



**Request for Proposal (RFP)  
Business Model Assessment**

**Introduction**

- A The Board of Directors is seeking proposals for the provision of the Services described in *RFP Schedule 1 – Statement of Requirement*.
- B Each Respondent to this RFP is expected to:
  - (i) fully inform themselves on all aspects of the work required to be performed;
  - (ii) submit its proposal on the template provided at *RFP Schedule 2 – Proposal*, including the signed Declaration by Respondent at the end of *Schedule 2*; and
  - (iii) submit its proposal in accordance with *RFP Schedule 1 – Statement of Requirement* and with due note of *RFP Schedule 4 – Evaluation Criteria*.
- C Each Respondent, by submitting its proposal, agrees that the proposal is subject to the RFP Schedule 3 – Standard Conditions of Proposal, and agrees to comply with those conditions. Acceptance of a proposal will occur only when a contract is executed. Any Contract will incorporate some or all of the policies and guidelines identified in RFP Schedule 3 - Special Conditions of Proposal and the contract at RFP Schedule 5 - Standard Contract Conditions.
- D The Board will only consider proposals from Consultants with demonstrated familiarity and experience in working with Public Power Electric Utility business models and, specifically, Public Power Electric Joint Action Agency business models.

**Structure of the RFP**

The RFP has five parts:

- Schedule 1: Statement of Requirement
- Schedule 2: Proposal Template
- Schedule 3: Standard Terms and Conditions of Request for Proposal
- Schedule 4: Evaluation Criteria
- Schedule 5: DEMEC Standard Contract Terms and Conditions

<b>RFP Schedule 1 – Statement of Requirement</b>
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Key Dates and Details

Event	Dates
Closing Time for submission of Proposals	Friday, March 15, 2019 at 3.00pm, EST
Method to Submit Proposal	<p>Proposals must be submitted in <u>both</u> (A) electronic and (B) hard copy form</p> <p>For (A) electronic submission, the Respondent shall email the detailed Proposal (in PDF format) to: Patrick E. McCullar, President &amp; CEO <a href="mailto:pmccullar@demecinc.net">pmccullar@demecinc.net</a></p> <p>For (B) hard copy submission, the Respondent shall deliver <b>one original</b> hard copy of its detailed Proposal to: Patrick E. McCullar President &amp; CEO 22 Artisan Drive Smyrna, DE 19977 by the closing time specified above.</p> <p>Proposals lodged in any manner other than as detailed in this paragraph or are submitted after the deadline shall be deemed to be invalid and may be excluded from consideration.</p>
Number of Copies to be Submitted	The Respondent shall submit one original hard copy and one electronic version (in PDF format) of its detailed Proposal. Decisions will be taken on the basis of the original hard copy written Proposal. In the event of any discrepancy between the original and copy thereof, information contained in the original hard copy shall be accepted as correct and shall prevail over any statements contained in the PDF copies.

Contact Officer	Patrick E. McCullar President & CEO 22 Artisan Drive Smyrna, DE 19977 302-653-2733 <a href="mailto:pmccullar@demecinc.net">pmccullar@demecinc.net</a>
Expected execution date of Contract	March 31, 2019
Date Services are to be completed	The Services are required to be completed on or before June 1, 2019. The contract deadline for completion may be extended by the Contact Officer, based on the agreed scope of work and other constraints.

### The Services

The Board is seeking proposals for Business Assessment of the Joint Action Agency.

#### **1. Background**

DEMEC is a public corporation constituted as a Joint Action Agency and a wholesale electric utility. DEMEC represents nine municipal electric distribution utilities located in the State of Delaware. The creation of DEMEC was made possible by an act of the Delaware General Assembly on June 6, 1978, and the entity was incorporated on July 12, 1979. The members of DEMEC comprise all the major cities and towns in Delaware except Wilmington. The DEMEC members are: Newark, New Castle, Middletown, Dover, Smyrna, Seaford, Lewes, Clayton and Milford. DEMEC employs 10 people in two locations.

The mission of DEMEC is to advance the principles of public power community ownership and provide competitive, reliable wholesale energy supply and related services to its members through a diversified portfolio of generation assets and power purchase agreements.

DEMEC is a political subdivision of the State of Delaware and is therefore exempt from state and federal income taxes. Please visit our website at [www.demecinc.net](http://www.demecinc.net) for other information such as financial statements and credit ratings.

DEMEC's Peak Load served is 266 MW. Annual Revenues from DEMEC's monthly member billings and generation assets are approximately \$160 million per year. The DEMEC energy portfolio is comprised of the following parts:

- Owner/Operator of the Warren F. Beasley Power Station in Smyrna, DE (100 MW)
- Owner of a portion of the American Municipal Power, Inc. (AMP) Fremont Energy Center in Fremont, OH (105 MW)
- Contracts with renewable energy facilities to purchase energy and/or environmental attributes (90+MW)
- Bilateral forward power supply contracts of varying term with energy providers

DEMEC is a member of the PJM Interconnection and transacts in the PJM market structures. DEMEC is also a member of American Municipal Power ("AMP"), a large joint action agency headquartered in Columbus, Ohio. AMP provides power supply and related services to 130 member systems in nine states. (See [www.amppartners.org](http://www.amppartners.org)).

The company has experienced significant growth over the past 5 years to provide the power supply and services required by the member/owners. The Board wishes to assess the current business organization and capabilities to determine if the current organization and capabilities

in place are sufficient to enable the company to efficiently and effectively deliver the required services and provide the necessary support to the member/owners into the future.

The potential Respondents can review additional details about the company at its website [www.demecinc.net](http://www.demecinc.net).

## **2. Objectives of the Engagement**

The Consultant will produce an assessment of the current business model and identify any gaps in organization structure and capabilities. This assessment will help target new projects in areas most relevant to the needs of the member/owners.

The primary objectives of the Engagement are to:

- Identify existing gaps in the company's capabilities, resident knowledge and skills, and resources
- Facilitate the identification of gaps by priority and provide recommendations for future efforts to fill identified gaps.
- Use the Consultant's knowledge to recognize and highlight best practices for Joint Action Agencies in the current and future industry environment.
- Develop recommendations to help guide future projects to fill gaps; and
- Ultimately help provide guidance to the Board and Senior Management on pursuing the most beneficial efforts to achieve progress towards the member/owner goals.

## **3. Scope of Services**

### **3.1 Description of Services**

Interview the nine members of the Board regarding value of the company and priority of services to determine areas of strength and concern.

Interview the Senior Management (President and Senior Vice President) to determine areas of strength and concern.

Benchmark the job description, compensation and contract of the President/CEO and Senior Vice President-Operations & Power Supply/COO utilizing a relevant peer group, identified and shared with the Board for future use.

Review existing goals and incentive compensation policy and recommend changes to current goals utilized to determine compensation changes, including incentive compensation, and/or determine appropriate goals to be used for determining compensation change. The goal of the recommended changes will be to retain existing talent that the company currently has investments in and to further provide the ability to recruit talent to fill identified skills gaps necessary to provide future services.

Review various succession models with the Board.

Review Board Committee structures to determine if changes are appropriate.

The Consultant shall also review public power case studies and best practices and conduct additional research to deliver a comprehensive report outlining gaps and Company needs for future priority areas of work for consideration by the Board. This assessment should take into

account the diversity of national circumstances across the nation to allow easier identification and adoption of best practices specific to a joint action agency operating in an RTO environment in the eastern mid-Atlantic region.

The study shall ultimately determine specific resource or knowledge gaps that, if filled, would improve the value and effectiveness of the company.

### 3.2 Expected Outputs and Timelines

The Consultant shall be expected to deliver the following outputs by the respective specified deadlines:

- Complete a survey of Senior Management (CEO and COO) and members of the Board of Directors to seek initial views on strengths and weaknesses and potential resource or knowledge gaps to be filled. Summarize the results of the survey and make appropriate recommendations.
- Complete review and report on the company as it is structured today compared with best practices in the public power sector of the electric industry, with specific focus on Joint Action Agencies operating in RTOs. Identify gaps by priority and recommend actions to fill gaps.
- Submit a draft report covering findings from above activities to the Board and Senior Management for review and comment.
- Finalize report of finding and recommendations and deliver to the Board and Senior Management.

The Consultant shall be expected to submit the Draft Report to the Board and Senior Management no later than April 25, 2019.

The Consultant will review the Draft Report with the Board and accept comments at the May Board Meeting (May 21, 2019).

The Consultant shall incorporate the Board comments and deliver a Final Report to the Board and Senior Management no later than June 15, 2019.

### 3.4 Qualifications of Respondent

The Respondent, through its written proposal, will need to describe its approach to delivering the Services, demonstrating appreciation of the key issues and stakeholders for achieving the objectives and having an appropriate methodology and work plan for delivering the Services in the specified timeframes.

The Respondent will also need to provide evidence of ability and experience to undertake the specified objectives/duties in this Request for Proposal, including:

- *evidence of a breadth and depth of knowledge of public power business models, specifically Joint Action Agency business models.*
- *experience working broadly with public power sector economies and familiarity with Joint Action Agency structures;*
- *knowledge of public power industry sector best practices from outside the company to lend to the analysis;*

- *familiarity with the Joint Action Agency business model;*
- *familiarity with operations in the PJM RTO; and*
- *proven analytical, research and plain English report writing skills.*

### 3.5 Additional Requirements

N/a.

### 3.6 Reports and Publications

Reports for publication must be prepared in MS Word and PDF formats. Industry publications utilized as the basis of recommendations should be provided in PDF format.

### 3.7 Reporting and Coordination Arrangements

The selected Consultant will be required to liaise closely and work in collaboration with Senior Management in performing the Services in the Contract. The selected Consultant will keep the Executive Committee Chair and Senior Management informed of progress of the work, timelines and budget.

## **4. Payment**

4.1 Subject to the satisfactory completion of the Services, DEMEC shall pay the selected Consultant up to **US\$20,000**.

4.2 This maximum amount payable to the selected Consultant is inclusive of:

Consultant Fee  
Reimbursable Costs (Travel Expenses)

## **5. Facilities and assistance proposed by the Board**

The Senior Management will provide access to all needed company data and resources needed to assist the Consultant in their work. Senior Management will provide advice and guidance to the Consultant throughout the project and will promptly make payment to the Consultant once work has been completed satisfactorily.

**RFP Schedule 2 – Proposal Template (to insert company logo)**

Instructions to assist Respondents to complete their proposal have been included as white text on a black background.

**Instruction to Respondents:**  
Ensure your response covers all of the evaluation criteria identified in Schedule 5 - Evaluation Criteria.

Respondent's Details

Full legal name and postal address:

Business registration number (if applicable):

Contact Officer

For all matters relating to this RFP, the Respondent's Contact Officer will be:

Name/position title:

Telephone

Mobile:

Email:

Contract Manager

**Instruction to Respondents:**

Respondents should provide the requested details of the person who is the Respondent's proposed Contract Manager, responsible for general liaison and accepting and issuing any written notices under the contract, if a contract is awarded.

Name/position title:

Telephone:

Mobile:

Email:

Respondent's Proposal

**Instruction to Respondents:**

Respondents should describe how they will meet the requirements set out in Schedule 1. Include Method and Workplan.

Proven Capacity

***Statement of Skills and Experience***

**Instruction to Respondents:**

Respondents should provide evidence of their skills and experience in providing the Services. Give evidence of why you/your company/your team members are most capable to deliver the Services. Ensure this responds to the requirements of this project, identified in Schedule 1 "the Services".

Specified Personnel

**Instruction to Respondents:**

List who will do what. Attach CVs where appropriate. Note that any fees shown in this table form part of the pricing itemized budget below – they are not additional. If no Specified Personnel insert “Not applicable”.

Name	Position/Role	Rate (\$USD, inclusive of taxes)	Anticipated Time	Total for Person
<b>Total (inclusive of tax)</b>				<b>\$USD</b>

Sub-Consultants

**Instruction to Respondents:**

Respondents must provide (in the form of the table below) details of any sub-Consultants that the Respondent proposes to engage to deliver the Services and an explanation for using subConsultants. If no subConsultants will be used insert “Not applicable”.

Proposed sub-Consultant (full legal name)	Scope of services to be subcontracted and technical significance	Fees and associated expenses (inclusive of tax)

Pricing

Itemized budget (all pricing must be inclusive of taxes)

**Instruction to Respondents:**

Prepare a detailed itemized budget in your proposal, including specification of:

- Consultancy fees and administrative support charges, with unit cost and the number of hours/days proposed to be devoted to the project;

If there are reimbursable items in your proposal (if stated in the RFP Schedule 1), please state.

Conflict of Interest

**Instruction to Respondents:**

This is a mandatory field, a response is required. If there is no conflict of interest then state that. If a real or perceived conflict of interest exists with the submission of a proposal, or would exist if the Respondent entered into a contract with DEMEC for the Services in this proposal, full details should be included here. Detail a plan to manage the conflict of interest.

Standards and Best Practice

**Instruction to Respondents:**

If there was a requirement in Schedule 1, you must respond here.

**Respondents must complete and sign a Declaration in the form presented below.**

Declaration by Respondent

The Respondent proposes to provide the Services described in *Schedule 1* to the RFP (*Statement of Requirement*) on the following terms:

- the RFP Schedule 1 - Statement of Requirement;
- the proposal is submitted according to Schedule 2 – Proposal Template;
- the RFP Schedule 3 – Standard Terms and Conditions of Request for Proposal ;
- DEMEC Standard Contract Terms and Conditions described at RFP Schedule 5.

These documents collectively comprise the Respondent’s **“Proposal”**.

**The Proposal**

The Respondent agrees to enter into a contract to provide the Services in accordance with its Proposal substantially in the form of the *Standard Contract* at RFP Schedule 5 of this RFP which incorporates by reference DEMEC Terms and Conditions of Contract in RFP Schedule 3.

The Respondent agrees that DEMEC may accept or decline the Respondent’s Proposal at its discretion. No commitment or contract exists until a contract substantially in the form of the *Standard Contract* is executed by both parties.

The Respondent agrees that participation in any stage of the RFP process is at the Respondent’s sole risk and cost.

**Conflict of Interest**

At the time of submitting a proposal, the Respondent agrees there is no conflict of interest (real or perceived) unless specifically and clearly identified in their proposal (Schedule 2) with a recommended plan to manage the conflict of interest.

The Respondent agrees to notify DEMEC immediately if an actual or potential conflict of interest arises.

..... Signatory’s printed name:	..... Signatory’s signature:
..... Signatory’s Position	..... Date
..... Signatory’s Phone Number	..... Signatory’s Email Address

**RFP Schedule 3 – Standard Terms and Conditions of Request for Proposal**

1. GENERAL

Respondents should submit proposals in the format provided at RFP Schedule 2 – Proposal Template, in response to the requirements stated in RFP Schedule 1. Proposals must be provided in English and with prices quoted in United States of America Dollars.

2. DEMEC RIGHT TO DECLINE

DEMEC, at its discretion, may discontinue the RFP; decline to accept any proposal; decline to issue any contract; or satisfy its requirement separately from the RFP process.

3. CHANGES TO REQUEST FOR PROPOSALS

DEMEC may, at its discretion, vary the Request for Proposals before the Closing Time. Changes will be communicated by email to all interested Respondents.

4. CONTRACT

If the Proposal of the Respondent is accepted by DEMEC, the Respondent shall execute a contract in a standard form (“the Contract”) within the time period specified by DEMEC. See Standard Contract Conditions at RFP Schedule 5, which will form part of the Contract.

5. LODGEMENT

5.1 All documentation submitted as part of the Proposal must be in English.

5.2 Respondents are required to include all information specified in this RFP in their Proposal.

5.3 Respondents accept that their failure to provide all information required, in the format specified may result in their Proposal being considered as a non-conforming Proposal and liable to rejection.

6. EVALUATIONS OF PROPOSALS

6.1 The DEMEC Executive Committee will evaluate proposals to determine best value for money outcome.

6.2 The criteria for evaluation will be assessed according to the criteria outlined at Schedule 4 - Evaluation Criteria.

7. FINANCIAL INFORMATION

7.1 If requested by DEMEC, the Respondent must be able to demonstrate its financial stability and its ability to remain viable as a provider of the Services over the term of any agreement.

## 8. REFERENCES

DEMEC requests the Respondent provide reference information on past projects/experience relevant to this scope of work and claimed in the Respondent's proposal, including reference contact details.

## 9. NO CONTRACT OR UNDERTAKING

Nothing in this RFP will be construed to create any binding contract (express or implied) between DEMEC and any Respondent until a written Contract, if any, is entered into by the parties.

## 10. RESPONDENTS ACKNOWLEDGEMENT

10.1.1 The Respondent acknowledges by submitting a Proposal that it accepts the terms of this RFP Standard Conditions of Request for Proposal, the Special Conditions of Proposal and DEMEC Standard Contract Conditions.

10.1.2 A Proposal is submitted on the basis that the Respondent:

- (a) has examined this RFP and any other documents referenced or referred to herein, and any other information made available in writing by DEMEC to Respondents for the purposes of submitting a Proposal; and
- (b) has sought and examined all necessary information which is obtainable by making reasonable enquiries relevant to the risks, contingencies and other circumstances having effect on its Proposal.

## 11. CONFLICT OF INTEREST

11.1 Conflict of interest can be defined as any situation in which an individual or organization is in a position to exploit his/her professional or official capacity in some way for personal or corporate benefit.

11.2 Respondents must identify in their Declaration by Respondent:

- (a) any actual or potential conflict of interest; and
- (b) the procedures they intend to implement for dealing with any actual or potential conflicts of interest which may arise in connection with the submission of their Proposal or the conduct of the Services in a Contract, as described in this RFP. Respondents should include details of any known circumstances that may give rise to either an actual or potential conflict of interest in relation to the project.

11.3 Respondents must notify DEMEC immediately if any actual, potential or perceived conflict of interest arises after submission of a proposal (a perceived conflict of interest is one in which a reasonable person would think that the person's judgement and/or actions are likely to be compromised).

11.4 If any actual or potential conflicts of interest arise for a Respondent, DEMEC may:

- (a) enter into discussions to seek to resolve such conflict of interest;
- (b) disregard the Proposal submitted by such a Respondent; or

- (c) take any other action that DEMEC considers appropriate.

## 12. INSURANCE

If required by DEMEC, the Respondent must ensure that it and its sub-Consultants maintain insurance policies relevant to the delivery of Services identified in this RFP, in the event that the Respondent is awarded the contract.

## 13. CLARIFICATION

DEMEC reserves the right to seek clarification or additional information from any Respondent related to their proposal.

**RFP Schedule 4 – Evaluation Criteria**

**EVALUATION CRITERIA**

1. A successful Respondent will be judged on the following evaluation criteria:

(a) **THE ORGANIZATION:**

*Demonstrated capability to provide adequate management and support to deliver the Services. Personnel nominated to provide the services have strong familiarity and experience with public power entities and specifically Joint Action Agencies and knowledge of electric utility industry best practices to lend to the analysis.*

(b) **EXPERIENCE WITH RTOs and Public Power Joint Action Agencies**

*Demonstrated experience working broadly with all aspects of a joint action agency operating in an RTO environment.*

(c) **APPROACH TO THE SERVICES:**

*Demonstrated appreciation of the key issues and risks to achieve the objectives as outlined in the RFP.*

*Appropriate methodology and work plan to fulfill the objectives of the Services in the specified timeframes.*

(d) **ANALYTICAL AND RESEARCH SKILLS:**

*Proven analytical and research skills on similar past projects.*

(e) **REFERENCES:**

*Relevant references that demonstrate satisfactory work providing the required services and the experience of the Consultant.*

(f) **PROPOSAL COST:**

*Appropriate qualifications, experience and skills of personnel and team balance to implement the Services with a reasonable budget.*

**RFP Schedule 5 – DEMEC Standard Contract Terms and Conditions**

DEMEC AND THE CONSULTANT WILL NEGOTIATE AND AGREE TO THE APPROPRIATE CONTRACT FOR THIS SCOPE OF WORK

**SPECIAL CONDITIONS**

**1. Scope of Services:**

- 1.1 Description of Services  
(hereinafter referred to as “the Services”)
- 1.2 Expected Outputs and Timelines
- 1.3 Milestone Payments Schedule

**2. Payment**

2.1 Subject to the satisfactory completion of the Services, DEMEC shall pay the Consultant **\$20,000** (United States Dollars Twenty Thousand) according to the Milestone Payments Schedule identified above at Clause 1.3. Any payment is inclusive of any taxes and bank charges levied by the Consultant’s agent and/or beneficiary banks for remittances made to the Consultant’s bank account.

2.2 This maximum amount payable to the Consultant is comprised of two parts:

- 2.2.1 Consultant Fee of **US\$20,000** (United States Dollars Twenty Thousand) as represented in Milestone Payments Schedule identified above at Clause 1.3;
- 2.2.2 Reimbursable Costs (Travel Expenses) must be included in the maximum fee bid.

2.3 Reimbursement of Reimbursable Costs over the bid amount will not be made.

2.4 DEMEC shall make payment on Consultant Fee according to the Milestone Payment Schedule identified above at Clause 1.3 and/or as soon as practicable after approving the Milestone and receiving the appropriate invoices and accompanying supporting documentation from the Consultant. The Consultant must complete the Services by June 15, 2019.

2.5 The point of contact for DEMEC for this Contract shall be Patrick E. McCullar, President & CEO.

**STANDARD CONDITIONS**

3. PARTIES

3.1 The Parties to this contract are DEMEC and the Consultant.

4. INVOICES

4.1 The Consultant shall submit certified invoices to DEMEC to claim payment for Milestones and approved Reimbursement cost items. Original or electronic copies of the invoices may be submitted.

4.2 Invoices shall include the following information:

- 4.2.1 full name and number of project;
- 4.2.2 name of Consultant;
- 4.2.3 invoice date and invoice number;
- 4.2.4 description of services provided and associated dates;
- 4.2.5 charges and payments for previous invoices;
- 4.2.6 charges for billing period;
- 4.2.7 detailed banking instruction which includes the bank name, branch name, bank SWIFT code, account holder's name and number;
- 4.2.8 billing by company/organization rather than individual requires the official letter head of the company/organization;
- 4.2.9 a signed statement by the Consultant that the services have been performed in accordance with the terms and conditions of this Contract, and the costs being billed are true and correct and have not been previously paid; and
- 4.2.10 the invoice should be accompanied by an endorsement by the Project Overseer that the services have been satisfactorily completed.

4.3 Requirements for seeking reimbursement of approved reimbursable items include:

- 4.3.1 providing DEMEC with airfare invoice and e-ticket receipt.

5 ASSIGNMENT

- 5.1 The Contract is intended to cover a relationship between the Parties only. The Consultant shall not assign, delegate, sub-contract, mortgage, charge or otherwise transfer the Contract or any interest or benefit arising out of, or in connection with, the Contract to a third party without the prior written approval of DEMEC.

6 CHANGES TO CONTRACT

DEMEC and the Consultant may change the terms of the Contract by written agreement only.

7 CONSULTANT LIABILITY FOR PERSONAL INJURY AND/OR PROPERTY DAMAGE

- 7.1 If the Consultant, its employees, agents or Consultants directly or indirectly causes any loss or damage to person or property during the performance of the Contract, the Consultant will bear all liability on behalf of DEMEC. If someone makes a claim against DEMEC (whether during or after the completion and/or termination of the Contract) for any loss or damage to person or property directly or indirectly caused by the Consultant, its employees, agents or Consultants during the performance of the Contract, the Consultant must indemnify and hold DEMEC harmless from and against any and all loss, damage or liability, whether criminal or civil, suffered by DEMEC in connection therewith and reimburse DEMEC for any costs it has incurred in connection therewith (including actual legal costs on a full indemnity basis) whether during or after the completion and/or termination of the Contract.

- 7.2 For the purpose of Clause 7.1 “claim” shall mean all demands, claims and liabilities (whether criminal or civil, in contract, tort or otherwise) for losses, damages, legal costs and other expenses of any nature whatsoever and all costs and expenses (including without limitation legal costs) incurred in connection therewith.

## 8 DEFAULT

- 8.1 A Default is anything DEMEC considers to be a significant breach of the Contract including:
- 8.1.1 failure to perform an obligation under the Contract within the agreed time; or
  - 8.1.2 failure to deliver outputs of satisfactory capability, quality or reliability.
- 8.2 In the event of a Default by the Consultant, DEMEC shall write to the Consultant setting out the Default and the time by when the Consultant must fix it. If the Consultant fails to fix the Default within the time specified, DEMEC may immediately terminate the Contract by issuing a written Notice of Termination to the Consultant.
- 8.3 Termination under this clause does not affect the rights and/or remedies either party may have accumulated up to the date of termination including the rights and/or remedies DEMEC may have in relation to the Default.

## 9 RIGHTS IN DATA

- 9.1 If intellectual property or confidential information is required to enable the Consultant to provide the Services, the Consultant shall be solely responsible for obtaining approvals for the use of any intellectual property and/or confidential information that belongs to anyone else (i.e. third parties).
- 9.2 DEMEC shall own all intellectual property and confidential information that it creates in relation to the Services. DEMEC shall own all intellectual property and confidential information that the Consultant creates as a result of performing the Services. In particular, DEMEC shall own the following:
- 9.2.1 all data resulting from performance of the Contract, regardless of its form, format, or media;
  - 9.2.2 all data (other than that owned by third parties) used in performing the Contract regardless of its form, format, or media;
  - 9.2.3 all data delivered under the Contract making up manuals or instructional and training materials;
  - 9.2.4 all processes provided for use under the Contract; and
  - 9.2.5 all any other data delivered under the Contract.
- 9.3 If the Consultant wishes to use the intellectual property and/or confidential information (mentioned in Clause 9.2 above) for purposes that are not in relation to the performance of the Services, it must obtain prior written consent from DEMEC.

- 9.4 The Consultant consents to DEMEC's use of the Consultant's own intellectual property and/or confidential information if DEMEC requires the Consultant's own intellectual property and/or confidential information to use the Services.
- 9.5 The Consultant shall protect all intellectual property and/or confidential information belonging to DEMEC vigorously to the extent permissible by law. If the Consultant has a reasonable suspicion that there has been any event that infringes the rights of DEMEC in relation to its intellectual property and/or confidential information, it will inform DEMEC immediately in writing.

10 CONFLICT OF INTEREST

- 10.1 The Consultant warrants, agrees and undertakes that neither it nor its employees, servants and/or agents has any arrangement, interest, activity, or relationship that could impair the Consultant's ability to act impartially and effectively in the delivery of the Services as required by this Contract.
- 10.2 The Consultant shall exercise its responsibility in the best interests of DEMEC and shall not engage in any activities that would conflict with this Contract.
- 10.3 If the Consultant becomes aware of any actual or potential conflict of interest as defined in Clause 10.1 and 10.2 above, the Consultant shall immediately notify DEMEC in writing of (i) any such actual or potential conflict of interest and (ii) the procedures it intends to implement to resolve any such actual or potential conflict of interest.
- 10.4 DEMEC may suspend the Services, terminate the Contract or take any other actions that DEMEC considers as appropriate in its sole discretion, if any actual or potential conflict of interest as defined in 10.1 and 10.2 above arises. If DEMEC directs the Consultant to take action(s) to resolve that conflict, the Consultant shall comply with any such direction(s).

11 CONFIDENTIALITY

- 11.1 The Consultant shall not, either during the term of the Contract or after the termination of the Contract, disclose to a third party any information that it may acquire in consequence of this Contract relating to the Services, this Contract or DEMEC's operations without the prior written consent of DEMEC.
- 11.2 The Consultant's obligations in Clause 11.1 shall not apply to any information which:
- 11.2.1 is publicly available or becomes publicly available other than by reason of the Consultant's default;
  - 11.2.2 the Consultant is required to disclose by order of a court of competent jurisdiction.
- 11.3 The Consultant shall ensure that its employees, servants and/or agents comply with the provisions of this Clause 11.

12 INSURANCE

- 12.1 The Consultant shall maintain and pay all premiums in respect of an insurance policy or policies relevant to the delivery of the Services with policy limits and provisions conforming to such requirements as DEMEC may from time to time prescribe and shall ensure that DEMEC shall be entitled to the benefit of such insurance.

13 SUSPENSION OF SERVICES

- 13.1 DEMEC may, at any time, give a written order to the Consultant, suspending all, or part, of the Services. DEMEC has full and sole discretion to decide the length of the suspension. Upon receiving the order, the Consultant must immediately comply with its terms and take all steps necessary to minimize any and all costs resulting from the suspension. DEMEC and the Consultant shall negotiate any adjustment to the price and/or schedule for completing the Services, which may result from the suspension.

14 TERMINATION BY DEMEC

- 14.1 DEMEC may terminate this Contract, in whole or in part, by issuing a written Notice of Termination. DEMEC may terminate this Contract without giving any reasons. If this Contract is terminated, DEMEC and the Consultant shall negotiate the rights, duties, and obligations of the Parties, including but not limited to compensation to the Consultant and/or DEMEC. Any compensation to the Consultant must not exceed the total value of the Contract, which is set out in Clause 2.1, "Payment" in Special Conditions.
- 14.2 Upon receiving a Notice of Termination, the Consultant shall immediately stop work as specified in the notice, except if directed otherwise by DEMEC.
- 14.3 Upon receiving a Notice of Termination, the Consultant shall submit a final termination settlement proposal to DEMEC. The settlement proposal must include a certification from the Project Overseer of the actual costs the Consultant has incurred.
- 14.4 If the Consultant fails to submit the termination settlement proposal within seven (7) days from the date of the Notice of Termination, DEMEC may in its sole discretion determine the amount, if any, due to the Consultant following the termination.
- 14.5 Upon termination of the Contract, subject as provided in this clause and except in respect of any accrued rights, neither Party shall be under any further obligation to the other.
- 14.6 Termination under this clause does not affect the rights and/or remedies which either Party may have accrued or accumulated up to the date of termination of the Contract.

15 LANGUAGE AND NOMENCLATURE

15.1 All of the Services, including any drawings, documents, information, correspondence, test reports and similar items must be in the English language.

16 INTERPRETATION

16.1 Should a dispute about the meaning of any term in the Contract arise, DEMEC may make a written determination as to the term's meaning. A written determination made under this clause shall be final and conclusive between the Parties.

17 LAW & JURISDICTION

17.1 The laws of the State of Delaware govern this Contract. The Parties to the Contract agree to submit to the exclusive jurisdiction of the Courts of Delaware.

18 COMMUNICATIONS

18.1 All communications relating to this Contract shall be in writing and may be delivered:

18.1.1 personally;

18.1.2 by prepaid registered post with recorded delivery to one of the addresses listed at the beginning of this Contract (as relevant); or

18.1.3 by email.

19 ENTIRE AGREEMENT

19.1 This Contract is the entire agreement between DEMEC and the Consultant in relation to the matters set out in this Contract. No other terms and conditions may be included or implied. Any warranty, representation, guarantee or other term or condition not contained in this Contract has no effect.

20 ILLEGALITY AND SEVERABILITY

20.1 If any provisions of this Contract are held unenforceable or invalid for any reason, the remaining provisions of this Contract will continue to be in full force and effect.

21 WAIVER

21.1 A Party's failure, delay or relaxation in exercising any power or right it has under this Contract does not mean that the Party has given up (i.e. waived) that power or right.

21.2 A Party exercising a power or right does not stop it from:

21.2.1 further exercising that power or right; or

21.2.2 exercising any other power or right under this Contract.

22 REASONABLENESS

- 22.1 The Consultant confirms it has had the opportunity to receive independent legal advice relating to all the matters relating to this Contract.
- 22.2 The Consultant agrees that, having considered the terms of this Contract as a whole, the terms of this Contract are fair and reasonable.

23 PARTNERSHIP

- 23.1 This Contract does not create a partnership between DEMEC and the Consultant.

24 FORCE MAJEURE

- 24.1 A Force Majeure Event is any event which is beyond the reasonable control of the Consultant or DEMEC and which makes it impossible to perform an obligation under this Contract, including the following:
  - 24.1.1 acts of God, lightning strikes, earthquakes, volcano eruptions, floods, storms, explosions, fires, pandemics and any natural disaster;
  - 24.1.2 acts of war (whether declared or not), invasion, acts of foreign enemies, mobilization, requisition, or embargo;
  - 24.1.3 acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution, military usurped power, or civil war;  
or
  - 24.1.4 contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosion, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly.
- 24.2 A Party that does not perform an obligation under this Contract shall not be in breach to the extent that a Force Majeure Event caused the non-performance.
- 24.3 Where the Consultant thinks there is likely to be a delay in performing an obligation under this Contract because of a Force Majeure Event the Consultant shall:
  - 24.3.1 immediately notify DEMEC in writing of:
    - 24.3.1.1 the likely delay and how long the Consultant thinks it will last; and
    - 24.3.1.2 details of the likely effect on the Services and the Consultant's ability to perform the Contract;
  - 24.3.2 take all reasonable steps to lessen (i.e. mitigate) the effects of any delay; and
  - 24.3.3 use its best efforts to continue to perform its obligations under the Contract.

24.4 DEMEC and the Consultant shall, as soon as practicable after receiving the notification, discuss whether the Contract can continue. If, following that discussion, DEMEC and the Consultant agree that the Contract can continue they may:

24.4.1 continue the Contract unchanged; or

24.4.2 change the Contract using the process in Clause 24.4

24.5 Nothing in this clause limits DEMEC's ability to suspend or terminate the Contract under Clause 13 or Clause 14.

25 COSTS AND EXPENSES FOR PREPARATION AND EXECUTION OF CONTRACT

25.1 Except as otherwise provided for in the Contract, the Parties shall bear their own costs of and incidental to the preparation and execution (i.e. signing) of the Contract.

26 PROVISION OF SERVICES

26.1 The Consultant shall provide the Services to DEMEC on the delivery dates identified in the Contract. The Consultant shall immediately notify DEMEC in writing if the Consultant becomes aware that it will be unable to provide all or part of the Services by the relevant delivery date and advise DEMEC as to when it will be able to do so.

26.2 The Services must be provided to the standard that would be expected of an experienced and professional supplier of similar services and any other standard specified in the Contract.

26.3 The Consultant and its staff or sub-Consultants shall not by virtue of this Contract be, or for any purpose be deemed to be, and must not represent itself as being, an employee, partner or agent of DEMEC.

27 REPORTING AND COORDINATION ARRANGEMENTS

The Consultant shall work in collaboration with the Board and Senior Management in performing the Services in the Contract.