

SUBCONTRACT # **[TO BE AUTOMATICALLY GENERATED]**

Subcontractor:	INSERT	Effective Date:	INSERT
Subcontract Not-to-Exceed (NTE)	INSERT	Subcontractor Address:	INSERT
Subcontractor Primary Contact Person:	INSERT	Subcontractor City, State, ZIP	INSERT

This SUBCONTRACT AGREEMENT (this “Subcontract”) dated to be effective as of the “Effective Date” listed above is between Vermont Energy Investment Corporation (“VEIC”) of 20 Winooski Falls Way, 5th Floor, Winooski, Vermont 05404 and the subcontractor identified in the table above (“Subcontractor”). Each of VEIC and Subcontractor may be referred to herein as a “Party” and, collectively, as the “Parties”.

Preliminary Statement. VEIC has a contract (the “Prime Contract”) with the District of Columbia Department of Energy and the Environment (“DOEE”) to manage the operations of the District of Columbia Sustainable Energy Utility (the “DCSEU”) and administer sustainable energy programs designed to reduce energy consumption, increase renewable energy generating capacity, reduce the growth of peak electricity demand, improve the efficiency of low-income housing, reduce the growth of energy demand of the largest energy users, increase the number of green-collar jobs in the District of Columbia, and DOEE’s FY2023 Solar for All CREF and Single Family initiatives (the “Programs”). VEIC desires to contract with Subcontractor to provide certain services in connection with the Programs; and Subcontractor desires to provide VEIC with such services in connection with the Programs.

Agreement. In consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto agree as follows:

1. **DEFINITIONS.** Capitalized terms and acronyms used in this Subcontract will have the meanings defined in **Attachment A**, “Definitions and Acronyms.”
2. **SCOPE OF SERVICES.**
 - a. **Subcontract Scope of Work.** Subcontractor agrees to provide VEIC with the Services during the Performance Period based upon the Scope of Work set forth in **Attachment B** and Subcontractor’s Portfolio of CREFs forth in **Attachment C**. The Performance Period for this Subcontract shall consist of a “Subcontract Construction Period” and a “Subcontract Operating Period,” and the Performance Period for any CREF shall consist of a “CREF Construction Period” and a “Minimum CREF Commercial Operation Period,” all as defined below. All Services to be provided by Subcontractor will be under the direction of the DCSEU staff set forth in Section 25, SFA Program Portfolio Manager, or CREF Program Manager.
 - b. **Changes.** Changes to the Subcontract Scope of Work may be made only by written amendment in accordance with the provisions of Sections 25 and 29.a. Subcontractor bears all risks for cost incurred by exceeding the Subcontract NTE or any CREF Incentive NTE if Subcontractor fails to

negotiate and execute an amendment to the existing Subcontract or any CREF Incentive NTE before the cost overrun occurs.

- c. **Monthly Progress Reports.** For each month in which Subcontractor performs any Services during the Subcontract Construction Period, Subcontractor must submit to VEIC a monthly progress report by no later than the fifth business day of the subsequent month, covering the Services performed in the previous month (each a “Progress Report”) unless this requirement has been waived by the SFA Program Portfolio Manager or CREF Program Manager. Each Progress Report will be in letter form, outlining: (i) the actual Services performed since the previous Progress Report, (ii) any problems identified with the Services, budget, and schedule for performance, and (iii) remedial actions planned.
- d. **Interim Work Products.** Upon request of VEIC during the Subcontract Construction Period, Subcontractor shall provide VEIC with intermediate work products as they are completed, including interim analyses, working drafts, and memoranda prepared for the Services.
- e. **CREF Authorization.** All Services provided to VEIC by Subcontractor under this Subcontract will be authorized by VEIC in **Attachment C** (or as otherwise modified by an amendment to **Attachment C**). No work may be undertaken on a specific CREF unless the CREF has been authorized by VEIC in **Attachment C**.
- f. **Subcontractor’s Portfolio of CREFs.** Subcontractor’s Portfolio of CREFs will be authorized by VEIC and set forth in list format in **Attachment C**. The list will contain for each CREF: (i) the CREF name, (ii) the DCSEU Tracker number, (iii) the site address (and interconnection address, if different) for the Services being provided, (iv) the CREF Capacity (kW) NTE, (v) the CREF Incentive (\$) NTE, (vi) milestone deadlines, (vii) the payment schedule, (viii) Commercial Operation Date, and (ix) Minimum CREF Commercial Operation Period. **Attachment C** shall also contain: (i) the Subcontractor’s Portfolio Capacity (kW or MW) NTE, (ii) the incentive price per watt, and (iii) a summary of the milestone deliverables and other subcontract deliverables.
- g. **Terms and Conditions.** All Services performed by Subcontractor will be subject to and governed by the terms and conditions of this Subcontract or applicable Attachments. In the event of any conflict or inconsistency among the individual terms and conditions of this Subcontract or applicable Attachments, the terms of this Subcontract shall control except the list of CREFs in Subcontractor’s Portfolio, incentive price per watt, milestone deliverables, deadlines, payment schedule, Commercial Operation Date, and Minimum CREF Commercial Operation Periods which will be controlled by **Attachment C**.
- h. **Modifications, Substitutions and Cancellations of CREFs.** The Parties acknowledge that the CREFs to be developed and installed during the CREF Construction Periods are subject to change, both in capacity, and other details of the individual CREFs. To provide for expeditious review, flexibility and accommodation of such modifications, substitutions and cancellations (“changes”) when feasible, Subcontractor shall immediately notify VEIC of any changes and comply with the following procedures as may be applicable to the requested change.
 - i. **CREF Capacity Modifications and other details of individual CREFs.** The CREF Capacity NTE and CREF Incentive NTE (“CREF NTEs”) for each CREF will be set forth in **Attachment C** based on the preliminary design drawings provided by Subcontractor to the DCSEU and shall be subject to the Subcontract NTE and Portfolio Capacity NTE. If during the CREF Construction Period, Subcontractor determines that a CREF(s) will either not achieve or will exceed the CREF NTEs listed in **Attachment C**,

Subcontractor shall immediately notify the DCSEU in writing and request either a (a) modification to the CREF NTEs set forth in **Attachment C** to reflect the expected increase or decrease; or (b) request a modification to Subcontractor's List of Approved CREFs in **Attachment C** if a CREF(s) within Subcontractor's Portfolio of CREFs is expected not to achieve its CREF NTEs listed in **Attachment C** and the lost capacity and incentive can be replaced or reduced by increasing the CREF NTEs for other CREF(s) within Subcontractor's Portfolio. The notice to VEIC shall explain the capacity change, provide sufficient details to permit evaluation of Subcontractor's proposal and the information that would be required to complete **Attachment C** to reflect Subcontractor's requested change, if approved by VEIC. If the modification is acceptable to VEIC, VEIC will send Subcontractor a draft Subcontract amendment for Subcontractor's review and execution. If the modification is not acceptable to VEIC, the Parties will cooperate in good faith to reach agreement on the matter. If the Parties are unable to reach agreement on the matter, VEIC reserves the exclusive right, in its sole discretion, to reject Subcontractor's proposed modification. All other modifications will be handled on an individual basis in accordance with the provisions of Section 25 and 29.a of this Subcontract.

- ii. **Cancellations and Substitutions of a CREF(s).** If during the CREF Construction Period, Subcontractor determines that a CREF(s) authorized by VEIC in **Attachment C** is no longer feasible for development under this Subcontract, Subcontract shall promptly notify VEIC, request cancellation of the CREF(s) and propose a substitute CREF(s) to replace the expected capacity and incentive loss from the canceled CREF(s). The notice to VEIC shall explain why the CREF(s) is no longer feasible for development, provide sufficient details to permit evaluation of Subcontractor's proposal and the information that would be required to complete **Attachment C** to reflect Subcontractor's requested change, if approved by VEIC. If the proposal is acceptable to VEIC, VEIC will send Subcontractor a draft Subcontract amendment for Subcontractor's review and execution. If the proposal is not acceptable to VEIC, VEIC reserves the exclusive right, in its sole discretion, to temporarily or permanently decrease Subcontractor's Subcontract NTE and Subcontractor's Portfolio of CREFs (**Attachment C**) to remove the CREF(s) that will no longer be feasible for development under this Subcontract. In such an event, VEIC will provide notice of such decrease to Subcontractor in accordance with the provisions of Section 25 and 29.a., and such decrease in the Subcontract NTE and Subcontractor's Portfolio of CREF(s) (**Attachment C**) shall be binding upon delivery. VEIC also retains the rights of termination for cause and without cause as set forth in Sections 14 and 15 of this Subcontract.

3. **PERFORMANCE PERIOD.** The "Performance Period" for this Subcontract will commence on the Effective Date and shall continue until completion of the Subcontract Scope of Work, including the Subcontract Operating Period (defined below), unless amended or terminated earlier in accordance with the provisions of this Subcontract. Any interim dates for completion of the Services, including the due date of any milestone deliverables, are as specified in **Attachment C**. Time is of the essence in undertaking all of Subcontractor's obligations under this Subcontract.

- a. **Subcontract Construction and Operating Periods.** The Performance Period for this Subcontract shall consist of a "Subcontract Construction Period" during which Subcontractor shall ensure that all CREFs are constructed and interconnected as described in **Attachment B** and **Attachment C**, and a "Subcontract Operating Period" during which Subcontractor shall ensure all CREFs are operated, maintained, and produce the minimum production requirement as described in **Attachments B** and **B2**. The Subcontract Construction Period

shall commence as of the Effective Date listed on Page 1 of this Subcontract and continue until all CREFs that receive funding under this Subcontract achieve all the requirements as described in Attachment B and Attachment C. The Subcontract Operating Period shall commence on the date the first CREF achieves Commercial Operation and continue until all CREFs that receive funding under this Subcontract have achieved the Minimum CREF Commercial Operation Period listed in Attachment C.

- b. **CREF Construction and Operating Periods.** The Performance Period for a CREF shall consist of a construction period during which Subcontractor shall ensure the CREF achieves all the requirements as described in Attachment B and Attachment C, and an operating period during which Subcontractor shall ensure the CREF operates in accordance with Attachments B and B2. Each “CREF Construction Period” shall commence on the date the CREF is authorized by VEIC in Attachment C and continue until the CREF achieves all the requirements described in Attachment B and Attachment C. Each operating period shall commence as of the Commercial Operation Date of the CREF and continue until each CREF authorized in Attachment C has achieved the Minimum CREF Commercial Operation Period listed in Attachment C.

4. **DOCUMENTATION REQUIREMENTS.** Subcontractor must submit to VEIC an executed Conflict of Interest Disclosure Form and must disclose on an annual basis any additional interests as outlined in the DCSEU Conflict of Interest Policy and Disclosure Form attached to this Subcontract as Attachment E. Until the completed form is on file with VEIC, VEIC shall be under no obligation to pay any invoices submitted by Subcontractor.

5. **FEES AND PAYMENTS.**

- a. **Payment of Invoices.** Subcontractor will be paid in accordance with Attachment D, “Invoicing and Payments,” and the provisions of this Section 5.
- b. **Subcontract and CREF Incentive Not-to-Exceed Amounts.** The Subcontract Not-to-Exceed Amount or Subcontract NTE is the maximum amount to be paid to Subcontractor hereunder for all Services performed under this Subcontract, which will be authorized by VEIC on a per CREF basis in Attachment C. The CREF Incentive Not-to-Exceed Amount or CREF Incentive NTE is the maximum amount to be paid to Subcontractor hereunder for a CREF authorized by VEIC and as set forth on Attachment C. The sum of Subcontractor’s invoices under this Subcontract shall not exceed the Subcontract NTE or the applicable CREF Incentive NTE except when overages have been approved by VEIC in a written amendment to this Subcontract in accordance with the provisions of Section 29.a. prior to Subcontractor exceeding the Subcontract NTE or CREF Incentive NTE. ***SUBCONTRACTOR BEARS ALL RISKS FOR COST OVERRUNS INCURRED BY EXCEEDING THE SUBCONTRACT NTE SET FORTH ON THE FIRST PAGE OF THIS SUBCONTRACT OR CREF INCENTIVE NTE SET FORTH IN ATTACHMENT C IF SUBCONTRACTOR DOES NOT NEGOTIATE AND A WRITTEN AMENDMENT OF THE RELEVANT NTE IS NOT EXECUTED BEFORE THE COST OVERRUNS OCCUR.***
- c. **Subcontract and CREF Incentive NTE.** The Subcontract NTE for this Subcontract is stated on the first page of this Subcontract. The CREF Incentive NTEs for each CREF in Subcontractor’s Portfolio are stated in Attachment C.
- d. **Subcontract NTE Reduction.** The Subcontract NTE does not represent a guaranteed payment amount to Subcontractor. VEIC reserves its right in its sole discretion to (i) authorize any level of

Services under this Subcontract subject to the Subcontract NTE, and (ii) to decrease the Subcontract NTE at any point during the term of this Subcontract if a CREF and/or Project is changed as set forth in Section 2.h. of this Subcontract.

- e. **Effect of Payment.** Payment by VEIC for Services or Products shall not be construed as (i) an acceptance of any Services or Products, or (ii) a waiver or limitation of any of VEIC's rights or remedies under this Subcontract or at law or in equity, with regard to Services or Products that do not comply with or conform to the applicable attachment or other provisions in this Subcontract.
- f. **Submission of Invoices.** Subcontractor shall invoice VEIC according to the payment schedule outlined in **Attachment C** upon achievement of applicable milestones for each CREF. Invoices shall be submitted as directed, and with the information required in **Attachment D**. Except as provided for in **Attachment C** for the Milestone 2 payment, all project-related materials, supplies, and equipment purchased by Subcontractor or its subcontractors shall be installed prior to submitting an invoice to VEIC.

6. **INDEPENDENT CONTRACTOR.**

- a. **No Employment Relationship.** Subcontractor is an independent contractor. This Subcontract does not establish an employment, partnership, or joint venture relationship between VEIC and Subcontractor or between VEIC and the Subcontractor's employees or subcontractors. Accordingly, all persons employed or retained by Subcontractor in connection with the performance of its obligations hereunder shall be employees or agents of the Subcontractor or those of its subcontractors or suppliers, as the case may be, and not the employees or agents of VEIC in any respect. Subcontractor assumes full responsibility for the actions and supervision of its employees and subcontractors. It is further understood that Subcontractor is free to work for other parties during the Performance Period of this Subcontract.
- b. **No Agency; Acceptable Practice.** Subcontractor shall not represent or hold itself out to anyone as being an agent of VEIC or the District, nor indicate that Subcontractor has the right to speak for, represent, or obligate VEIC or the District in any way, unless expressly authorized in writing to speak on behalf of VEIC only by an authorized representative of VEIC.
- c. **Taxes and Employee Benefits.** Subcontractor shall be obligated to pay all taxes arising from the compensation payable hereunder. Subcontractor is solely and exclusively responsible for all applicable federal, state, and local taxes and withholdings with respect to any fees or expense reimbursements Subcontractor may receive as a result of this Subcontract.
- d. **No Claims or Recourse.** None of Subcontractor's employees or subcontractors shall have any claim against VEIC for employee benefits, including vacation pay, sick leave, retirement benefits, social security, workers' compensation, health or disability benefits, unemployment insurance benefits, or other employee benefits of any kind. Subcontractor understands that Subcontractor and its subcontractors are not named insured or additional insured on any VEIC insurance policies. Because Subcontractor and its subcontractors are independent contractors, neither party shall have any recourse against any of VEIC's affiliates, members, partners, joint venturers, shareholders, officers, directors, or employees for any reason, other than as set forth in the Subcontract. Further, to the extent that VEIC or any affiliate of VEIC is assessed any fines, penalties, taxes, or costs related to the independent contractor relationship between Subcontractor or its subcontractors and VEIC, Subcontractor shall indemnify and hold harmless VEIC, its affiliates, and the District in full.

- e. **Performance and Timing.** Other than VEIC providing overall deadlines and general production guidelines, Subcontractor will determine the times, methods, details and means of performing the Services identified in **Attachment B** and **Attachment C** of this Subcontract. Notwithstanding the aforementioned, VEIC retains the right to inspect and generally oversee the performance and timing to ensure conformity with the requirements of this Subcontract.
- f. **Workspace and Materials.** Subcontractor is responsible for supplying and using Subcontractor's own office space, business equipment, telephone, copier, and other materials necessary to conduct Subcontractor's business and to perform the Scope of Work contemplated by this Subcontract.

7. **INSURANCE.**

- a. **Minimum Insurance Coverages.** Before commencing the Subcontract Scope of Work, Subcontractor will provide a Certificate(s) of Insurance to VEIC and DOEE to show that the following minimum insurance coverages are in effect:
 - i. **Commercial General Liability Insurance.** Subcontractor shall provide evidence satisfactory to VEIC with respect to the Services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate; bodily injury and property damage including, but not limited to: premises-operations; broad form property damage; products and completed operations; personal and advertising injury; and contractual liability and independent contractors; however, for subcontracts under \$100,000, Subcontractor may instead provide evidence satisfactory to VEIC with respect to the services performed that it carries \$1,000,000 in Umbrella and Liability Insurance. The policy coverage will be primary and non-contributory with any other insurance maintained by the District and VEIC, and will contain a waiver of subrogation, as set forth in Section 7.f. Subcontractor will maintain completed operations coverage for five (5) years following the Subcontract Operating Period.
 - ii. **Automobile Liability Insurance.** Subcontractor shall provide automobile liability insurance to cover all owned, hired, or non-owned motor vehicles used in conjunction with the performance of this Subcontract. The policy shall provide a \$1,000,000 per occurrence combined single limit for bodily injury and property damage. The automobile liability insurance must be held by Subcontractor and not its individual employees.
 - iii. **Workers' Compensation Insurance.** Subcontractor shall carry Workers' Compensation insurance, and with respect to such insurance, Subcontractor shall comply with the statutory mandates of the District of Columbia and any other jurisdiction in which the Subcontract is performed.
 - iv. **Employer's Liability Insurance.** Subcontractor shall provide employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.
 - v. **Crime Insurance (3rd Party Indemnity).** Subcontractor shall provide a 3rd Party Crime Policy to cover the dishonest acts of Subcontractor's employees which result in a loss to VEIC or the District. The policy shall provide a limit of \$1,000,000 per occurrence.
 - vi. **Cyber Liability Insurance.** Subcontractor shall provide Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, and \$2,000,000 aggregate.

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Subcontractor in this Subcontract and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

- vii. **Professional Liability Insurance (Errors and Omissions).** Subcontractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Subcontract. The policy shall provide limits of \$1,000,000 per occurrence for each wrongful act and \$2,000,000 annual aggregate.
 - viii. **Sexual/Physical Abuse and Molestation.** Subcontractor shall provide evidence satisfactory to VEIC and the Contracting Officer with respect to the Services performed under this Subcontract that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate. This insurance requirement will be considered met **if the general liability insurance includes sexual abuse and molestation coverage as a separate endorsement for the required amounts** as evidenced on its Certificate of Insurance.
 - ix. **Umbrella or Excess Liability Insurance.** Subcontractor shall provide umbrella or excess liability (which is excess over employer's liability, general liability, and automobile liability) insurance as follows: \$3,000,000 per occurrence. All liability coverage must be scheduled under the umbrella and that the combined limits of the above required policies should be no less than \$3,000,000 aggregate. However, for subcontracts under \$100,000, Subcontractor may instead provide evidence satisfactory to VEIC with respect to the services performed that it carries \$1,000,000 in Umbrella and Liability Insurance.
- b. **Certificates of Insurance Requirements.** The Certificate(s) of Insurance shall name VEIC and the District as additionally insured parties as their interests may appear on all liability policies and provide a waiver of subrogation in favor of the additional insured to the fullest extent allowable under all policies and under the law. In no event will any Services be performed until the required Certificate(s) of Insurance signed by an authorized agent or broker of the insurer(s) have been provided to and accepted by VEIC. All insurance will be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and that have an A.M. Best Company rating of A-VIII or higher.
- c. **Cancellation Notice; Duration.** All policies will provide that VEIC and DOEE will be given thirty (30) days prior written notice from the insurance carrier in the event the stated limit in the declarations page of the policy is reduced via endorsement or the policy is canceled prior to the expiration date shown in the certificate. It is the responsibility of Subcontractor to maintain a current Certificate(s) of Insurance on file with VEIC and DOEE through the Performance Period of this Subcontract. Subcontractor will provide VEIC and DOEE with ten (10) days prior written notice in the event of non-payment of premium. **Subcontractor shall maintain these insurance policies during the Subcontract Construction Period and for a period of five (5) years following the Subcontract Construction Period.** Notwithstanding the aforementioned,

Subcontractor shall maintain Commercial General Liability Insurance for a period of five (5) years following the Subcontract Operating Period.

- d. **Liability.** These are the required minimum insurance requirements established by the District and VEIC. However, the required minimum insurance requirements provided above will not in any way limit Subcontractor's liability under this Subcontract.
- e. **Subcontractor's Property.** Subcontractor is solely responsible for any loss or damage to its personal property and its subcontractors, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment.
- f. **Waiver of Subrogation.** To the fullest extent allowable under all policies and under law, Subcontractor and its insurers hereby waive all rights of subrogation against the District and VEIC, and each of their respective directors, officers, employees, agents, and representatives. Subcontractor shall include a waiver of subrogation in favor of the District and VEIC on its Certificate of Insurance and, if requested, furnish copies of endorsements as further evidence of a waiver of subrogation.
- g. **Measure of Payment.** Neither the District nor VEIC will make any separate measure or payment for the cost of any required insurance. Subcontractor will include all of the costs of such insurance in Subcontractor's incentive price per watt specified in **Attachment C.**
- h. **Notification and Stop Work.** Subcontractor shall immediately provide VEIC with written notice if its insurance coverage will be substantially changed, canceled, or not renewed, and shall immediately cease Services if its insurance coverage is cancelled or reduced below the minimum insurance coverages required under this Subcontract. Subcontractor may resume Services once Subcontractor (i) provides an updated certificate of insurance to VEIC and DOEE in compliance with the minimum insurance coverages under this Section, or (ii) the Parties execute a Subcontract amendment modifying the minimum insurance requirements as outlined in Section 29.a.
- i. **Submission Requirements.** Subcontractor will submit a Certificate(s) of Insurance to VEIC and DOEE giving evidence of the required coverage and limits as specified in this Section 7 prior to commencing Services. Unless and until a Certificate(s) of Insurance is submitted to VEIC and DOEE that complies with the requirements of this Section 7, Subcontractor shall not commence the Services hereunder, and VEIC shall be under no obligation to pay any invoices submitted by Subcontractor for Services performed before the required Certificate(s) of Insurance is submitted. VEIC and DOEE also reserve the right to request full copies of Subcontractor's insurance policies and/or endorsements to verify compliance with the requirements of this Section 7.
- j. **Disclosure of Information.** Subcontractor agrees that the District and VEIC may disclose the name and contact information of its insurers to any third party presenting a claim for any damages or claims resulting from or arising out of the Services performed by Subcontractor, its agents, employees, or subcontractors under this Subcontract.
- k. **No Warranty as to Coverages; Failure to Maintain Insurance.** No warranty is made by VEIC or the District that the coverages and limits listed herein are adequate to cover and protect the interests of Subcontractor for Subcontractor's operations. The required coverages are solely minimums that have been set to protect the interests of VEIC and the District. None of VEIC's or the District's insurance coverage will apply to Subcontractor. IN NO EVENT WILL VEIC OR THE DISTRICT BE LIABLE TO SUBCONTRACTOR FOR SUBCONTRACTOR'S

FAILURE, AND/OR ITS SUBCONTRACTOR'S FAILURE, TO MAINTAIN ADEQUATE INSURANCE.

1. **Broader Coverage; Higher Limits.** If Subcontractor and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown above, VEIC and the District shall be entitled to the broader coverage and/or the higher limits maintained by the Subcontractor and its subcontractors.

8. REPRESENTATIONS AND WARRANTIES OF SUBCONTRACTOR.

- a. **Representations, Warranties and Covenants.** Subcontractor represents, warrants, and covenants to VEIC as follows:
 - i. **Status.** That Subcontractor's full legal name is as set forth on the first page of this Subcontract. Subcontractor is either an individual or is an organization validly existing, and in good standing, under the laws of the state or jurisdiction where it is formed.
 - ii. **Due Authorization.** That this Subcontract has been duly authorized, executed, and delivered by Subcontractor, and constitutes a legal, valid, and binding obligation of Subcontractor, enforceable in accordance with its terms. The officer or representative of Subcontractor signing this Subcontract on behalf of Subcontractor has been duly authorized to sign this Subcontract on behalf of Subcontractor.
 - iii. **Litigation.** That there are no existing undisclosed or threatened legal actions, claims, encumbrances, or liabilities that may adversely affect the Services or VEIC's rights hereunder.
 - iv. **Personnel Warranty.** That Subcontractor will provide highly qualified supervision and sufficient, competent personnel to perform the Services.
 - v. **Quality of the Services.** That the Services shall conform with the standards of care and practice appropriate to the nature of the Services, and that the Services shall be free from material defects, errors, and omissions, and that the Services shall be in conformity with the terms and conditions of this Subcontract. Services not conforming to these standards shall be considered defective.
 - vi. **Due Diligence.** That Subcontractor will carry out the Services with due diligence and efficiency, and in a practical manner designed to promote the purposes of the Programs.
 - vii. **Compliance with Laws.** That its performance of the Services shall comply with all applicable laws, statutes, ordinances, rules, regulations, and orders enacted by or promulgated by federal, state, municipal, or other governmental authorities, including, but not limited to, those relating to public health and safety, employment, equal employment opportunity, the environment, taxes and withholding, labor, and the specific regulations and statutory requirements set forth in Sections 9 and 10 and **Attachment F.** This warranty shall extend to Subcontractor's agents, employees, and subcontractors.
 - viii. **Licenses, Approvals, and Fees.** That before starting on any part of the Services, it and its employees and subcontractors shall: (i) be licensed in accordance with all applicable laws; (ii) procure all necessary permits, licenses, concurrences, and other governmental approvals; (iii) shall pay all charges and fees; and (iv) give all notices necessary or

incidental to the due and lawful prosecution of the Services. Performance of the Services shall comply with all of the terms, conditions, and limitations contained in any certificate, permit, or license applicable to the Services, and Subcontractor shall immediately notify VEIC in writing if any required permit, license, concurrence, or if approval expires, is suspended, or is revoked.

- ix. **Protection of Project Site Property.** That it shall adequately protect and avoid damage to the property of the third-party property owner(s) at the locations where the Subcontract Scope of Work will be performed, including, but not limited to, ensuring that the premises where any solar panels are being installed are structurally sufficient to support the panels, and that it will be responsible for any damage or injury arising directly or indirectly from the performance of the Services.
 - x. **Protection of Adjacent Property.** That when adjacent property to a property where the Subcontract Scope of Work will be performed is affected or endangered, or potentially affected or endangered, by any of the Services performed under this Subcontract, it shall be the responsibility of Subcontractor, at Subcontractor's expense, to take whatever steps are necessary for the protection of the adjacent property(ies) and to notify the owner(s) of the adjacent property(ies) regarding the possible hazards.
 - xi. **Debris and Waste Materials.** That it shall keep the property(ies) at which the Subcontract Scope of Work will be performed clean and orderly at all times during the performance of the Services, shall remove from the work site all debris and waste materials resulting from the performance of the Services, and shall dispose of all debris and waste materials in accordance with applicable laws and regulations.
 - xii. **Bankruptcy.** That it shall provide VEIC with prompt notice, and in any event, within seven (7) days if Subcontractor is adjudged bankrupt or insolvent, files a petition to take advantage of any bankruptcy or insolvency law, makes a general assignment for the benefit of its creditors; and/or a trustee or receiver is appointed for Subcontractor or for any of Subcontractor's property.
- b. **Breach of Warranty.** If any of the Services are defective or otherwise breach the warranties made in this Subcontract, then VEIC may require correction or re-performance of same to VEIC's satisfaction without further cost to VEIC. If such required correction or re-performance is not properly or timely performed, then VEIC may terminate Subcontractor's performance, have such services performed by a third party, and, in addition to any other remedies VEIC may have, deduct from payments then or thereafter due to Subcontractor all costs and expenses thereby incurred by VEIC including internal costs and expenses incurred pursuing the remedies provided for in this Section.
- c. **Payment or Acceptance.** Neither final payment nor acceptance of the Services shall relieve Subcontractor of responsibility for failure to meet the warranties made in the Subcontract.

9. SUBCONTRACTOR REPRESENTATION AND COVENANTS REGARDING EMPLOYEES.

- a. **Certified Business Enterprises.** VEIC is required under the Prime Contract to be a signatory to the CERTIFIED BUSINESS ENTERPRISE PARTICIPATION AND UTILIZATION AGREEMENT, Article I, Section 1.1 Utilization of Certified Business Enterprises, with the DSLBD (the "CBE Agreement"). In order to ensure that VEIC meets its requirements under the

CBE Agreement, Subcontractor must certify on the signature page hereto as to its CBE status and immediately notify VEIC of any changes to its CBE status. Either a failure to immediately notify VEIC of any changes to its CBE status or loss of its CBE status shall be considered a material breach of this Subcontract. In such event, VEIC may terminate this Subcontract for cause pursuant to Section 14 of this Subcontract and seek monetary damages from Subcontractor if VEIC is found to have breached its subcontracting plan as a result of Subcontractor's failure to maintain its CBE status. **In addition, VEIC may require that at least fifty percent (50%) of the dollars paid to Subcontractor under this Subcontract be retained by a CBE. This requirement may be satisfied by Subcontractor or its subcontractors, if approved by VEIC as set forth in Section 24.** Subcontractor must also comply with all CBE Agreement compliance reporting requirements as provided by VEIC from time to time (**Attachments I and J**) unless compliance has been waived in writing by VEIC. **FAILURE TO SUBMIT CBE COMPLIANCE REPORTING WILL RESULT IN PAYMENTS HEREUNDER BEING WITHHELD BY VEIC UNTIL SUBCONTRACTOR IS IN COMPLIANCE.**

- b. **First Source Employment Agreement.** If Subcontractor's cumulative value of all contracts involving District funds is equal to or in excess of three hundred thousand dollars (\$300,000.00), Subcontractor shall enter into a First Source Employment Agreement with the District Department of Employment Services through the [First Source Online Registration and Reporting System \(FORRS\)](#) and shall comply with all registration, reporting, and compliance requirements therein. If requested by VEIC, Subcontractor shall provide evidence satisfactory to VEIC and/or the CA that Subcontractor complies with the requirements set forth in this Section and the First Source Employment Agreement Act of 1984, as amended, (codified in D.C. Official Code §§ 2-219.01 – 2.219.05). **FAILURE TO EXECUTE THE FIRST SOURCE EMPLOYMENT AGREEMENT AND FORMS OR COMPLY WITH ALL REQUIREMENTS THEREIN MAY RESULT IN PAYMENTS HEREUNDER BEING WITHHELD BY VEIC UNTIL SUBCONTRACTOR IS IN COMPLIANCE.**
- c. **Apprenticeship Program.** If Subcontractor's cumulative value of all contracts involving District funds is equal to or in excess of five hundred thousand dollars (\$500,000.00), Subcontractor shall register an apprenticeship program with the District of Columbia Apprenticeship Council and comply with all registration, reporting, and compliance requirements of the Apprenticeship Requirements Amendment Act of 2004, as amended, (Codified in D.C. Official Code §§ 2-219.03 and 32-1431). If requested by VEIC, Subcontractor shall provide evidence satisfactory to VEIC and/or the CA that Subcontractor complies with the requirements set forth in this Section and the Apprenticeship Requirements Amendment Act of 2004. **FAILURE TO REGISTER AN APPRENTICESHIP PROGRAM AND FORMS OR COMPLY WITH ALL REQUIREMENTS THEREIN MAY RESULT IN PAYMENTS HEREUNDER BEING WITHHELD BY VEIC UNTIL SUBCONTRACTOR IS IN COMPLIANCE.**

10. FEDERAL AND DISTRICT REGULATIONS AND STATUTORY REQUIREMENTS.

- a. **Federal and District Laws.** Subcontractor shall comply with all federal and District of Columbia regulatory and statutory requirements, as amended, including, but not limited to, those relating to safety, employment, equal employment opportunity, the environment, taxes and withholding, labor, and the specific regulations and statutory requirements set forth in Section 9 and **Attachment F**.
- b. **Effect of Noncompliance.** **FAILURE OF SUBCONTRACTOR TO COMPLY WITH ANY APPLICABLE STATUTE OR REGULATION MAY BE THE BASIS FOR VEIC TO**

WITHHOLD PAYMENTS DUE UNDER THE TERMS OF THIS SUBCONTRACT AND/OR FOR TERMINATION OF THIS SUBCONTRACT FOR CAUSE BY VEIC.

11. INSPECTIONS.

- a. Subcontractor shall control and direct the details of the Services rendered and installation of any Products as part of the Programs when the foregoing is part of the Subcontract Scope of Work. VEIC seeks to fulfill a public function in undertaking the Programs and recognizes that performance of the Services is dependent upon the specialized skills and training of Subcontractor. However, the Services must meet the approval of VEIC and DOEE and shall be subject to their rights of inspection and rights to secure satisfactory completion of the Services and this Subcontract. Subcontractor, as requested, shall report directly to the authorized VEIC representative or his/her designee regarding all of Subcontractor's activities hereunder.
- b. VEIC and DOEE have the right to physically or virtually inspect and test all Services called for by this Subcontract at reasonable times and places during the term of this Subcontract. Subcontractor agrees to comply with all reasonable requests made by VEIC or DOEE to physically or virtually inspect and/or test all Services. VEIC and DOEE will perform inspections and tests in a manner that will not unduly delay the Services. If VEIC or DOEE performs inspections or tests, Subcontractor shall furnish, without additional charge, all reasonable facilities and assistance for the safety and convenient performance of these rights. For purposes of this Subcontract, if the Subcontract Scope of Work requires entry on to property of third persons, Subcontractor acknowledges and agrees that the authorized VEIC representative, the CA and CO, and their designees shall have the same rights as the Subcontractor to access the premises of any location where Services are performed in order to complete inspections.

12. SETTLEMENT OF DISPUTES. Any dispute arising out of or relating to this Subcontract will be resolved in accordance with the procedures specified herein, which will be the sole and exclusive procedures for the resolution of any such disputes. Notwithstanding the aforementioned, nothing in this Section 12 shall be construed to limit the DCSEU's ability to enforce the claw back provision outlined in **Attachment B**.

- a. **Negotiation.** The Parties will attempt to resolve promptly any dispute, claim, or controversy arising out of or relating to this Subcontract, or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of the agreement to arbitrate, (collectively, a "dispute") by negotiation between representatives who have the authority to settle the dispute. For VEIC, the Managing Director of the DCSEU or VEIC's Chief Executive Officer may be contacted. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business pursuant to this subsection. Within ten (10) calendar days after delivery of the notice, the receiving Party will submit to the notifying Party a written response. The notice and response will include (a) a statement of that Party's position and a summary of arguments supporting that position, and (b) the name and title of the representative of that Party and of any other person who will accompany the representative. Within ten (10) calendar days after delivery of the response, the representatives of both Parties will meet at a mutually acceptable time and place to attempt to resolve the dispute. All negotiations pursuant to this provision are confidential and will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

- b. **Mediation.** Any dispute that has not been resolved by negotiation within thirty (30) calendar days after first notice of the dispute shall be determined first by mediation. The Parties shall choose an independent third-party mediator by mutual agreement and consent, which shall not be unreasonably withheld. When selecting a mediator, the Parties shall consider the qualified mediators of the District of Columbia Office of Administrative Hearings. The mediation shall be administered by the third-party mediator, and a resolution on the dispute may be entered in any court having jurisdiction unless otherwise agreed to by the Parties in writing as a part of the resolution. This clause shall not preclude the Parties from seeking provisional remedies in aid of mediation from a court of appropriate jurisdiction
- c. **Arbitration.** Any dispute that has not been resolved by negotiation or mediation will be finally resolved by arbitration under the Rules of Conciliation and Arbitration of the American Arbitration Association by one or more arbitrators appointed in accordance with said Rules. The arbitration will take place in the District of Columbia. The resulting award will be final and binding on the Parties and will be in lieu of any other remedy.
- d. **Injunctive Relief.** Nothing herein shall limit either Party's right to seek injunctive relief from a court of competent jurisdiction prior to and during the pendency of negotiations or arbitration under this Section 12.
- e. **Labor Disputes.** Disputes arising out of the labor standards provisions of this Subcontract shall not be subject to the foregoing clauses of this Section 12. All such labor disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 Code of Federal Regulations ("CFR") parts 5, 6, and 7. Disputes within the meaning of this Subsection 12.e. include disputes between Subcontractor (or any of its subcontractors) and VEIC, DOEE, the U.S. Department of Labor, or their respective employees or representatives.

13. INDEMNIFICATION.

- a. **Obligation to Indemnify.**
 - i. **General Indemnification.** Subcontractor agrees to defend, indemnify, and hold harmless VEIC, the District, and their respective officers, agencies, departments, agents, and employees (collectively the "Indemnitees") from and against any and all claims, losses, liabilities, penalties, fines, forfeitures, demands, causes of action, suits, costs, and expenses incidental thereto (including costs of defense and attorneys' fees), resulting from, arising out of, or in any way connected to activities or Services performed by: (i) Subcontractor, (ii) Subcontractor's officers, employees, agents, subcontractors, or (iii) any other person acting for or by permission of Subcontractor in performance of this Subcontract. This includes, but is not limited to, any damage caused to the property of the third party owner(s) at the locations where the Services are performed as well as to any adjacent property(ies). Subcontractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed in performance of this Subcontract. Subcontractor will also repair or replace any Indemnitees' property that is damaged by (i) Subcontractor, (ii) Subcontractor's officers, employees, agents, subcontractors, or (iii) any other person acting for or by permission of Subcontractor while performing work hereunder.
 - ii. **Intellectual Property Indemnification.** Subcontractor agrees to defend, indemnify, and hold harmless the Indemnitees from and against any and all claims, losses, liabilities, penalties, fines, forfeitures, demands, causes of action, suits, costs, and expenses

incidental thereto (including costs of defense and attorneys' fees), resulting from, arising out of, or in any way connected to any alleged: (a) patent, copyright, or trademark infringement; (b) unlawful disclosure, use, or misappropriation of trade secrets; or (c) any other violation of any third party intellectual property right. If any injunction or restraining order is issued, Subcontractor will, at its expense, either obtain for Indemnitee the right to continue to use and commercialize all allegedly infringing services and work product and the allegedly misappropriated trade secrets, or replace or modify the services and work product to make them non-infringing.

- b. **Effect of Insurance.** The indemnification obligation under this Section 13 will not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor or any party acting under Subcontractor's direction.
- c. **Notice.** VEIC agrees to give Subcontractor prompt written notice of any claim of indemnity under this Section 13, but in any event not later than thirty (30) days after VEIC is made aware of such claim.
- d. **Control of Defense and Settlement.** Additionally, Subcontractor will have the right and sole authority to control the defense or settlement of any claims, provided that no contribution or action by the Indemnitees is required in connection with the settlement.
- e. **Holdback.** Monies due or to become due to Subcontractor under this Subcontract may be retained by VEIC or the District as necessary to satisfy any outstanding claim the Indemnitees may have against Subcontractor.

14. TERMINATION FOR CAUSE.

- a. **Event of Default.** Any failure of Subcontractor to comply with the terms and conditions of this Subcontract and the Attachments hereto, or any action(s) or inaction that materially threatens Subcontractor's ability to perform the Services and fulfill the objectives of this Subcontract, shall constitute an "Event of Default" under this Subcontract. Upon an Event of Default, VEIC may, by written notice to Subcontractor, terminate this Subcontract or any applicable CREF(s) authorized by VEIC in **Attachment C** for cause if such breach is not cured within the applicable cure period (if any). Subcontractor shall promptly repay to VEIC all milestone incentive payments paid to Subcontractor for all CREF(s) terminated for an Event of Default. By way of examples only, and without limitation, the following shall constitute Events of Default under this Subcontract:
 - i. Failure of Subcontractor to perform the Services, install the Products, and/or fulfill any other obligation as set forth in the Subcontract, applicable Attachment(s), or any authorized amendment to this Subcontract;
 - ii. Failure of Subcontractor to timely perform its obligations pursuant to the Subcontract, applicable Attachment(s), or any authorized amendment to this Subcontract;
 - iii. Material breach by Subcontractor of any representation or warranty set forth in this Subcontract, applicable Attachment(s), or any authorized amendment to this Subcontract;
 - iv. Subcontractor fails at any time during the Performance Period to: (i) be licensed or maintain its license(s) in accordance with all applicable laws of the District of Columbia and its state of incorporation/organization; (ii) procure all necessary permits, approvals, and

consents necessary to lawfully perform the Services; (iii) ensure that performance of the Services complies with all of the terms, conditions, and limitations contained in any certificate, permit, or license applicable to and obtained in connection with the Services; or (iv) fails to maintain the minimum insurance coverages or limits set forth in Section 7 of this Subcontract;

- v. Subcontractor engages in behavior that is dishonest, fraudulent, reckless, or consistently unresponsive, or gives rise to a conflict of interest inconsistent with its obligations under this Subcontract;
 - vi. Subcontractor fails to respond within a reasonable amount of time to or to reasonably cooperate with VEIC's reasonable and material questions, demands, or requests to modify or amend the Subcontract or any applicable Attachments;
 - vii. Subcontractor fails to correct any nonconforming Services in a reasonable amount of time, or fails to reasonably cooperate or respond to reasonable requests to correct performance, management, or facilitation of this Subcontract when such actions are jeopardizing completion of the Services and fulfillment of the Programs' objectives; and/or
 - viii. Subcontractor is adjudged bankrupt or insolvent, files a petition to take advantage of any bankruptcy or insolvency law, makes a general assignment for the benefit of its creditors; and/or a trustee or receiver is appointed for Subcontractor or for any of Subcontractor's property.
- b. **Termination.** VEIC may terminate this Subcontract or any applicable CREF(s) authorized by VEIC in **Attachment C** for an Event of Default:
- i. In the cases of an Event of Default pursuant to Sections 14.a.i., ii., iii, vi, or vii and/or any other Event of Default not specifically listed above, if Subcontractor does not cure such Event of Default within seven (7) calendar days from receipt of notification of such Event of Default from VEIC, or sooner (at VEIC's election) if public safety or violations of the law, rules, or other regulations are involved; or
 - ii. In the cases of an Event of Default pursuant to Sections 14.a.iv., v. and/or viii., immediately upon providing Subcontractor notice of termination.
- c. **Close-Out of Services.** In the event of termination of this Subcontract or any applicable CREF(s) authorized by VEIC in **Attachment C** pursuant to this Section 14, Subcontractor will perform such additional work as is necessary for the orderly filing of documents with VEIC and DOEE to allow for efficient close out of the Services. No payments for disputed services or filing and close-out work will be made until and unless VEIC receives payment for the Services from DOEE.
- d. **Transfer of Work.** In the event of termination of this Subcontract or of a CREF(s) authorized by VEIC in **Attachment C** pursuant to this Section 14:
- i. During the Subcontract Construction Period in the event of termination of the Subcontract, or during the CREF Construction Period in the event of termination of a CREF(s), Subcontractor shall return to VEIC: (i) all milestone incentive payments made to Subcontractor for CREF(s) that failed to complete all milestones or that do not otherwise comply with the requirements of this Subcontract prior to the termination

effective date, within thirty (30) calendar days following the date of termination, if any, made to Subcontractor to date; (ii) all paperwork and related documents; and (iii) all other Confidential Information provided to Subcontractor by VEIC, DOEE, or any of VEIC's customers pursuant to this Subcontract.

- ii. During the Subcontract Operating Period, Subcontractor shall promptly pay all penalties due to VEIC pursuant to **Attachments B, B2, and B3**. Subcontractor shall also return all paperwork and related documents as well as all other Confidential Information provided to Subcontractor by VEIC, DOEE, or any of VEIC's customers pursuant to this Subcontract.
- e. **Final Invoice**. Subcontractor will render a final invoice and supporting information as required on **Attachment D** for Services provided to VEIC by the 5th business day of the month following the date of termination. If such final invoice is approved by VEIC, VEIC will pay the invoice in accordance with the provisions set forth on **Attachment D**. VEIC also reserves the right to deduct from any monies due or to become due to Subcontractor the milestone payments made to Subcontractor for CREFs that failed to achieve completion of all milestones or otherwise comply with the requirements of this Subcontract prior to the termination effective date.

15. **TERMINATION WITHOUT CAUSE.**

- a. **VEIC Termination**. Notwithstanding any other provision of this Subcontract, VEIC may terminate this Subcontract, or any CREF(s) authorized by VEIC in **Attachment C** during the Subcontract Construction Period, without cause by giving thirty (30) days advance written notice thereof to Subcontractor. No termination of a CREF pursuant to this Section 15 shall effect the termination of any other CREF, and VEIC may not terminate this Subcontract or a CREF without cause during the Subcontract Operating Period.
- b. **Effect of Termination**. Upon termination of this Subcontract or of a CREF authorized by VEIC in **Attachment C** pursuant to this Section 15, Subcontractor will have no further obligation to provide Services to VEIC pursuant to this Subcontract or the affected CREF(s), respectively, other than to submit all required reports for Services provided and to repay all milestone incentive payments within thirty (30) calendar days following the date of termination.
- c. **Final Invoice**. Subcontractor will render a final invoice and supporting information as required in **Attachment D** for Services provided to VEIC by the 5th business day of the month following the date of termination. If such final invoice is approved by VEIC, VEIC will pay the invoice in accordance with the provisions set forth in **Attachment D**. VEIC also reserves the right to deduct from any monies due or to become due to Subcontractor the milestone payments made to Subcontractor for CREFs that failed to achieve completion of all milestones or that failed to otherwise comply with the requirements of this Subcontract prior to the termination effective date.

16. **TERMINATION OF PRIME CONTRACT.**

- a. **Assignment of Subcontract**. If the Prime Contract expires or is terminated by VEIC or DOEE for any reason, then pursuant to Section 24, upon notice to Subcontractor, VEIC shall assign its rights and delegate the performance of its obligations to a third party ("Third Party") selected by DOEE.

- b. **Effect of Termination.** Upon assignment of this Subcontract pursuant to this Section 16, Subcontractor will have no further obligation to provide Services to VEIC and shall provide Services to the Third Party pursuant to this Subcontract. VEIC will have no further obligation to pay Subcontractor except for payment of fees to Subcontractor for attainment of the milestones as specified in **Attachment B** for work completed before the date of termination of the Prime Contract. Any unpaid fees will only be disbursed to Subcontractor if VEIC receives payment of these fees from DOEE.
- c. **Final Invoice.** Subcontractor will render a final invoice and supporting information as required in **Attachment D** for Services provided to VEIC by the 5th business day of the month following the date of termination of the Prime Contract. If approved by VEIC, VEIC will pay the invoice in accordance with the provisions set forth in **Attachment D**. VEIC also reserves the right to deduct from any monies due or to become due to Subcontractor the milestone payments made to Subcontractor for CREFs that failed to achieve completion of all milestones or otherwise comply with the requirements of this Subcontract prior to the termination effective date.

17. STOP WORK NOTICE.

- a. **Notice.** VEIC or DOEE may, at any time during the Performance Period, by oral or written notice to Subcontractor, require Subcontractor to stop all or any part of the Services to be performed pursuant to the Prime Contract or this Subcontract for reasons of (i) public safety, (ii) to investigate an alleged violation of safety or other laws, rules, or regulations, (iii) for the lack of availability of funding, or (iv) due to concerns regarding performance of the Services. To the extent feasible in the circumstances, if oral notice is provided by VEIC, VEIC shall follow-up with formal written notice.
- b. **Cessation of Work.** Upon oral or written notice by VEIC to Subcontractor to stop all or any part of the Services, Subcontractor shall comply with the terms of such notice by immediately ceasing performance of the Services during the Performance Period until further notice, and by notifying its officers, employees, agents, subcontractors, or any other person acting for or by permission of Subcontractor to stop all work until further notice. Subcontractor will comply with all subsequent instructions provided by VEIC or directly by DOEE.
- c. **Resumption of Work.** VEIC will endeavor in good faith to lift the stop work order and either direct Subcontractor to resume work, or to provide a notice of Termination for Cause requiring cure or a notice of Termination for Convenience, at the earliest available opportunity once the issue is addressed.

18. CONFIDENTIALITY OF DATA, INFORMATION, AND DOCUMENTS.

- a. **Acknowledgement of Confidential Information.** Subcontractor agrees that all information communicated to it with respect to the Services to be performed under this Subcontract is Confidential Information, including any information gained by Subcontractor by reason of association with VEIC, VEIC customers, or DOEE.
- b. **Mailing Lists.** Subcontractor expressly agrees that it will not use VEIC's mailing lists other than for lawful purposes necessary for performance of the Services hereunder.
- c. **Protective Agreement.** Contemporaneously with execution of this Subcontract, Subcontractor shall read and abide by the terms and conditions of **Attachment G**, the General Confidentiality Guidelines Memo, and shall cause its authorized representative to execute the same. The

authorized representative of Subcontractor shall also execute the Protective Agreement included with **Attachment G1**.

- d. **Compliance.** Subcontractor will be responsible for and shall ensure compliance with this Section 18 and **Attachments G and G1** by Subcontractor's employees, agents, and authorized subcontractors, and shall include the confidentiality obligations contained in this Section 18 in any subcontracts. Subcontractor will require any subcontractors to sign confidentiality agreements with substantially the same terms as the Protective Agreement attached as **Attachment G1**.
 - e. **Notice of Immunity from Liability for Confidential Disclosure of a Trade Secret to the Government or in a Court Filing.** Federal law requires VEIC to notify Subcontractor that there are a few limited situations in which Subcontractor will not be liable for the confidential disclosure of a trade secret to the government or in a court filing. First, an individual shall not be criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a Federal, State, or local government official or attorney, either directly or indirectly, or to an attorney, and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Second, an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding if the individual (A) files any document containing the trade secret under seal and (B) does not disclose the trade secret, except pursuant to court order.
- 19. POLICY ON POLITICAL ACTIVITY.** VEIC is a non-profit organization that has been granted tax-exempt status by the federal government under Section 501(c)(3) of the Internal Revenue (IRS) Code. Subcontractor agrees to comply with all IRS rules and regulations that strictly prohibit VEIC subcontractors from engaging in political activities while acting in their official and professional roles and/or using organizational resources while performing the Services outlined in this Subcontract.
- 20. OWNERSHIP OF DATA, INFORMATION AND DOCUMENTS.** All reports, studies, plans, specifications, data, and other information developed, written, or prepared by Subcontractor pursuant to this Subcontract will be delivered to and become the property of DOE (or VEIC where applicable). Subcontractor will not use VEIC or DOE's name, logo, identity, any affiliation, or the service mark and any related logo, without VEIC's or DOE's prior written consent, as applicable. Whenever any data, including computer software, are to be obtained from Subcontractor under this Subcontract, the terms contained in **Attachment H**, "Rights in Data" will apply to this Subcontract.
- 21. COMPETITIVE ACTIVITIES.** During the Performance Period, Subcontractor will not, directly or indirectly, either as an employee, employer, consultant, agent, principal, partner, stockholder, corporate officer, director, or in any other individual or representative capacity, engage or participate in any competitive activity relating to the Programs or activity to which this Subcontract relates.
- 22. MAINTENANCE OF RECORDS.** Subcontractor will keep, maintain, and preserve at its principal office throughout the term of the Subcontract, and for a period of three (3) years after the expiration or termination of this Subcontract, full and detailed books, accounts, and records pertaining to the performance of the Subcontract, including without limitation, all bills, invoices, payrolls, subcontracting efforts, and other data evidencing, or in any material way related to, the

direct and indirect costs and expenses incurred by Subcontractor in the course of such performance. However, if any litigation, claim, or audit is started before the expiration of the three-year period, the records will be retained until all litigation, claims, or audit involving the records has been resolved if the litigation, claim, or audit is not resolved within the three-year period.

23. **AUDIT ADJUSTMENT.** Any payment made under the Subcontract will be subject to retroactive reduction for amounts included therein which are found by DOEE, on the basis of any audit of VEIC or Subcontractor by an agency of the United States or the District, not to constitute an allowable charge or cost hereunder.

24. **SUBCONTRACT; ASSIGNMENT AND DELEGATION.**

a. **Assignment.**

- i. **Restrictions on Assignment.** Subject to the remainder of this Section 24, Subcontractor may not assign (either directly or by Change of Control) this Subcontract in whole or in part without the prior written consent of VEIC. No Permitted Assignment will relieve Subcontractor of responsibility for the payment and performance when due of any of its obligations hereunder without the prior written consent of VEIC, and Subcontractor shall remain jointly and severally liable with any such assignee absent such consent of VEIC.
- ii. **Permitted Assignments.** Subcontractor may, upon prior written notice to VEIC, but without the consent of VEIC:
 1. Assign this Subcontract to a Qualified Transferee in whole or in part in connection with the transfer to such Qualified Transferee of less than all of the CREFs authorized hereunder.
 2. Pledge, collaterally assign, mortgage, or otherwise encumber its interests in this Subcontract to or in favor of any Financing Party (each of the foregoing clauses (1) and (2), a "Permitted Assignment").
- iii. **Change of Control.** Any Change of Control that has the effect of circumventing the requirements of this Section 24.a. is an Event of Default hereunder.
- iv. VEIC in its sole and absolute discretion may assign its rights and may delegate the performance of its obligations hereunder upon written notice to Subcontractor.
- v. Any assignment of this Subcontract in whole or in part in contravention of this Section 24 is void and of no force or effect.

- b. **Delegation.** Subcontractor may delegate or subcontract any of its obligations under this Subcontract to a lower-tier subcontractor or delegee with experience comparable to or greater than Subcontractor in developing, constructing, commissioning, owning, and/or operating solar power generation projects similar in size and scope to the CREF(s) that is or are the subject of such subcontract or delegation, in each case pursuant to a binding agreement for such services. No subcontract, delegation, or other engagement with any lower-tier subcontractor shall relieve Subcontractor of any of its duties, responsibilities, obligations, or liabilities hereunder.

- c. **Financing.** In connection with any pledge, collateral assignment, mortgage, or other encumbrance permitted under Section 24.a.ii.2., if requested by Subcontractor and its Financing Party, VEIC will execute a consent to collateral assignment of this Subcontract in a form conventionally required for project financings and on terms acceptable to VEIC. Such terms may, among other matters, include payment of amounts due to bank accounts controlled by the Financing Party, reasonable consent rights of the Financing Party to any amendment of this Subcontract, VEIC's obligation to provide notices of Events of Default to the Financing Party, and VEIC's obligation to allow the Financing Party the ability to cure Events of Default.

25. PRIMARY CONTACTS AND NOTICES

- a. VEIC's primary contact for purposes of the relationship between the Parties and for compliance with the terms and conditions of this Subcontract is the DCSEU Interim Managing Director shown below. The responsibilities of the DCSEU SFA Portfolio Manager and CREF Program Manager are set forth in **Attachment A**.
- b. VEIC and Subcontractor may change the name and/or contact information for their primary contact by providing written notice to the other Party. If Subcontractor's physical or mailing address changes, notice of the change shall be provided to VEIC as soon as possible, but no later than five (5) business days after the change.
- c. Any notice or request required or permitted by this Subcontract will be in writing to the appropriate primary contact. Such notice or request will be deemed to be duly made upon delivery by hand, certified mail, or electronic mail to the other Party, at such address specified below or at such other address specified in writing by the other Party.

FOR VEIC:

Ernest Jolly
Managing Director
DCSEU
1 M St., SE, 3rd Floor
Washington, DC 20003
Telephone: 202-479-2222
Email: ejolly@dcseu.com

FOR SUBCONTRACTOR:

INSERT

26. GOVERNING LAW. This Subcontract is made and shall be construed under the laws of the District of Columbia and applicable federal laws without regard to any conflicts or choice of law provisions thereof, including any arbitration pursuant to Section 12.c above. In the event litigation is filed, including obtaining injunctive relief pursuant to Section 12.d above, it is agreed by and between the Parties hereto that the litigation shall take place in a court of competent jurisdiction in the District of Columbia and that each Party consents to the jurisdiction of such court, and agrees to service of process for any such action if made pursuant to the notice provision in Section 25 of this Subcontract.

27. ATTORNEYS' FEES. In the event that either Party brings a court action, suit or proceeding to enforce this Subcontract, or in the event of an arbitration to resolve a dispute pursuant to Section 12.c above, the prevailing Party shall be entitled to reimbursement by the other Party of its reasonable costs, expenses, and attorneys' fees in addition to any other relief granted.

28. SURVIVAL. Any terms of this Subcontract and the attachments which by their nature survive beyond expiration or termination of this Subcontract shall remain in effect until fulfilled and shall apply to the respective successors and permitted assigns of the Parties. By way of example and not limitation, Sections 6, 7, 8, 10, 12, 13, 14.c., 14.d., 14.e., 15.b., 15.c., 16.b., 16.c., 18, 19, 20, 22, and 23 and Attachments G, G1, Attachment F, and Attachment H specifically shall survive the expiration or termination of this Subcontract.

29. AMENDMENTS AND MODIFICATIONS.

- a. **General.** No modifications, amendments, or extensions to the terms and conditions of this Subcontract or to any attachments including the Scope of Work will be effective unless reduced to writing and signed by a duly authorized representative of VEIC and Subcontractor, except as provided herein with respect to VEIC's ability to reduce the Scope of Work, Subcontract NTE, CREF Incentive NTE, or certain other changes to the Subcontract without Subcontractor's consent.
- b. **Modified Prime Contract Requirements.** Subcontractor acknowledges that the Prime Contract may be modified such that additional or modified requirements may need to be reflected in this Subcontract. In such event, VEIC will issue an amendment to this Subcontract to reflect the additional or modified Prime Contract terms and conditions. If Subcontractor fails to execute the proposed Subcontract amendment within the time period requested by VEIC, Subcontractor understands and accepts that VEIC may terminate this Subcontract immediately, in which case the provisions of Sections 15.b and 15.c above shall apply.
- c. **Federal Funding Requirements.** Subcontractor acknowledges that this Subcontract is funded by DOEE using funds received by the District from the American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (Mar. 11, 2021), and that additional Prime Contract requirements may apply as a result of the funding source for the FY 2023 SfA Program. In such event, VEIC will issue an amendment to this Subcontract to reflect the additional or modified Prime Contract terms and conditions. If Subcontractor fails to execute the proposed Subcontract amendment within the time period requested by VEIC, Subcontractor understands and accepts that VEIC may terminate this Subcontract immediately, in which case the provisions of Sections 15.b and 15.c above shall apply.

30. ATTACHMENTS. All attachments to this Subcontract are incorporated by reference and made a part of this Subcontract.

31. SEVERABILITY; HEADINGS. If any term or provision of this Subcontract is held to be invalid or unenforceable, the remaining terms and provisions of this Subcontract will be valid and enforceable to the fullest extent permitted by law. The headings and subheadings contained herein are for convenience only and shall not be deemed to control over the plain language of the Subcontract.

32. NONWAIVER. The failure of a Party to enforce any one or more of the provisions of this Subcontract will not be construed to be a waiver thereof, nor will such failure affect the validity of the Subcontract, either Party's obligations hereunder, or the right of either Party to enforce any provision of this Subcontract.

33. COUNTERPARTS; ELECTRONIC SIGNATURE AUTHORIZATION. This Subcontract, any amendment to this Subcontract, any attachment, and/or any amendment to any attachment may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original, and all of which shall constitute the same instrument. Signatures of either Party transmitted by email or

other electronic transmission shall constitute effective execution and delivery of this Subcontract, any amendment to this Subcontract, any attachment, and/or any amendment to any attachment, and shall be deemed to be original signatures for all purposes. Each Party hereby consents to signature by such means.

34. ENTIRE AGREEMENT. This Subcontract, together with all the attachments, if any, constitutes the entire agreement between VEIC and Subcontractor and supersedes all prior communications, representations, agreements, and understandings, whether oral or written, made by either of them concerning the subject hereof, expressly including, but not limited to, subcontracts for prior fiscal years.

35. DOCUMENT PRODUCTION. Within the work schedule established in the applicable attachment, Subcontractor agrees to provide VEIC final draft documents in “print-ready” form. All tables and/or links to spreadsheets will be completely filled out with final data. All document formatting will be consistent with the guidelines set forth on the applicable attachment or as provided by VEIC. VEIC will not consider incomplete tables or data, nor format and style inconsistent with the applicable attachment, to meet the Subcontractor’s requirements as established in such attachment.

[Signature page follow.]

IN WITNESS WHEREOF, Subcontractor and VEIC have caused this Subcontract to be executed as of the Effective Date.

[SUBCONTRACTOR NAME]

VERMONT ENERGY INVESTMENT CORPORATION

By: _____

Name: _____

Title: _____

Email: _____

Date: _____

By: _____

Name: _____

Title: _____

Email: _____

Date: _____

Is SUBCONTRACTOR a CBE? ___YES ___NO

If Yes:

CBE Number:

Expiration Date:

Preference Points:

Ward:

I attest that this information is accurate and valid. Also, I will immediately inform the DCSEU of any changes to our organization's CBE status. Please separately submit via email a copy of your CBE certification to proposals@dcseu.com.

[SUBCONTRACTOR NAME]

Print Name

By: _____
Signature

List of Attachments

<u>Attachment A</u>	Definitions and Acronyms
<u>Attachment B</u>	General Scope of Work and Pricing Provisions
<u>Attachment B1</u>	DCSEU CREF Site Control Agreement Supplement Solar for All Program Covenants
<u>Attachment B2</u>	Penalty Mechanism Calculation
<u>Attachment B3</u>	Penalty Calculation Workbook
<u>Attachment C</u>	Subcontractor's Portfolio of CREFs and Summary of Milestone Deliverables (Signatures Required)
<u>Attachment D</u>	Invoicing and Payments
<u>Attachment E</u>	DCSEU Conflict of Interest Policy and Disclosure Form
<u>Attachment F</u>	Special Requirements
<u>Attachment G</u>	General Confidentiality Guidelines Memo (Signature Required)
<u>Attachment G1</u>	Protective Agreement (Signatures Required)
<u>Attachment H</u>	Rights in Data
<u>Attachment I</u>	Monthly CBE Spend Report
<u>Attachment J</u>	Quarterly Vendor Verification Form

Attachment A

DEFINITIONS AND ACRONYMS

“Affiliate” of any specified person means any other person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such specified person.

“Attachment C Effective Date” means the date set forth in Attachment C and upon which Attachment C, or Attachment C as amended, shall be effective.

“CAEA” means Clean and Affordable Energy Amendment Act of 2008, D.C. Official Code §8-1773.01 *et seq.*

“CBE” means a Certified Business Enterprise under the DSLBD’s business certification program. The DSLBD maintains a database of all certified local, small, and disadvantaged business enterprises that are deemed CBEs. Businesses with CBE certification will receive preferred procurement and contracting opportunities.

“Change of Control” means (i) the sale, transfer, assignment, lease, conveyance or other disposition, directly or indirectly, of all or substantially all the assets of the Subcontractor, or (ii) the Subcontractor merges, consolidates or amalgamates with or into any other person or any other person merges, consolidates or amalgamates with or into the Subcontractor, or (iii) the sale or disposition of any direct or indirect voting or economic interests in Subcontractor by the Controlling owner(s) of Subcontractor, whether consummated by a sale, merger, combination, or otherwise, and whether consummated in a single transaction or a series of related transactions, such that such owner(s) ceases (or, when consummated, would cease) to Control Subcontractor.

“Commercial Operation” means a CREF funded by this Subcontract is fully constructed, generates electric energy on a commercial basis, the interconnection to the utility’s electric grid has been authorized and is functioning with the utility, and the CREF is generating CREF credits for its subscribers.

“Commercial Operation Date” means the date on which a newly-installed CREF funded by this Subcontract achieves Commercial Operation.

“Contract Administrator” or “CA” means the DOEE representative responsible for general administration of the Prime Contract.

“Contracting Officer” or CO” means the Contracting Officer for the Prime Contract.

“Control” means the power to direct the management and policies of a person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “Controlling” and “Controlled” have meanings correlative to the foregoing.

“Confidential Information” has the meanings set forth in the General Confidentiality Guidelines Memo and Protective Agreement included as Attachments G and G1.

“CREF” or “Community Renewable Energy Facility” means an energy facility using renewable resources defined as tier one renewable sources in D.C. Official Code § 34-1431(15) that is located within the District of Columbia and where the monetary value of electricity generated by the facility is credited to the subscribers of the facility. (D.C. Official Code § 34-1501(9B)). The CREFs authorized under this Subcontract shall be set forth in Attachment C.

“CREF Construction Period” is defined in Section 3(b) of this Subcontract.

“CREF Incentive NTE” has the meaning set forth in Section 5.b of this Subcontract and is stated in **Attachment C**.

“CREF Program Manager” means an individual responsible for the day-to-day oversight of Subcontractor’s Portfolio of CREFs authorized in **Attachment C**.

“Cut-off Date” has the meaning set forth in **Attachment D**.

“DCRA” means the District of Columbia Department of Consumer and Regulatory Affairs and its successor agency, the District of Columbia Department of Buildings, as established by the Department of Buildings Establishment Act of 2020, effective Apr. 5, 2021, D.C. Law 23-269.

“DCSEU” or “SEU” has the meaning set forth in the Preliminary Statement.

“DCSEU Managing Director” or “DCSEU Interim Managing Director” means the individual responsible for managing this Subcontract on behalf of VEIC. Until further notice the DCSEU Managing Director or DCSEU Interim Managing Director is the individual set forth in Section 25 of this Subcontract.

“DOEE” has the meaning set forth in the Preliminary Statement.

“DOES” means the District Department of Employment Services.

“DSLBD” means the District Department of Small and Local Business Development.

“District” means the Government of the District of Columbia.

“Effective Date” means the date set forth in Page 1 of this Subcontract.

“Financing Party” means any person (including lenders or third parties (including tax equity or similar investors)) providing or who may provide credit to the Subcontractor or a Project(s) in the form of debt, equity or sale-leaseback financing for the development, installation, construction, ownership, operation or maintenance of such Project(s), or any refinancing of that financing, and shall include any assignee or transferee of such a person and any trustee, collateral agent or similar entity acting on behalf of such a person.

“FY 2023 SfA Program” means the Solar for All Program administered by the DCSEU and funded by DOEE in fiscal year 2023 to meet the District’s goals to bring solar energy and the associated energy savings to low-income residents.

“FTE” or “full-time equivalent” means a total of 1,950 labor hours worked in support of this Subcontract and equals one full-time equivalent of a year-round job, i.e., 1 FTE = 1,950 work-hours.

“Full Production Year” means a Production Year that begins on January 1st of that year and ends on December 31st of that year.

“Living Wage” means a minimum hourly wage as determined by the District Department of Employment Services in accordance with the “Living Wage Act of 2006,” Title I of D.C. Law 16-118 (D.C. Official Code §§2-220.01-.11).

“Minimum CREF Commercial Operation Period” means the time period set forth in **Attachment C** whereby each CREF must (1) designate 100% of its electricity output to DOEE-designated low-income households at no cost and (2) guarantee the electricity output or pay a penalty for failing to meet the minimum production requirements as outlined in further detail in **Attachment B** (Scope of Work and Pricing Provisions) and **Attachment B2** (Penalty Mechanism Calculator).

“NREL” means the National Renewable Energy Laboratory.

“OSHA” means the Occupational Safety and Health Administration, as established by the Occupational Safety and Health Act of 1970, as amended, effective Dec. 29, 1970.

“Performance Period” has the meaning set forth in Section 3 of the Subcontract.

“Permitted Assignment” is defined in Section 24(a)(ii) of the Subcontract.

“Portfolio” means: (i) the CREF(s) installed under this Subcontract; and (ii) solar capacity from Subcontractor’s operating portfolio of non-SfA Program solar systems located in the District of Columbia added to the SfA Program, with prior approval from VEIC and DOEE, to (a) replace CREF(s) installed under this Subcontract but no longer available for the SfA Program or (b) supplement Subcontractor’s actual or anticipated output shortfall from the FY 2023 SfA Program solar systems.

“Prime Contract” has the meaning set forth in the Preliminary Statement.

“Prime Contractor” shall mean Vermont Energy Investment Corporation.

“Partial Production Year” means a Production Year that does not begin on January 1st of that year and/or does not end on December 31st of that year.

“Production Year” means a particular calendar year during the Minimum CREF Commercial Operation Period beginning on the Commercial Operation Date that a CREF funded by this Subcontract must operate and generate electricity for the benefit of low-income District of Columbia households.

“Products” means such products, equipment, and materials which are installed, furnished, or supplied by Subcontractor as part of the Services.

“Progress Report” shall have the meaning set forth in Section 2.c of the Subcontract.

“Programs” has the meaning set forth in the Preliminary Statement.

“Project” means one or more CREFs installed by the Subcontractor at a particular location or site that is funded by this Subcontract.

“Prudent Industry Practice” means (i) any of the practices, methods, and acts engaged in or approved by a significant portion of the solar photovoltaic installation industry in the country and geographic region where a CREF is located during the relevant time period, or (ii) practices, methods, and acts that, in the exercise of reasonable judgment on the facts known (or that reasonably should have been known) at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expediency.

“Qualified Transferee” means an Affiliate of Subcontractor that has acquired or, concurrently with an assignment in whole or in part of this Subcontract, will acquire Subcontractor’s interest in a CREF(s) authorized hereunder.

“REDF” means Renewable Energy Development Fund. (D.C. Official Code § 34–1436).

“Services” means any and all labor, equipment, and other items required for Subcontractor to meet the performance requirements and legal obligations of this Subcontract.

“SfA Program” means the Solar for All Program administered by the DCSEU and funded by DOEE to increase the access of seniors, small local businesses, nonprofits, and low-income households in the District of Columbia to the benefits of solar power and provide the long-term financial benefits of solar energy production to District of Columbia low-income households. (D.C. Official Code § 8–1774.16).

"SFA Portfolio Manager" means the individual responsible for the day-to-day oversight of the DCSEU Solar for All Program.

“SREC” means Solar Renewable Energy Credit (D.C. Official Code §§ 34–1432 - 1433).

“Subcontract NTE” has the meaning set forth in Section 5.b. and is stated on the first page of this Subcontract.

“Subcontract Scope of Work” means the Scope of Work identified in **Attachment B** of this Subcontract.

“Subscriber” means a retail customer of the electric company who owns a subscription and who has identified an individual billing meter within the District of Columbia to which the subscription shall be attributed. (D.C. Official Code § 34–1501(27)).

“VEIC” has the meaning set forth in the first paragraph of this Subcontract.

“Weather-Adjusted” means adjusting the partial or annual expected electricity output to remove the uncertainty related to weather variability in a given Production Year.

Attachment B

SCOPE OF WORK AND PRICING PROVISIONS

GENERAL DESCRIPTION OF SERVICES

Subcontractor will provide fully integrated and operational photovoltaic (PV) electric generation systems on properties located in the District of Columbia. The PV systems will be required to operate as Community Renewable Energy Facilities (CREFs). Subcontractor will be responsible for performing the Services outlined in this Subcontract including, but not limited to, planning, designing, engineering, permitting, constructing, commissioning, operating, and maintaining the CREF(s).

Subcontractor will also be required to (1) designate 100 percent of each CREF's electricity output to DOEE-designated low-income households at no cost for the Minimum CREF Commercial Operation Period set forth in **Attachment C** and (2) guarantee the electricity output from the CREF(s) or pay a penalty for failing to meet the minimum production requirements as outlined in further detail below and in **Attachment B2** (Penalty Mechanism Calculator).

INELIGIBLE CREFS

The following CREF(s) are not eligible to participate in the DCSEU FY 2023 Solar for All (SfA) Program:

- a. CREFs that received other District incentives or funding to promote solar through DOEE's earlier SfA initiatives, such as the Solar for All DC Innovation & Expansion Grants, or other offerings;
- b. CREFs that have already achieved PEPCO Authorization to Operate (ATO) prior to Subcontractor's receipt of a Notice of Intent to Award from the DCSEU;
- c. CREFs that will not designate 100 percent of the electricity output to DOEE designated low-income households (e.g., partial CREF allocations) for the Minimum CREF Commercial Operation Period; or
- d. CREFs with estimated production values below 1,200 kWh/kW during the first twelve months of electricity generation, unless otherwise approved in writing by the DCSEU.

By signing this Subcontract, Subcontractor represents that each CREF authorized by VEIC in **Attachment C** and to be installed under this Subcontract:

- a. has not, is not, and will not receive any other District support for the CREF;
- b. has not achieved PEPCO Authorization to Operate (ATO) prior to Subcontractor's receipt of a Notice of Intent to Award from the DCSEU;
- c. will designate 100 percent of the electricity output to DOEE designated low-income households for the Minimum CREF Commercial Operation Period; and
- d. will have an estimated production value above 1,200 kWh/kW during the first twelve months of electricity generation, unless otherwise approved in writing by the DCSEU.

CREF DEVELOPMENT, CONSTRUCTION, INSPECTION, AND INTERCONNECTION

Subcontractor shall follow the milestone process to complete each CREF. The components and requirements for each milestone are described below. In order to achieve completion of a milestone, Subcontractor must submit and obtain DCSEU approval of all milestone deliverables by the milestone deadlines set forth for each CREF in **Attachment C**. If the DCSEU cannot approve a milestone deliverable based on the documentation submitted by Subcontractor, the DCSEU will notify Subcontractor and Subcontractor will have five (5) business days thereafter to cure any such deficiencies. Invoices not approved by VEIC by the Cut-off Date will be delayed in payment until the following month as outlined in **Attachment D**.

Milestone 1 Deliverables and Requirements

- a. **Evidence of Site Control**: Subcontractor shall furnish evidence of site control for the Minimum CREF Commercial Operation Period set forth in **Attachment C**, which may be in the form of a signed lease, power purchase agreement (PPA), or other contract between Subcontractor and the owner(s) of the property where the CREF(s) will be installed under this Subcontract. Subcontractor will also be required to submit evidence that the Site Control Agreement (defined in **Attachment B1**) and the DCSEU CREF Site Control Agreement Supplement (**Attachment B1**) have been recorded with the District of Columbia Government Recorder of Deeds as a part of Milestone 4 deliverables.
- b. **DCSEU CREF Site Control Agreement Supplement (Attachment B1)**: Subcontractor shall secure the necessary rights and approvals from the property owner(s) to enroll the CREF(s) in the DCSEU Solar for All Program using the DCSEU CREF Site Control Agreement Supplement included as **Attachment B1** to this Subcontract. Any changes to the pre-approved form of DCSEU CREF Site Control Agreement Supplement must be approved in writing by the DCSEU.
- c. **Stamped Engineering Design Documents**: Subcontractor shall prepare and provide to the DCSEU for approval comprehensive, stamped engineering design documents for the CREF(s) to be installed under this Subcontract. The stamped drawings must include the equipment specification sheets and final system description with the following information:
 - i. System description and size;
 - ii. Installer information;
 - iii. System design/layout;
 - iv. System electrical design; and
 - v. Equipment details, specifications, and cut sheets.
- d. **Installation Permits**: Subcontractor shall furnish evidence of all DCRA permits and any other permits required to install the CREF(s) or Project(s) funded by this Subcontract.

- e. **Financing Plan:** Subcontractor shall submit a financing plan for the CREF(s) or Project(s) being installed under this Subcontract, along with letters of commitment from financiers (third-party investors or lenders), where applicable, specifying at a minimum:
 - i. The amount of capital being invested or loaned and the anticipated costs of the CREF(s) authorized in **Attachment C**;
 - ii. The exact number of installations or commensurate capacity that will be financed;
 - iii. The date the terms of investment available to Subcontractor expire; and
 - iv. Such additional information as the DCSEU may reasonably request.

If Subcontractor is self-financing its Portfolio or a portion of its Portfolio, Subcontractor shall submit a letter explaining how Subcontractor will finance its Portfolio or the portion of its Portfolio and provide evidence to support Subcontractor's ability to self-finance signed by a Chief Executive Officer or an individual with equivalent authority.

- f. **Project Schedule and Installation Plan:** Subcontractor shall provide a detailed project schedule and installation plan for the Project(s) installed under this Subcontract. Subcontractor shall identify potential permitting, construction, and interconnection risks for the CREF(s), and provide a detailed description explaining how Subcontractor plans to manage and mitigate these risks to deliver the CREF(s) according to the deadlines specified in **Attachment C**.

Additional Subcontractor Requirements Under Milestone 1:

- g. **PEPCO Cost Acceptance Letter:** Subcontractor shall promptly provide to the DCSEU a copy of its signed PEPCO Cost Acceptance Letter for the CREF(s), a copy of the cost estimate from PEPCO, and evidence of payment to PEPCO when available.
- h. **Compliance with the Law and PEPCO Requirements:** Subcontractor is responsible for obtaining, maintaining, and paying for all fees and costs associated with required permits and licenses necessary to construct and operate the CREF(s) in compliance with all applicable local, state, and federal requirements including, but not limited to, strict adherence to District of Columbia Department of Consumer and Regulatory Affairs (DCRA) codes (electrical, building, and service) and the National Electric Code (NEC). Subcontractor is also responsible for complying with PEPCO's requirements and paying for all fees and costs to interconnect the CREF(s) in its Portfolio to PEPCO's distribution system, including, but not limited to, metering and telemetry charges, if applicable.
- i. **Structural Integrity.** Subcontractor is responsible for ensuring that the structure of the property can support the CREF.
- j. **Adequate Corrosion and Runoff/Snow Loading Control:** Subcontractor is responsible for demonstrating that the CREF installed will have adequate corrosion and runoff/snow loading control.

Milestone 2 Deliverables and Requirements

Subcontractor shall procure the equipment necessary to install and operate the CREF(s) conforming to the requirements of this Subcontract on buildings, structures, or land located in the District of Columbia.

- a. Evidence of Purchase: Subcontractor shall provide evidence that the materials have been purchased for the CREF(s) permitted in Milestone 1, which shall include, at a minimum, the modules, inverters, and racking materials to complete installation. ***This evidence can be in the form of an invoice, order acknowledgement, or other documentation approved by the DCSEU in addition to a sales receipt, packing list, line of credit, or other documentation approved by the DCSEU.*** Documentation that does not show payment will not be accepted to satisfy this requirement.
- b. Evidence of Equipment Condition: Subcontractor shall provide evidence satisfactory to the DCSEU to demonstrate all equipment is new, never used, and has all factory warranties intact. ***This evidence can be in the form of sales receipts, photographs of the equipment with serial numbers or other documentation if approved by the DCSEU.*** Documentation that does not show equipment is new, never used, and has all factory warranties intact will not be accepted to satisfy this requirement.
- c. Warranties and Guarantees for the PV System and Components: Subcontractor shall provide copies of all manufacturer warranties for the system components listed below to the DCSEU. By signing this Subcontract, Subcontractor also agrees to guarantee the PV system components and provide all labor services at no additional cost to the DCSEU for the Minimum CREF Commercial Operation Period, including but not limited to the:
 - i. PV module(s);
 - ii. Inverter(s); and
 - iii. Power optimizer(s) (if applicable).

If any of the above component(s) of the CREF(s) change after Milestone 2, Subcontractor must notify the DCSEU and provide updated copies of the manufacturer warranties.

- d. Pepco Approval of Interconnection Application & Agreement Part I (“Approval to Install” or “ATI”): Subcontractor shall provide evidence of ATI to the DCSEU for the CREF(s). Subcontractors should allow a minimum of four (4) weeks for PEPCO to approve Subcontractor’s application(s) for ATI. If Subcontractor fails to achieve Milestone 2 deadline for its CREF(s), the DCSEU may terminate the CREF(s) for cause as outlined in Section 14.a.ii of this Subcontract.

Additional Subcontractor Requirements Under Milestone 2:

- e. Interconnection Equipment: Subcontractor shall ensure all interconnection equipment,

including components of the CREF(s) meet the following requirements:

- i. Have been tested in accordance with the appropriate codes and standards referenced in Chapter 40, Title 15 of the District of Columbia Municipal Regulations (commonly referred to as the “District of Columbia Small Generator Interconnection Rules”) by any nationally recognized testing laboratory (“NRTL”) recognized by OSHA to test and certify interconnection equipment.
 - ii. Meet the requirements for certification, including but not limited to the following codes and standards:
 - Include Underwriters Laboratories (“UL”), UL 1741 Inverters, Converters, and Controllers for Use in Independent Power Systems;
 - IEEE 1547.1 Standard for Conformance Tests Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems; and
 - iii. Compatible with the performance monitoring software selected by the DCSEU.
- f. Building Modifications, Safety, and Spare Parts. Subcontractor shall provide all necessary building modifications, safety devices, and spare parts to complete the installation of the CREF(s).
- g. Staging and Installation. Subcontractor shall supply all equipment, materials, and labor necessary to stage, install, and interconnect the CREF(s) with PEPCO’s distribution system according to their permitted design.

Milestone 3 Deliverables and Requirements

- a. DCRA Temporary Pending Final (TPF) Inspection (signed and received by PEPCO). For the CREF(s) installed under this Subcontract, Subcontractor shall submit a signed copy of DCRA’s TPF electrical inspection and approval. Subcontractor shall also ensure the Temporary Pending Final (TPF) Inspection approval, performed by DCRA or a DCRA approved third-party inspector, is received by PEPCO directly from DCRA and deemed acceptable. If Subcontractor fails to comply with these requirements, the DCSEU may terminate the CREF(s) for cause as outlined in Section 14.a.ii of the Subcontract.

Milestone 4 Deliverables and Requirements

- a. DCSEU Quality Assurance and Quality Control (QA/QC) Inspection: The CREF(s) must pass the DCSEU’s QA/QC inspection. The DCSEU will conduct a detailed QA/QC inspection of the completed CREF(s) installations, from which a substantial completion report will be generated by the DCSEU for DOEE. The purpose of the substantial completion report is to confirm that the CREF(s) has been built according to the permit(s) and follows best practices for optimizing output. The DCSEU will take photographs as part of the CREF(s)’s documentation, including photos of the modules, inverters, and other aspects of the installation(s). Subcontractor shall also provide documentation showing it has submitted Part II of the Interconnection Application and Agreement to PEPCO for Approval to Operate (ATO) for the CREF(s). The DCSEU reserves the right to

periodically inspect the CREF(s) as necessary to ensure timely completion.

- b. As-Built/Revised DCRA Permits and Evidence of Final Inspection: For the CREF(s), Subcontractor shall submit all required as-built/revised permits and plans from DCRA to the DCSEU, including, but not limited to, the as-built/revised building and electrical permits and associated plan set(s). Subcontractor shall also submit evidence satisfactory to the DCSEU and PEPCO that the CREF(s) have passed the required DCRA final inspection(s), performed by DCRA or an DCRA approved third-party inspector, such as a signed copy of the DCRA Onsite Inspection Record.
- c. PEPCO Application for Authorization to Operate (ATO): Subcontractor shall submit documentation or evidence showing PEPCO has approved Subcontractor's Approval of Interconnection Application & Agreement Part II ("Approval to Operate" or "ATO") and provide a copy of the application(s), as approved by PEPCO, to the DCSEU for the CREF(s). Subcontractor will be responsible for all fees and costs for interconnection of all CREF(s) in its Portfolio to PEPCO's distribution system. Subcontractors should allow a minimum of ten (10) weeks for PEPCO to approve Subcontractor's application(s) for ATO. If Subcontractor fails to achieve ATO by the Milestone 4 deadline, the DCSEU may terminate the CREF(s) for cause as outlined in Section 14.a.ii of this Subcontract.
- d. Production Data: Subcontractor shall provide the DCSEU and DOEE with direct access to the production data for each CREF within 14 calendar days of the Commercial Operation Date to enable the DCSEU to track and verify the electricity output. To satisfy this requirement, Subcontractor shall provide, at the sole discretion of the DCSEU and DOEE, the login credentials (or other agreed upon means of direct access) for each CREF inverter or the login credentials (or other agreed upon means of direct access) to a solar production monitoring system connected to an automated, revenue-grade solar production meter for each CREF that meets or exceeds SREC requirements.
- e. Operation and Maintenance Manual: Subcontractor shall provide copies of all operation and maintenance manuals for the CREF(s) and both the manufacturer warranties for the system components and Subcontractor's guarantee outlined under Milestone 2.c. (Warranties and Guarantees for the PV System and Components) to the property owner(s) and the DCSEU. Subcontractor shall also provide the DCSEU with specification sheets and as-built drawings for the CREF(s). The operation and maintenance manuals shall include information on maintenance, including a maintenance schedule and safety precautions specific to the CREF(s) as installed, as well as emergency contact information for operations and maintenance of the system. The as-built drawings and manuals shall be delivered prior to the acceptance of the installed equipment.
- f. Recorded Site Control Documents: Subcontractor shall provide the DCSEU with documentation or evidence showing its executed Site Control Agreement and DCSEU CREF Site Control Agreement Supplement with the property owner(s) have been recorded with the District of Columbia Government Recorder of Deeds for the CREF(s).

Additional Subcontractor Requirements:

REGISTER WITH PUBLIC SERVICE COMMISSION (PSC):

Subcontractor shall use commercially reasonable efforts to register each CREF on a timely basis with the PSC to generate and sell solar renewable energy credits (SRECs). Subcontractor shall comply with the process outlined by the PSC for registration (see <https://dcpsc.org/Utility-Information/Electric/RPS.aspx>) and submit documentation or evidence to the DCSEU to confirm Subcontractor has registered each CREF.

CREF INTERCONNECTION POINT

Subcontractor shall evaluate and determine a suitable location for the CREF's inverter(s) and related components on each building or structure. Subcontractor shall supply and install all materials and equipment required to interconnect with PEPCO's distribution system as a CREF. Subcontractor's Scope of Work includes, but is not limited to, providing all applications, designs, equipment, materials, commissioning, and testing required for completion of the interconnection of the CREF(s). The inverters and other required equipment must:

- a. Provide reliable service with no negative impact on the site's electrical, mechanical, or structural systems;
- b. Comply with all requirements for interconnection with PEPCO's distribution system; and
- c. Be able to monitor production and electricity output remotely (wireless connection).

OPERATION AND MAINTENANCE

Subcontractor shall be responsible for the operation, maintenance, and repair of each CREF for the Minimum CREF Commercial Operation Period. Subcontractor shall perform all such services at no additional cost to the DSEU in accordance with applicable law and Prudent Industry Practices. Subcontractor shall:

- a. Ensure proper operation and maintenance of each CREF and guarantee the system components and labor services at no additional cost to the DCSEU, as set forth in this Subcontract.
- b. Plan and manage operations and maintenance activities, including:
 - i. Monitoring the operation of each CREF and responding promptly to any events which may or do impact operations and electricity output;
 - ii. Managing and maintaining each CREF to maximize production and acting to remedy any underperformance issues as further outlined below;
 - iii. Assuring that each CREF operates properly and in a safe, reliable, efficient, and prudent manner, including replacing failing equipment, during the CREF's Minimum CREF Commercial Operation Period;
 - iv. Ensuring operations and maintenance personnel are trained and qualified for their

- assigned responsibilities and tasks, and that such qualification is maintained;
 - v. Ensuring that each CREF meets all contract, regulatory, and environmental requirements; and
 - vi. Planning, scheduling, and managing work and maintenance activities.
- c. Execute or provide oversight of routine preventive maintenance (“PM”) activities in accordance with Prudent Industry Practices to troubleshoot, inspect, and repair the equipment upon identification and detection of certain conditions, including without limitation, any conditions prescribed by manufacturers and, in any event, at least annually.

ELECTRICITY PRODUCTION

Subcontractor shall be responsible for meeting all the deadlines specified in **Attachment C** to achieve Commercial Operation in a timely manner upon receipt of Authorization To Operation (“ATO”), but in no event longer than 14 calendar days after receipt of ATO from PEPCO. For the Minimum CREF Commercial Operation Period of each CREF, 100 percent of the electricity output from each CREF installed under this Subcontract shall be obligated to DOEE designated low-income households at no cost and in such amount(s) as may be determined by DOEE.

Subcontractor shall also ensure that the electricity output from each CREF installed under this Subcontract has not been, and will not be, sold, traded, obligated, or otherwise delivered to any party other than DOEE and DOEE-designated recipients for the Minimum CREF Commercial Operation Period of each CREF, and shall execute such other agreements as necessary to secure DOEE’s rights to the electricity output from each CREF.

Subcontractor shall list DOEE as the “alternate contact” on its PEPCO Approval of Interconnection Application & Agreement Part I and as the Subscriber Organization by listing DOEE on its PEPCO CREF Application and Contract with the following person listed as the primary contact:

Lance Loncke, Ph.D.
Economist/Senior Program Analyst
Department of Energy and Environment
1200 First Street, NE, 5th Floor
Washington, DC 20002
Desk: (202) 671-3306
Email: lancelot.loncke@dc.gov

Subcontractor shall cooperate with and participate in the subscription process as directed by DOEE or its designee, and shall provide all information and documentation that DOEE or its designee may request for the subscription process. In the event that any of the CREF(s) electricity output is unsubscribed energy that is not designated for the benefit of low-income households, Subcontractor shall cooperate fully with DOEE or its designee and with PEPCO to ensure that all payments from PEPCO for the unsubscribed energy are transferred to the District in a timely manner for return to the REDF.

POST-CONSTRUCTION MONITORING

Ongoing monitoring of the electricity output and performance is critical to the long-term success of the SfA Program. Subcontractor shall install a monitoring system that will allow DCSEU and DOEE staff and their authorized designees to monitor and analyze the historic and real-time electricity output and

performance of each CREF for the Minimum CREF Commercial Operation Period. The monitoring system shall be designed to inform Subcontractor, DCSEU staff, and DOEE staff when a CREF(s) is off-line or when the electricity output is below expectations. The monitoring system capabilities shall include at a minimum the following:

- a. System operational status, historic and real-time;
- b. The ability to produce a standard monthly summary report for electronic distribution and archiving;
- c. Average and cumulative electricity output; and
- d. Capacity factor by month.

Subcontractor shall provide the above electricity output data by allowing the DCSEU and DOEE to access the monitoring systems, and Subcontractor shall provide, at the sole discretion of the DCSEU and DOEE, DCSEU and DOEE with login credentials (or other agreed upon means of direct access) to each inverter or the login credentials (or other agreed upon means of direct access) to an automated, revenue-grade solar production meter for each CREF that meets or exceeds SREC requirements, within 14 calendar days of each CREFs' Commercial Operation Date. Upon DCSEU request, Subcontractor shall provide reports in electronic format on system performance, over a period of time specified by the DCSEU, within 14 calendar days of a request.

Subcontractor shall provide the DCSEU, DOEE, and their authorized representatives and third-party evaluators access to CREF(s) for inspections of physical installations and access to the generation data for analysis and ongoing monitoring.

The DCSEU SfA Program could be subject to third-party evaluation as part of the larger oversight of DCSEU's portfolio. The evaluator may join the DCSEU and/or DOEE for construction site visits and may analyze production data. The DCSEU will share each CREF(s)' generation data and system characteristics with the evaluator.

SUBCONTRACT ANNUAL MINIMUM PRODUCTION REQUIREMENT

The CREF(s) installed under this Subcontract must produce on an annual basis a minimum of **90 percent of projected electricity output** (as verified by the online PVWatts (or comparable Solar forecasting) tool) for the Minimum CREF Commercial Operation Period for each CREF, adjusted for degradation of module efficiency over time and adjusted to account for sporadic weather activity.

Specifically, during the Subcontract Operating Period, the CREF(s) installed by the Subcontractor under this Subcontract must meet the Subcontract Annual Minimum Production Requirement for each Production Year as follows:

For a Partial or Full Production Year, either:

- i. each CREF installed by the Subcontractor under this Subcontract must generate at least the Weather-Adjusted CREF Minimum Production Requirement for that CREF, as further described in **Attachment B2**; or
- ii. Subcontractor's Portfolio of CREFs installed under this Subcontract must generate at least the Weather-Adjusted Portfolio Aggregate Minimum Production Requirement for the Subcontractor's Portfolio, as further described in **Attachment B2**.

The required Subcontract Annual Minimum Production Requirement described above will be calculated and evaluated according to the schedule and process outlined below and in **Attachment B2**. Subcontractor shall not include in its Portfolio, for purposes of calculating the Subcontract Annual Minimum Production Requirement, CREFs authorized under a separate subcontract with the DCSEU or solar systems/CREFs not installed under this Subcontract, unless such CREF(s) were added to Subcontractor's Portfolio pursuant to the "Additional Remedies for Production Shortfalls" provision in this **Attachment B** (described below) and with prior written approval from the DCSEU and DOEE.

DETERMINATION OF ACTUAL AND PROJECTED PRODUCTION

The DCSEU will calculate the projected and actual electricity output in a Production Year and for the Subcontract Operating Period according to the schedule and methodology described in **Attachment B2** to determine if Subcontractor has met the Subcontract Annual Minimum Production Requirement in a given Production Year and Subcontract Term Minimum Production Requirement under this Subcontract. The DCSEU will use the data reported through Subcontractor's monitoring system to determine the actual electricity output.

If Subcontractor's monitoring system encounters an issue and electricity output data is not available, the electricity output will be counted as zero until the production data is made available again, unless otherwise approved by the DCSEU. Subcontractor may submit electricity output data from other sources to the DCSEU for the periods in which the electricity output data is not available, however acceptance or rejection of the data from other sources shall be within the sole discretion of VEIC and DOEE. Subcontractor shall also promptly notify the DCSEU of the issue and Subcontractor will have 14 calendar days to remedy the situation or to detail in writing how and when the situation will be remedied. The problem must be remedied as soon as practically possible, but in no event later than 90 calendar days from receiving notice of the problem; the DCSEU may extend the 90-day deadline if Subcontractor demonstrates good cause.

PENALTY CALCULATION METHODOLOGY AND PROCESS

The DCSEU will notify Subcontractor if Subcontractor's performance in a particular Production Year failed to meet the Subcontract Annual Minimum Production Requirement for that Production Year. If such an event occurs, Subcontractor will be required to:

- a. Develop and submit an action plan and timeline within 20 business days and submit weekly update reports on action plan progress; and
- b. Pay a penalty calculated according to the Penalty Calculation Methodology and Process further described below and in **Attachments B2** and **B3**, unless an alternate remedy is approved in advance for the applicable Production Year by the DCSEU and DOEE in a written amendment to this Subcontract in accordance with the provisions of Sections 25 and 29.a. of this Subcontract (*see* Additional Remedies for Production Shortfall below).

The penalty will be determined according to the following factors: system sizes, incentive level, Production Year, incentive amount, and shortfall of actual electricity output.

COLLECTION OF PENALTY

If Subcontractor does not promptly pay the penalty to DOEE, the DCSEU will make a good-faith effort to collect the funds from Subcontractor. These efforts will include detailing for Subcontractor the amount of production shortfall and how it was calculated, electronic and paper billing for payment, and negotiating a payment schedule, if appropriate. However, failure to respond to these efforts to collect the penalty after 120 calendar days may result in referral of the account to a debt collection agency that works on behalf of DOEE to collect the penalty amount from Subcontractor.

PENALTY CALCULATION METHODOLOGY FOR TERMINATION FOR CAUSE

IN THE EVENT VEIC TERMINATES THIS SUBCONTRACT FOR CAUSE BEFORE THE END OF THE SUBCONTRACT OPERATING PERIOD, SUBCONTRACTOR SHALL BE LIABLE FOR AND SHALL PROMPTLY, BUT IN NO EVENT LATER THAN 30 CALENDAR DAYS FROM THE TERMINATION EFFECTIVE DATE, PAY ALL PENALTIES DUE FOR THE PRODUCTION YEARS REMAINING IN THE SUBCONTRACT OPERATING PERIOD FOR WHICH SUBCONTRACTOR FAILED TO MEET THE SUBCONTRACT ANNUAL MINIMUM PRODUCTION REQUIREMENT. The total penalty due to the DCSEU shall be calculated using the methodology described in **Attachment B2** and calculated using the workbook in **Attachment B3**.

For example, if the performance period was 15 years and if this Subcontract is Terminated for Cause at the end of Year 12, Subcontractor shall be liable for penalties for failing to perform under this Subcontract for Years 13 through 15 and the final Partial Production Year (if any). Using the example in **Attachment B2**, if Subcontractor's Portfolio consists of one CREF with system size 100kW and total incentive \$125,000, the total penalty amount Subcontractor will be required to pay is **\$30,142.10**:

$(95,730 \text{ kWh (Year 13 expected generation)} + 94,772 \text{ kWh (Year 14 expected generation)} + 93,825 \text{ kWh (Year 15 expected generation)} + 77,096 \text{ kWh (final Partial Production Year generation)}) *$

$\$0.0834/\text{kWh (value of generation per kWh)} = \$30,142.10$

ADDITIONAL REMEDIES FOR PRODUCTION SHORTFALLS.

In the event that Subcontractor determines that Subcontractor's performance has or will in the future be expected to fail to meet the Subcontract Annual Minimum Production Requirement during the then current Production Year and thereafter, including, without limitation, as a result of the owner(s) of a property where a CREF will be or has been installed under this Subcontract exercising an early purchase option or early termination option under the applicable Site Control Agreement that would result in the electricity output from such CREF not being obligated to DOEE designated low-income households for the required full period of Minimum CREF Commercial Operation Period, then:

- a. Subcontractor may propose to VEIC the addition of solar capacity to the Subcontractor's Portfolio for the FY2023 SfA Program from Subcontractor's operating portfolio of non-SfA Program solar systems located in the District of Columbia (i.e. from solar system projects not otherwise then enrolled in the SfA Program or incentivized by the DCSEU or DOEE) for the purpose of (i) replacing the capacity for a CREF where an early purchase/early termination option was elected by the property owner(s) of such CREF; or (ii) otherwise toward supplementing Subcontractor's actual or anticipated electricity output shortfall across Subcontractor's Portfolio of CREFs.

- b. acceptance or rejection of Subcontractor's proposed substitution or supplementation of solar system(s) shall be within the sole discretion of VEIC and DOEE;
- c. if the proposed substitution or supplementation of solar system(s) is accepted by VEIC and DOEE, details of the Subcontractor's proposed remedy would be documented in a subsequent Subcontract Amendment and Subcontractor shall have 120 days from, as applicable, (a) the date the capacity from a current SfA Program CREF becomes unavailable due to the early purchase/termination option; or (b) the date that Subcontractor proposed to VEIC the addition of the non-SfA Program solar system to otherwise contribute supplemental electricity output to mitigate against Subcontractor's actual or anticipated electricity output shortfall, to have the new capacity from the substitute/supplemental system generating electricity for the FY 2023 SfA Program and for the benefit of SfA Program participants/subscribers; and
- d. Any production shortfalls due to the transition to adding the capacity from the substitute/supplementary solar system(s) into Subcontractor's Solar for All Portfolio of CREFs shall be subject to the Penalty Mechanism Calculation in **Attachments B and B2**.

MARKETING

The following requirements are *in addition* to the requirements set forth in Section II. (No Statements) of **Attachment F**.

- a. Subcontractor must notify the DCSEU in writing at least 48 hours in advance (via email) prior to any press release about a CREF(s). Any press release shall be subject to DCSEU approval;
- b. Subcontractor must notify the DCSEU in writing at least 48 hours in advance (via email) if Subcontractor anticipates any media coverage of a CREF(s). Any appearance by Subcontractor on any media outlet shall be subject to DCSEU approval;
- c. Subcontractor will include the DCSEU in any press releases, media alerts, earned media pitching (collectively, "Press"), events, and social media promoting or referencing the DCSEU SfA Program and/or the CREF(s); and
- d. Subcontractor acknowledges, agrees, and hereby consents that as the work progresses on the CREF(s), the DCSEU and/or DOEE may:
 - i. document the work through social media, photography / videography, regular SfA Program progress updates through the DCSEU and/or DOEE website(s) and email communications to stakeholders, and onsite media events for achieving significant project milestones; and
 - ii. pursue earned media to highlight DCSEU SfA Program milestones and successful CREF installations, including CREF(s) that are the subject of this Subcontract.
- e. Subcontractor acknowledges that visibility and signage are important elements contributing to the sustainability of the SfA Program. Subcontractor shall make a good faith effort to provide at least one (1) CREF site location to the DCSEU to display temporary public signage (banner) to inform the public the CREF is enrolled in the

DCSEU SfA Program. This work by Subcontractor will include obtaining permission from the property owner or representative to display the banner during the construction and installation period and complying with all District regulations. The DCSEU shall work directly with Subcontractor to develop an approved and co-branded banner. The DCSEU shall pay for the design and production of the banner. Subcontractor shall display the banner in a highly visible area, so the banner is visible from public streets and sidewalks by drivers and pedestrians, unless otherwise approved by the DCSEU.

PRICING PROVISIONS

PRICING:

Subcontractor's Portfolio of CREFs will be set forth in list format in **Attachment C**. The list will contain the information set forth in Section 2.f. of this Subcontract. Subcontractor will be paid at the per watt rate(s) listed in **Attachment C** for every 1 (one) watt of the CREF's actual installed capacity based on the as-built system size which will be determined by the DCSEU through the QA/QC inspection, subject to the CREF Incentive and Portfolio NTEs listed in **Attachment C**. There are no reimbursable expenses under this Subcontract.

Subcontractor bears all risks for cost incurred by exceeding the CREF Incentive and/or Subcontract NTEs listed in **Attachment C** without negotiating and executing an amendment to **Attachment C** before the cost overrun occurs as outlined in Sections 25 and 29.a of this Subcontract.

INCENTIVE CLAWBACK:

ALL MILESTONE PAYMENTS ARE ALSO CONDITIONAL UPON SUBCONTRACTOR'S COMPLETION OF ALL MILESTONES BY THE DEADLINES SET FORTH IN **ATTACHMENT C**, AND COMMERCIAL OPERATION OF EACH CREF WITHIN 14 CALENDAR DAYS AFTER RECEIPT OF AUTHORIZATION TO OPERATE (ATO) FOR THE MINIMUM CREF COMMERCIAL OPERATION PERIOD SET FORTH IN **ATTACHMENT C**. IN THE EVENT THAT SUBCONTRACTOR DOES NOT COMPLETE ALL MILESTONES BY THE DEADLINES SPECIFIED IN **ATTACHMENT C**, ALL MILESTONE PAYMENTS PAID TO SUBCONTRACTOR SHALL BE PROMPTLY REPAYED TO THE DCSEU, BUT IN NO EVENT LATER THAN 30 CALENDAR DAYS AFTER SUBCONTRACTOR RECEIVES A REQUEST FOR REPAYMENT FROM THE DCSEU. IN THE EVENT THAT COMMERCIAL OPERATION OF THE CREF(S) IS NOT ACHIEVED WITHIN 14 CALENDAR DAYS OF RECEIPT OF ATO, ALL MILESTONE PAYMENTS PAID TO SUBCONTRACTOR SHALL BE PROMPTLY REPAYED TO THE DCSEU, BUT IN NO EVENT LATER THAN 30 CALENDAR DAYS AFTER SUBCONTRACTOR RECEIVES A REQUEST FOR REPAYMENT FROM THE DCSEU.

Subcontractor acknowledges that there is no assurance of funding availability past September 30, 2023. Subcontractor's obligation to repay all incentive payments received in the event that Subcontractor does not timely complete the milestones or does not achieve Commercial Operation within fourteen (14) calendar days after receipt of ATO, shall be secured by a collateral assignment of permits and CREF and Project documents and by a security interest in personal property relating to the applicable CREF(s).

**Attachment B1
DCSEU Community Renewable Energy Facility
Site Control Agreement Supplement
Solar for All Program Covenants**

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

(SPACE ABOVE THIS LINE FOR RECORDER’S USE ONLY)

DCSEU CREF Site Control Agreement Supplement
(Solar for All Program Covenants – DCSEU Community Renewable Energy Facility)

Subcontractor:	Insert Subcontractor Name
Property Owner(s):	Insert Name(s) of Property Owner(s)
Property Address:	Insert Address of Property
Effective Date:	Insert Supplement Effective Date

This DCSEU CREF SITE CONTROL AGREEMENT SUPPLEMENT (this “Supplement”), effective as of the “Effective Date” listed above, is between the subcontractor identified in the table above (the “Subcontractor”) and the owner(s) identified in the table above (the “Property Owner(s)”). Each of Subcontractor and Property Owner(s) may be referred to herein as a “Party” and, collectively, as the “Parties”.

RECITALS

A. Vermont Energy Investment Corporation d/b/a District of Columbia Sustainable Energy Utility (“DCSEU”) has a contract (the “Prime Contract”) with the District of Columbia Department of Energy and the Environment (“DOEE”) to implement and manage the DCSEU Solar for All Program (the “SfA Program”);

B. To further the SfA Program goals and objectives, the DCSEU entered into a subcontract with Subcontractor (the “Subcontract”) to incentivize the development of fully-integrated and operational photovoltaic (PV) electric generation systems (each, a “PV System”) installed as CREFs (as defined in Section 2(a) below) in the District of Columbia;

C. Pursuant to the Subcontract, Subcontractor is eligible for incentive funds from the DCSEU to pay, in part, for the costs of developing, constructing, and installing one or more PV Systems at the property address identified in the table above and more fully described in Exhibit A hereto (the

“Property”). It is a condition of receiving such funds that Subcontractor enter into a site control agreement (lease, power purchase agreement with appropriate license agreement, or other approved form of contract) with the Property Owner(s) containing the covenants and other obligations of the Parties set forth herein (the “SfA Program Requirements”); and

D. The Parties have entered into the [**Insert Name of Site Control Agreement**] dated [**Insert Date of Site Control Agreement**] (the “Site Control Agreement”) and now desire to ensure that the SfA Program Requirements are incorporated therein.

AGREEMENT

1. Site Control Agreement Supplement. The Site Control Agreement is hereby supplemented and amended to include the SfA Program Requirements set forth in Section 2 below. Except as expressly set forth herein, if there is any conflict or inconsistency between the terms and conditions of the Site Control Agreement and this Supplement, this Supplement shall prevail.

2. DCSEU SfA Program Requirements

a. Term. To the extent that the initial term of the Site Control Agreement is less than 15 years, such term shall be extended to a minimum of fifteen (15) years from the Commercial Operation Date (defined below) of the PV System(s) installed on the Property (the “SfA Term”). For purposes of this Supplement, the “Commercial Operation Date” means the date that the PV System(s) (i) is fully constructed, (ii) generates electric energy on a commercial basis, (iii) has received authorization to interconnect with the utility’s electric grid and is operating in parallel with the grid, and (iv) is generating CREF credits. “CREF” or “Community Renewable Energy Facility” means an energy facility using renewable resources defined as tier one renewable sources in D.C. Official Code § 34-1431(15) that is located within the District of Columbia and where the monetary value of electricity generated by the facility is credited to the subscribers of the facility. (D.C. Official Code § 34–1501(9B)).

b. Access to Solar Facility. From the Effective Date through the SfA Term, Property Owner(s) grants the DCSEU, DOEE, and their third-party evaluators and other authorized representatives a license to access to the PV System(s) constructed on the Property during normal business hours and upon reasonable prior notice for inspections and ongoing monitoring of the PV System(s). Subcontractor agrees to accompany such representatives during any such visits to ensure compliance with any access and safety protocols set forth in the Site Control Agreement.

c. Electricity Output and Grant of Use. Property Owner(s) understands and acknowledges that Subcontractor is obligated to provide 100% of the SfA Program-incentivized PV System(s)’ solar electricity output to DOEE-designated low-income recipients at no cost to such recipients during the SfA Term.

d. Acknowledgement. Property Owner(s) acknowledges that the SfA Program Requirements set forth in this Section 2 shall run with the land and Property Owner(s) authorizes Subcontractor to record this Supplement in the official real estate records of the District of Columbia.

3. Miscellaneous.

a. Site Control Agreement Changes. If the Site Control Agreement is further amended, supplemented, or otherwise modified after the Effective Date, Subcontractor shall send a copy of such amendment, supplement, or other modification to the addresses below. For the avoidance of doubt, no such amendment, supplement, or other modification shall have the effect of modifying the SfA

Program Requirements set forth herein unless expressly consented to in writing by the DCSEU and DOEE. Each of the DCSEU and DOEE are express third party beneficiaries of this Supplement.

DCSEU
Attention: Solar for All Program
1 M Street, SE, 3rd Floor
Washington D.C., 20003

With a copy to:
District of Columbia Department of Energy and Environment
Attention: Lance Loncke, Ph.D., Economist/Senior Program Analyst
1200 First Street, NE
5th Floor
Washington D.C. 20002

b. Effect on Site Control Agreement. Except as otherwise set forth herein, the Site Control Agreement is hereby ratified and reconfirmed in its entirety.

c. Governing Law. This Supplement shall be governed by and construed in accordance with the laws of the District of Columbia.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Supplement as of the Effective Date.

PROPERTY OWNER(S)

[Name of Property Owner]

By: _____
Name:
Title:

District of Columbia

This record was acknowledged before me, _____ (Name of Notarial Officer), on
_____ (Date), by _____ (Name of Signatory), in his/her capacity
stated above.

Signature of notarial Officer

Seal

Title of office

My commission expires: _____

SUBCONTRACTOR

[Name of Subcontractor]

By: _____

Name:

Title:

District of Columbia

This record was acknowledged before me, _____ (Name of Notarial Officer), on
_____ (Date), by _____ (Name of Signatory), in his/her capacity
stated above.

Signature of notarial Officer

Title of office

My commission expires: _____

Seal

Exhibit A to Site Control Agreement Supplement
Legal Description of the Property

[Insert legal description]

DRAFT COPY

Attachment B2

Penalty Mechanism Calculation

- I. **Expected Electricity Output.** The Expected Electricity Output shall be calculated using the below methodology.
1. **Partial Year Expected Electricity Output** (kWh) for each Partial Production Year (i.e., Years 1 and the final year of the Minimum CREF Commercial Operation Period as set forth in **Attachment C**, assuming the Commercial Operation Date does not coincide with the start of the calendar year), the Partial Production Year expected electricity output shall be determined by prorating the Annual Expected Electricity Output (see below).
 2. **Annual Expected Electricity Output** (kWh) for each Full Production Year (i.e., January 1 – December 31) shall be computed as follows. Using the lesser of (i) system capacity as specified in **Attachment C** or (ii) the as-built system capacity from the DCSEU Substantial Completion Report, annual production:
 - a. shall be estimated using the NREL PVWatts generation profile, based on NREL (NSRDB) weather data for the District of Columbia, and
 - b. shall then be adjusted by the Production Year panel degradation factor determined according to manufacturer specifications, calculated as follows: 1 minus the manufacturer specified annual panel degradation factor, raised to the power of the Production Year minus 1. (For example, if Panel Specification degradation = 1%, and Production Year = 5, then Panel degradation (Yr5) = $(1 - 0.01)^{(5-1)} = (0.99)^{(4)} = 0.960596$.)
- II. **Subcontract Annual Minimum Production Requirement.** Each CREF or Subcontractor's Portfolio under this Subcontract must meet the Subcontract Annual Minimum Production Requirement as outlined in **Attachment B**. In a given Production Year, the DCSEU shall use the methodology in Section II.1-2 below to determine the CREF Minimum Production Requirement for each CREF and the methodology in Section IV (Portfolio Calculation) below to determine the Portfolio Aggregate Minimum Production Requirement for Subcontractor's Portfolio under this Subcontract.
- If Subcontractor fails to meet the Subcontract Annual Minimum Production Requirement, as defined in **Attachment B**, in a Production Year, Subcontractor shall be required to pay a penalty for failing to meet the Subcontract Annual Minimum Production Requirement for that Production Year.
- For each CREF in Subcontractor's Portfolio, the CREF Minimum Production Requirement for a particular Production Year shall be calculated using the methodology below:
1. **Partial Production Year CREF Minimum Production Requirement** (kWh) for each Partial Production Year (i.e., Years 1 and the final year of the Minimum CREF Commercial Operation Period as set forth in **Attachment C**, assuming the Commercial Operation Date does not coincide with the start of the calendar year), shall be determined by prorating the Annual Expected Electricity Output by both the 90% minimum level of required electricity output and the percentages in the table below, based on the first full month starting after the Commercial Operation Date.

Month	Prorate %
January	5%
February	7%
March	9%
April	10%
May	11%
June	11%
July	11%
August	10%
September	9%
October	7%
November	5%
December	5%

a. First Partial Production Year Example;

- i. Year 1 expected generation (for a 100 kW system) = 120,000 kWh, and
- ii. Production Year = 1, and
- iii. Panel degradation (Yr1) = 1.00, and
- iv. Required contract output level = 90%, and
- v. Commercial Operation Date = September 14th, then
- vi. Partial Year CREF Minimum Production Requirement (Yr 1) = (120,000 kWh) * (1.00) * (0.9) * (0.17) = 18,360 kWh, where 0.17 represents the sum of the monthly prorate percentages in the table above from October to December

b. Final Partial Production Year Example;

- i. Year 1 expected generation (for a 100 kW system) = 120,000 kWh, and
- ii. Production Year = 16, and
- iii. Panel degradation (Yr16) = 0.860058, and
- iv. Required contract output level = 90%, and
- v. Commercial Operation Date = September 14th, then
- vi. Partial Year CREF Minimum Production Requirement (the final year of the Minimum CREF Commercial Operation Period as set forth in **Attachment C**) = (120,000 kWh) * (0.860058) * (0.9) * (0.83) = 77,096 kWh, where 0.83 represents the sum of the monthly prorate percentages in the table above from January to September (i.e., those months not covered in the first partial year).

2. Full Production Year CREF Minimum Production Requirement (kWh) for each Full Production Year (i.e., January 1 – December 31) shall be determined by multiplying the Annual Expected Electricity Output by the 90% minimum level of required electricity output.

a. For Example:

- i. Year 1 expected generation (for a 100 kW system) = 120,000 kWh, and
- ii. Production Year = 5, and
- iii. Panel degradation (Yr5) = 0.960596, and

- iv. Required contract output level = 90%, then
- v. Full Production Year CREF Minimum Production Requirement (Yr 5) = (120,000 kWh)
* (0.960596) * (0.9) = 103,744 kWh

III. **Subcontract Term CREF Minimum Production Requirement.** The DCSEU shall use the methodology in Section III.1-2 below to determine the Subcontract Term CREF Minimum Production Requirement for each CREF over the Minimum CREF Commercial Operation Period and the methodology in Section IV (Portfolio Calculation) below to determine the Subcontract Term Portfolio Aggregate Minimum Production Requirement for Subcontractor's Portfolio over the Subcontract Operating Period. These calculations shall be used to determine the Value of the CREF Minimum Production Requirement for one of Subcontractor's CREFs under this Subcontract and the Value of the Portfolio Aggregate Minimum Production Requirement for Subcontractor's Portfolio under this Subcontract.

1. **Subcontract Term CREF Minimum Production Requirement** (kWh) for the total electricity output production for a CREF during the Subcontract Operating Period shall be determined by the following process:
 - a. Calculate the CREF Minimum Production Requirement (kWh) for Production Years 1 through the final year of the Minimum CREF Commercial Operation Period set forth in **Attachment C** using the process described in Steps II.1 and II.2.
 - b. Add the CREF Minimum Production Requirement (kWh) for all Production Years (1 - the final year of the Minimum CREF Commercial Operation Period); see the following table for an example (which assumes a Year 1 production of 120,000 kWh, 1% annual panel degradation factor, a Commercial Operation Date of September 14th, and performance over a Minimum CREF Commercial Operation Period of 15 years):

Production Year	CREF Minimum Production Requirement (kWh)
1	18,360*
2	106,920
3	105,851
4	104,792
5	103,744
6	102,707
7	101,680
8	100,663
9	99,656
10	98,660
11	97,673
12	96,697
13	95,730
14	94,772
15	93,825
16	77,096*
Total	1,498,825

*denotes Partial Production Year

2. Value of the CREF Minimum Production Requirement (\$/kWh) shall be determined for a CREF by the following formula:
 - a. The total incentive awarded to Subcontractor for that specific CREF, divided by the Subcontract Term CREF Minimum Production Requirement (kWh) for all years (1 - the final year of the Minimum CREF Commercial Operation Period).
For example:
 - i. System size = 100 kW
 - ii. Incentive level = 1.25/Watt
 - iii. Total Incentive = \$125,000, and
 - iv. Total Minimum Production Requirement for the Minimum CREF Commercial Operation Period = 1,498,825 kWh, then
 - v. Value of the CREF Minimum Production Requirement = $\$125,000 / 1,498,825$ kWh = \$0.0834/kWh
3. The Threshold-Adjusted CREF Minimum Production Requirement (kWh) for a CREF, for a Production Year, shall be computed for CREFs for which the production estimate developed under Section I.2(a) above yields a production ratio less than 1,200 kWh/kW as follows, unless otherwise expressly approved in writing by the DCSEU in its sole discretion: for such CREFs, the production estimate shall be set to a value that is the product of 1,200 kWh/kW and the system capacity (kW) used to develop this estimate. Annual adjustments would then be made according to the processes outlined in Section I.2(b) and Section II.1-2 above.
4. The Weather-Adjusted CREF Minimum Production Requirement (kWh) for a CREF, for a Production Year shall be computed by adjusting the CREF Minimum Production Requirement (or Threshold-Adjusted CREF Minimum Production Requirement, as applicable) for that Production Year using weather data from the NREL National Solar Radiation Database (NSRDB), and System Advisor Model¹ to produce a Weather-Adjusted projection of annual (or, as applicable, partial-year) electricity output. (An alternative source of weather data and/or an alternative normalization methodology may be used if mutually agreed to by the DCSEU and Subcontractor, and approved by DOEE.)
5. The Amount of System Underproduction for a given Production Year shall be determined using the following methodology:
 - a. The Actual System Production (kWh) for a CREF, for specific Production Year shall be captured through the Subcontractor monitoring system.
 - b. The Actual System Production (kWh) for a specific Production Year shall be subtracted from the Weather-Adjusted CREF Minimum Production Requirement (kWh) for that specific Production Year.
 - c. Any difference resulting from this calculation (unless negative) represents the

¹ <https://sam.nrel.gov/>

Amount of System Underproduction (kWh) for that specific Production Year.
For example, in Production Year 5:

- i. The Actual System Production (Yr 5) = 100,000 kWh, and
- ii. The Weather-Adjusted CREF Minimum Production Requirement (Yr 5) = 103,744 kWh, then
- iii. The Amount of System Underproduction (Yr 5) = 103,744 kWh – 100,000 kWh = 3,744 kWh

6. **Calculation of Penalty for a CREF's Underproduction:** If Subcontractor opts not to aggregate performance across its Portfolio for a given Partial or Full Production Year, the Performance Penalty for each CREF, for that Production Year shall be calculated using the following formula:

- a. Amount of System Underproduction for a specific Production Year, multiplied by the Value of the CREF Minimum Production Requirement for that CREF.
For example, for Production Year 5:

- i. Amount of System Underproduction (Yr 5) = 3,744 kWh, and
- ii. Value of the CREF Minimum Production Requirement = \$0.0834/kWh, then
- iii. Performance Penalty for Production Year 5 = \$312.28

IV. **Portfolio Calculation**

If Subcontractor opts to aggregate performance for its Portfolio for a given Partial or Full Production Year:

1. The Annual Expected Electricity Output (kWh), for each CREF, for each Production Year, starting at the Commercial Operation Date (established in accordance with the Electricity Production requirement in **Attachment B**) established in Year 1 and commencing each January 1st thereafter for the Minimum CREF Commercial Operation Period, shall be computed as follows. Using the capacity as specified in the lesser of (i) system capacity as specified in **Attachment C** or (ii) the as-built system capacity from the DCSEU Substantial Completion Report, annual production:
 - a. shall be estimated using the NREL PVWatts generation profile, based on NREL (NSRDB) weather data for the District of Columbia, and
 - b. shall then be adjusted by the Production Year panel degradation factor determined according to manufacturer specifications, calculated as follows: 1 minus the manufacturer specified annual panel degradation factor, raised to the power of the Production Year minus 1. (For example, if Panel Specification degradation = 1%, and Production Year = 5, then Panel degradation (Yr5) = $(1 - 0.01)^{(5-1)} = (0.99)^{(4)} = 0.960596$.)
2. The Full Production Year CREF Minimum Production Requirement (kWh), for each CREF, for each Full Production Year (i.e., January 1 – December 31), shall be determined according to the process outlined in Section II.2. above, but is only referenced here for the purpose of determining the Subcontract Term CREF Minimum

Production Requirement.

3. The Partial Production Year CREF Minimum Production Requirement (kWh), for each CREF, for each Partial Production Year (i.e., years 1 and the final year of the Minimum CREF Commercial Operation Period, assuming the Commercial Operation Date does not coincide with the start of the calendar year), shall be determined according to the process outlined in Section II.1. above, but is only referenced here for the purposes of determining the Subcontract Term CREF Minimum Production Requirement.
4. The Subcontract Term CREF Minimum Production Requirement (kWh) for each CREF, for the Minimum CREF Commercial Operation Period shall be calculated using the methodology outlined in Section III above but is only referenced here for the purpose of determining the Subcontract Term Portfolio Aggregate Minimum Production Requirement.
5. The Portfolio Aggregate Minimum Production Requirement (kWh) for the aggregated Portfolio, in a particular Production Year, shall be determined as the sum of the CREF Minimum Production Requirements (kWh) for all the CREFs in Subcontractor's Portfolio for that Production Year.
6. For example, for Production Year 5:
 - a. The Weather-Adjusted CREF Minimum Production Requirement (Yr 5) for a CREF in Subcontractor's Portfolio = 103,744 kWh, and
 - b. Assume Subcontractor has 10 CREFs of the same size in its Portfolio, all with the same performance for that Production Year (Yr 5), then the Weather-Adjusted Actual Portfolio Aggregate Minimum Production Requirement for the 10 CREFs systems (Yr 5) = $103,744 \text{ kWh} * 10 = 1,037,440 \text{ kWh}$
7. The Subcontract Term Portfolio Aggregate Minimum Production Requirement (kWh), for the aggregated Portfolio, over the full Subcontract Operating Period of this Subcontract, shall be determined as the sum of the Subcontract Term CREF Minimum Production Requirement (kWh) of each CREF over the full Subcontract Operating Period of this Subcontract.
8. The Value of the Portfolio Aggregate Minimum Production Requirement (\$/kWh) shall be determined by the following formula:
 - a. The total incentive awarded to Subcontractor for its Portfolio, divided by the Subcontract Term Portfolio Aggregate Minimum Production Requirement (kWh) for all years (1 - final year of the Subcontract Operating Period). For example:
 - i. Portfolio size = 1,000 kW (1 MW); Portfolio = 10 CREFs @ 100 kW each
 - ii. Incentive level = 1.25/Watt
 - iii. Total Incentive = \$1,250,000, and
 - iv. Total Subcontract Term Portfolio Aggregate Minimum Production Requirement = $10 * 1,498,825 \text{ kWh} = 14,988,250 \text{ kWh}$, then
 - v. Value of Subcontract Term Portfolio Aggregate Minimum Production

$$\text{Requirement} = \$1,250,000 / 14,988,250 \text{ kWh} = \$0.0834/\text{kWh}$$

9. The Weather-Adjusted CREF Minimum Production Requirement (kWh) for each CREF, for each Production Year shall be computed according to the process outlined in Section III.4 above.
10. The Weather-Adjusted Portfolio Aggregate Minimum Production Requirement (kWh) for each Production Year shall be determined as the sum of the Weather-Adjusted CREF Minimum Production Requirements (kWh) for all the CREFs in Subcontractor's Portfolio, for that Production Year.
11. The Actual Portfolio Aggregate Production shall be determined using the following methodology:
 - a. The Actual System Production (kWh) for each CREF, for a specific Production Year (January 1 through December 31) shall be captured through the Subcontractor monitoring system.
 - b. The Actual Portfolio Aggregate Production (kWh) for each Production Year shall be determined as the sum of the Actual System Production (kWh) for each CREF, for that Production Year.
 - c. For example, for Production Year 5:
 - i. The Actual System Production (Yr 5) for a CREF in Subcontractor's Portfolio = 100,000 kWh, and
 - ii. Assume Subcontractor has 10 CREFs of the same size in its Portfolio, all with the same performance for that Production Year (Yr 5), then
 - iii. The Actual Portfolio Aggregate Production for the 10 CREFs (Yr 5) = $100,000 \text{ kWh} * 10 = 1,000,000 \text{ kWh}$
12. The Amount of Portfolio Aggregate Underproduction for a portfolio size of 1,000 kW (1 MW, 10 systems @ 100 kW each), for a given Production Year, shall be determined by the following:
 - a. The Actual Portfolio Aggregate Production (kWh) for a specific Production Year shall be calculated by adding the Actual System Production for all the CREFs in Subcontractor's Portfolio.
 - b. The Actual Portfolio Aggregate Production (kWh) for a specific Production Year shall be subtracted from the Weather-Adjusted Portfolio Aggregate Minimum Production Requirement (kWh) for that specific Production Year.
 - c. Any difference resulting from this calculation (unless negative) represents the Amount of Portfolio Aggregate Underproduction (kWh) for that specific Production Year. For example, for Production Year 5:
 - i. The Actual Portfolio Aggregate Production for the 10 CREFs systems (Yr 5) = 1,000,000 kWh, and
 - ii. The Weather-Adjusted Portfolio Aggregate Minimum Production Requirement (Yr 5) = 1,037,440 kWh, then
 - iii. The Amount of Portfolio Aggregate Underproduction (Yr 5) =

$$1,037,440 \text{ kWh} - 1,000,000 \text{ kWh} = 37,440 \text{ kWh}$$

13. **Calculation of Penalty for Underproduction by Subcontractor's Portfolio:** The **Portfolio Aggregate Underproduction Performance Penalty** for a given Production Year shall be calculated using the following formula:

- a. Amount of Portfolio Aggregate Underproduction for the specific Production Year, multiplied by the Value of the Portfolio Aggregate Minimum Production Requirement. For example, for Production Year 5:
 - i. Amount of Portfolio Aggregate Underproduction (Yr 5) = 37,440 kWh, and
 - ii. Value of the Portfolio Aggregate Minimum Production Requirement = \$0.0834/kWh, then
 - iii. Portfolio Aggregate Underproduction Performance Penalty (Yr 5) = \$3,122.75

ATTACHMENT B3

PENALTY CALCULATION WORKBOOK



Attachment
B3_DCSEU_Penalty Ca

DRAFT COPY

ATTACHMENT C

**SUBCONTRACTOR’S PORTFOLIO OF APPROVED CREFS
AND SUMMARY OF MILESTONE DELIVERABLES**

Subcontractor Name: SUBCONTRACTOR NAME

Subcontract NTE: The NTE for this Subcontract is XXXX.

Portfolio Capacity NTE: XXXX kW (XXX MW).

Incentive: INCENTIVE PRICE per every 1 (one) watt of the installed system’s size.

Subcontractor’s List of Approved CREFs

CREF Name	DCSEU Tracker No.	Site Address (and Interconnection Address, if different)	CREF Capacity (kW) NTE	CREF Incentive (\$) NTE	M1 Deadline, Payment	M2 Deadline, Payment	M3 Deadline, Payment	M4 Deadline, Payment	Commercial Operation Date	Minimum CREF Commercial Operation Period
XXXX	XXXX	XXXX	XXXX	\$XX	7/20/23 0%	7/31/23 50%	8/31/23 30%	9/15/23 20%	(ATO + 14 Days)	XX/XX/2023 – XX/XX/20XX (XX Years)
XXXX	XXXX	XXXX	XXXX	\$XX	7/20/23 0%	7/31/23 50%	8/31/23 30%	9/15/23 20%	(ATO + 14 Days)	XX/XX/2023 – XX/XX/20XX (XX Years)
XXXX	XXXX	XXXX	XXXX	\$XX	7/20/23 0%	7/31/23 50%	8/31/23 30%	9/15/23 20%	(ATO + 14 Days)	XX/XX/2023 – XX/XX/20XX (XX Years)
XXXX	XXXX	XXXX	XXXX	\$XX	7/20/23 0%	7/31/23 50%	8/31/23 30%	9/15/23 20%	(ATO + 14 Days)	XX/XX/2023 – XX/XX/20XX (XX Years)
TOTAL			XXXX	XXXX						

Milestone Summary Chart

Milestones	Milestone 1	Milestone 2	Milestone 3	Milestone 4
	All documents must comply with the requirements outlined in <u>Attachment B</u>. <ul style="list-style-type: none">● Evidence of Site Control;● DCSEU CREF Site Control Agreement Supplement (Attachment B1)● Stamped Engineering Design Documents;● Installation Permits;● Financing Plan; and● Project Schedule and Installation Plan.	All documents must comply with the requirements outlined in <u>Attachment B</u>. <ul style="list-style-type: none">● Evidence of Purchase;● Evidence of Equipment Condition; and● Manufacturer Warranties and Guarantee for PV System and Components.● Pepco Approval of Interconnection Application & Agreement Part I (“Approval to Install” or “ATI”).	All documents must comply with the requirements outlined in <u>Attachment B</u>. <ul style="list-style-type: none">● DCRA Temporary Pending Final Inspection Report (TPF) (signed and received by PEPCO).	All documents must comply with the requirements outlined in <u>Attachment B</u>: <ul style="list-style-type: none">● Pass DCSEU QA/QC Inspection;● Any as-built/revised DCRA Permits and Evidence of Final Inspection;● Documentation or evidence showing PEPCO’s Approval of Interconnection Application & Agreement Part II (“Approval to Operate” or “ATO”);

				<ul style="list-style-type: none">• Login Credentials to Inverter or Revenue Grade Meter;• O&M Manual; and• Recorded Site Control Documents.
	Additional Subcontractor Deliverables			
	<p>All documents must comply with the requirements outlined in <u>Attachment B</u>.</p> <ul style="list-style-type: none">• Documentation or evidence showing Subcontractor has registered each CREF with the PSC to generate and sell solar renewable energy credits (SRECs).			

IN WITNESS WHEREOF, Subcontractor and VEIC have caused this **Attachment C** to be executed as of this _____ (the “**Attachment C Effective Date**”).

SUBCONTRACTOR NAME

VERMONT ENERGY INVESTMENT CORPORATION

By: _____
Name: _____
Title: _____
Email: _____
Date: _____

By: _____
Name: _____
Title: _____
Email: _____
Date: _____

ATTACHMENT D
INVOICING AND PAYMENTS

Invoice Requirements

Subcontractor will submit invoices for achievement of applicable milestones in accordance with the Subcontract. The invoice and supporting documentation are to be received at VEIC's principal offices by the 5th business day of the subsequent calendar month. This is defined as the "Cut-off Date." Invoices not received by the Cut-off Date will be delayed in payment until the following month.

If invoices are submitted by mail, one copy should be sent to:

Accounts Payable
Vermont Energy Investment Corporation
20 Winooski Falls Way, 5th Floor
Winooski, Vermont 05404

A second copy should be sent to the CREF Program Manager:

1 M Street SE, 3rd Floor
Washington, DC 20003

If submitted via e-mail, invoices should be sent to AccountsPayable@veic.org with a cc to the CREF Program Manager and tchristopher@dcseu.com at the same time.

All invoices will, at a minimum, include:

- Subcontractor name;
- Subcontractor address;
- Invoice number and date;
- Subcontractor Federal Employer I.D. number (or Social security number if Subcontractor is an individual / sole proprietorship);
- Milestone(s) covered by invoice to include Project Name, DCSEU Tracker Number, customer name, CREF address (and interconnection location, if different), as applicable;
- Subcontract number being billed in support; and
- Signature of the Subcontractor's Authorized Representative providing the following certification:
"I certify that this invoice constitutes a proper invoice for services completed in accordance with the requirements of the Subcontract between VEIC and Subcontractor."

NOTE: IF ANY OF THE LISTED ITEMS ARE MISSING, THE INVOICE WILL BE RETURNED AND NO PAYMENT WILL BE MADE UNTIL THE ITEMS ARE COMPLETED.

Subcontractor will cooperate with VEIC to develop an invoice format and requirements for implementation prior to the first invoice submitted under this Subcontract. VEIC may require modifications to the form of invoice during the Performance Period of this Subcontract.

Payments

Within 30 calendar days, excluding legal holidays, after receipt of a proper invoice from Subcontractor, VEIC will pay Subcontractor for services that have been completed in accordance with the requirements of this Subcontract including passing inspection by VEIC if the services are subject to such inspection. A “proper invoice” means an invoice that complies with the Invoice Requirements set forth above and that contains or is accompanied by substantiating documentation required by this Subcontract. For services that are subject to inspection by VEIC, VEIC will pay Subcontractor within 30 days of receipt of a proper invoice for services that have been completed in accordance with the requirements of this Subcontract unless VEIC performs an inspection and the Subcontractor’s work fails the inspection. In the case of a failed inspection, the items on the invoice that passed inspection will be paid within 30 days, and invoice items that did not pass inspection will be paid after Subcontractor corrects the defects and completes the services in accordance with the requirements of this Subcontract.

Expenditures shall not be reimbursable if they are not in conformity with guidance or rules prescribed by the Internal Revenue Service or the Office of Management and Budget.

VEIC will pay interest on late payments to Subcontractor as provided in subsection (b)(1) and (2) of the Quick Payment Act, DC Official Code §2-221.02 *et seq.*

This “Payments” subsection will not limit or impair any contractual, administrative, or judicial remedies otherwise available to Subcontractor in the event of a disputed payment, late payment or nonpayment by VEIC, or to VEIC in the event of deficient Subcontract performance or nonperformance by Subcontractor.

Flow-down requirements for lower-tier subcontractors

Subcontractor will include in its subcontracts with any lower-tier subcontractors or suppliers the payment and interest clauses from paragraphs (1) and (2) of DC Official Code §2-221.02(d).

ATTACHMENT E

DCSEU CONFLICT OF INTEREST POLICY AND DISCLOSURE FORM

Effective April, 2020

DCSEU employees and subcontractors are subject to the District of Columbia Sustainable Energy Utility's (DCSEU) Conflict of Interest Policy. All DCSEU employees and subcontractors are expected to represent the DCSEU in a positive and ethical manner at all times, and to refrain from any activities that compromise their ability to objectively represent the DCSEU's best interests. To ensure that decisions about DCSEU policy, operations, procurement of good and services, and the use or disposition of DCSEU assets are made solely in terms of the benefits to DCSEU and for the purposes set forth in VEIC's Prime Contract with the District of Columbia Department of Energy and the Environment (DOEE), employees and subcontractors are prohibited from engaging in activities, practices, or conduct which conflicts with, or appears to conflict with, DCSEU's interests.

Since it is impossible to describe all of the situations that may cause or give the appearance of a conflict of interest, specific prohibitions included in this policy are not intended to be exhaustive and include only some of the more clear examples:

- Employees may not accept any employment relationship with any organization that does business with, or competes with DCSEU, while employed by or serving the DCSEU. This includes serving as an advisor, consultant, contractor or subcontractor to any organization of this type, unless the activity is conducted as an employee of DCSEU.
- Employees may not independently perform any of the types of services for fees that DCSEU provides for fees for any organization or individual while employed by DCSEU without prior approval from VEIC's Chief Executive Officer.
- Employees and subcontractors must disclose any financial interest (except incidental common stock ownership or participation in mutual funds) that they or their immediate family has in any company that does business with or competes with DCSEU, in any situation where that employee or subcontractor is in a position to make a decision that could pose a conflict or appearance of a conflict of interest. The purpose of such disclosure is to be able to evaluate the potential for conflict of interest. DCSEU may require the person to withdraw herself /himself from any decision where the financial interest could be considered to be in conflict with the best interests of DCSEU.
- Employees and subcontractors may not accept, give, offer, or promise, either directly or indirectly, any gifts valued at over \$20 to a DOEE employee, or valued at over \$100 to a DCSEU employee, any representative of Subcontractor, a customer, a potential customer, or a financial institution in connection with any transaction or business that the DCSEU may perform. Any gifts valued at over \$100 that are received by a DCSEU employee must be promptly returned or turned over to VEIC's Chief Executive Officer.

If an actual or potential conflict of interest is identified by an employee or subcontractor, VEIC's Chief Executive Officer must be promptly notified in writing and they will make a determination of the appropriate response and any action(s) to be taken.

Employees and subcontractors must also disclose on an annual basis any additional interests, such as a list of family members, substantial business or investment holdings and other transactions or affiliations with businesses or organizations, that might be related to DCSEU's interests.

In addition, DCSEU’s auditors will periodically review any potential excess benefit transactions as well as compensation arrangements, partnerships, joint ventures, and any other arrangements with management organizations to prevent inurement, impermissible private benefit, or an excess benefit transaction.

Check **one** of the following and sign:

☐ By signing this document, I attest that I have read and understand the DCSEU Conflict of Interest Policy, I agree to abide by its provisions, and I do not have any actual or potential conflict of interest to report.

☐ By signing this document, I attest that I have read and understand the DCSEU Conflict of Interest Policy, I agree to abide by its provisions, and I am reporting the following relationships and interests related to DCSEU’s business:

SUBCONTRACTOR NAME

Signature:

Print Name:

Date:

ATTACHMENT F

SPECIAL REQUIREMENTS

- I. RIGHTS OF EXAMINATION.** If this Subcontract is for \$100,000 or more, and (A) is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type of contract or any combination of these; (B) requires cost or pricing data; or (C) requires Subcontractor to furnish reports as required of VEIC in the Prime Contract; Subcontractor shall comply with the provisions contained in this Section I. As used in this Section I, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
1. Examination of Costs. Subcontractor will maintain and VEIC and the CO, or any of their duly authorized representatives, will have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Subcontract. This right of examination will include inspection at all reasonable times of Subcontractor’s plants, or parts of them, engaged in performing this Subcontract.
 2. Examination of Transaction Records. The CO, the District of Columbia’s Inspector General and the District of Columbia’s Auditor, VEIC, or any of their duly authorized representatives, will have access to and the right to examine any of Subcontractor’s directly pertinent records involving transactions related to this Subcontract or a subcontract hereunder. This paragraph may not be construed to require Subcontractor or its subcontractors to create or maintain any record that Subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
 3. Reports. If Subcontractor is required to furnish cost, funding, or performance reports, the CO or an authorized representative of the CO, and/or VEIC will have the right to examine and audit the supporting records and materials, for the purpose of evaluating the effectiveness of Subcontractor’s policies and procedures to produce data compatible with the objectives of these reports, and the data reported.
 4. Availability. Subcontractor shall make available to DOEE at its office or VEIC at all reasonable times the records, materials, and other evidence described in this Section I, for examination, audit, or reproduction, until three (3) years after final payment under this Subcontract, or for any longer period required by statute or by other clauses of this Subcontract. In addition:
 - a. Post-Termination. If this Subcontract is completely or partially terminated for any reason, Subcontractor will make available the records relating to the Services terminated until three (3) years after any resulting final termination settlement; and
 - b. Litigation. Subcontractor will make available records relating to appeals under Section 12. (Settlement of Disputes) of this Subcontract or to litigation or the settlement of claims arising under or relating to this Subcontract until such appeals, litigation, or claims are finally resolved.

- II. NO STATEMENTS.** Subcontractor shall at all times obtain prior approval from VEIC and the CA before it, or any of its officers, agents, employees, or subcontractors, makes any statement that may reflect on DOEE or the District, or states or implies it is speaking on behalf of DOEE or the District. Subcontractor shall at all times inform VEIC and the CA 48 hours in advance before it, or any of its officers, agents, employees or subcontractors, either during or after expiration or termination of this Subcontract, makes any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this Subcontract.
- III. FREEDOM OF INFORMATION ACT (FOIA).** The District of Columbia Freedom of Information Act, at D.C. Official Code §2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If Subcontractor receives a request for such information, Subcontractor will immediately send the request to VEIC and the CA, and the CA will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by Subcontractor pursuant to this Subcontract, the CA will forward a copy to VEIC and Subcontractor. In either event, VEIC and Subcontractor are required by law to provide all responsive records to the CA within the timeframe designated by the CA. The FOIA Officer for the agency with programmatic responsibility will determine the releaseability of the records.
- IV. AMERICANS WITH DISABILITIES ACT OF 1990 (ADA), AS AMENDED.** Subcontractor, and any of its subcontractors, shall comply with the ADA, as amended. The ADA makes it unlawful to discriminate against a qualified individual with a disability in the private sector, and in state and local governments. See 42 U.S.C §12101 *et seq.*
- V. SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED.** Subcontractor, and any of its subcontractors, shall comply with Section 504 of the Rehabilitation Act of 1973, as amended. This Act prohibits discrimination against disabled people in federally funded programs and activities. See 29 U.S.C. §794 *et seq.*
- VI. WAY TO WORK AMENDMENT ACT, AS AMENDED.** If this Subcontract is for \$100,000 or more in a twelve month period, Subcontractor shall comply with Title I of The Way to Work Amendment Act of 2006, effective June 8, 2006 (D.C. Law 16-118, D.C. Official Code §2-220.01 *et seq.*), as amended, including but not limited to the following:
- A. Subcontractor shall pay its employees and subcontractors who perform services under this Subcontract no less than the current living wage published on the Office of Contracting and Procurement (OCP) website at www.ocp.dc.gov. DOES may adjust the living wage annually and the OCP will publish the current living wage rate on its website at www.ocp.dc.gov. The payment of wages under the Living Wage Act of 2006 shall be consistent with and subject to the provisions of D.C. Official Code §32-1301 *et seq.* See D.C. Official Code §32-1302 for exceptions to the requirements of the Living Wage Act.
 - B. Subcontractor shall provide a copy of the Living Wage Fact Sheet (see subsection B.1 below) to each employee and subcontractor who performs services under this Subcontract. The Subcontractor shall also post the Notice of Living Wage (see subsection B.2 below) in a conspicuous place in its place of business. The Subcontractor shall include in any subcontract for Fifteen Thousand Dollars (\$15,000) or more a

provision requiring its subcontractors to post the Notice of Living Wage in a conspicuous place in its place of business.

1. Living Wage Fact Sheet (effective January 1, 2020): See <https://does.dc.gov/sites/default/files/dc/sites/does/publication/attachments/Living%20Wage%20Fact%20Sheet%202020.pdf>
2. Notice of Living Wage Act (effective January 1, 2019): See <https://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/Living%20Wage%20Notice%202020.pdf>

VII. EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION. Subcontractor shall comply with the Civil Rights Act of 1964, as amended, which prohibits employment discrimination on the basis of race, color, religion, sex or national origin and the DC Human Rights Act of 1977, as amended, which prohibits discrimination in any manner against any employee or applicant for employment on the basis of 21 protected traits for individuals that live, visit or work in the District of Columbia. Subcontractor agrees to: (a) permit access to its books, records and accounts pertaining to its employment practices to VEIC, DOEE, the District of Columbia's Chief Procurement Office or designee, and/or the District of Columbia's Director of Human Rights or designee, for purposes of investigation to ascertain compliance with this Section and (b) post and keep posted in a conspicuous location where business or activity is customarily conducted or negotiated, a notice whose language and form has been prepared by the DC Office of Human Rights, setting forth excerpts from or summaries of, the pertinent provisions of the DC Human Rights Act and information pertinent to the filing of a complaint.

VIII. DC LANGUAGE ACCESS ACT OF 2004. For any customers with limited or no-English proficiency to whom Subcontractor provides services, Subcontractor will inform the CREF Project Manager of the customer's name and contact information. If directed by VEIC, Subcontractor will provide written materials to such customers informing them of the opportunity to obtain language assistance services; all such written materials will be supplied to Subcontractor by VEIC.

IX. NATIONAL HISTORIC PRESERVATION ACT. Subcontractor must comply with the requirement of the National Historic Preservation Act (Section 106) by cooperating with VEIC in obtaining a written concurrence of no objection from the State Historic Preservation Officer of the District prior to conducting any work on a property that is listed in or eligible for listing in the National Register of Historic Places.

X. SERVICE CONTRACT ACT OF 1965.

A. Definitions. "Act," as used in this Section X, means the Service Contract Act of 1965, as amended (41 U.S.C. §351, *et seq.*).

1. "Subcontractor," as used in this Section X, means the Subcontractor or any of its subcontractors at any tier.
2. "Service employee," as used in this Section X, means any person (other than a person employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR 541) engaged in performing a District contract not exempted under 41 U.S.C. §356, the principal purpose of which is to furnish services in the

United States, as defined in section 22.1001 of the Federal Acquisition Regulation. It includes all such persons regardless of the actual or alleged contractual relationship between them and a contractor.

B. Applicability. To the extent that the Act applies, this Subcontract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (20 CFR part 4). All interpretations of the Act in Subpart C of 29 CFR 4 are incorporated in this Subcontract by reference. This Section X does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. §356, as interpreted in Subpart C of 29 CFR 4.

C. Compensation.

1. Each service employee employed in the performance of this Subcontract by the Subcontractor or any of its subcontractors shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or the Secretary's authorized representative, as specified in any wage determination attached to this Subcontract.
2. If a wage determination is attached to this Subcontract,² the Subcontractor shall classify any class of service employees not listed in it, but to be employed under this Subcontract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph. This conforming procedure shall be initiated by the Subcontractor prior to the performance of Subcontract work by the unlisted class of employee.
 - a. The Subcontractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any Subcontract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration (ESA), Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary;

² The following attachment is incorporated into the contract by reference: U.S. Department of Labor Wage Determination No. 2015-4281 Revision No. 18, dated April 7, 2021.

- b. The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Subcontractor of the action taken. Each affected employee shall be furnished by the Contracting Officer with a written copy of such determination or it shall be posted as a part of the wage determination;
- c. The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed;
- d. In the case of a contract or subcontract modification, an exercise of an option, or extension of an existing contract or subcontract, or in any other case where a Subcontractor succeeds to a contract or subcontract under which the classification in question was previously conformed pursuant to this Section X, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract or subcontract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of Subcontract work by the unlisted class of employees, the Subcontractor shall advise the Contracting Officer of the action taken but the other procedures in this Section X need not be followed;
- e. No employee engaged in performing work on this Subcontract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended;
- f. The wage rate and fringe benefits finally determined under this Section X shall be paid to all employees performing in the classification from the first day on which Subcontract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this Subcontract;
- g. Upon discovery of failure to comply with this Section X, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive

to the date such class or classes of employees commenced Subcontract work.

3. If the term of this Subcontract is more than one (1) year, the minimum wages and fringe benefits required for service employees under this Subcontract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by ESA.
4. The Subcontractor can discharge the obligation to furnish fringe benefits specified in the attachment or determined under subsection C.2 of this Section X by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, in accordance with Subpart B and C of 29 CFR 4.

D. Minimum wage: In the absence of a minimum wage attachment for this Subcontract, the Subcontractor shall not pay any service or other employees performing this Subcontract less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §206). Nothing in this Section X shall relieve the Subcontractor of any other legal or contractual obligation to pay a higher wage to any employee.

E. Successor contracts: If this Subcontract succeeds a contract subject to the Act under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then, in the absence of a minimum wage attachment to this Subcontract, the Subcontractor may not pay any service employee performing this Subcontract less than the wages and benefits, including those accrued and any prospective increases, provided for under that agreement. No Subcontractor may be relieved of this obligation unless the limitations of 29 CFR 4.1c(b) apply or unless the Secretary of Labor or the Secretary's authorized representative:

1. Determines that the agreement under the predecessor was not the result of arms-length negotiations; or
2. Finds, after a hearing under 29 CFR 4.10, that the wages and benefits provided for by that agreement vary substantially from those prevailing for similar services in the locality or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and 4.11 and parts 6 and 8 that some or all of the wages and fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge,

or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

- F. Notification to employees: The Subcontractor shall notify each service employee commencing work on this Subcontract of a minimum wage and any fringe benefits required to be paid, or shall post a notice of these wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.
- G. Safe and sanitary working conditions: The Subcontractor shall not permit services called for by this Subcontract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Subcontractor that are unsanitary, hazardous, or dangerous to the health or safety of service employees. The Subcontractor shall comply with the health standards applied under 29 CFR Part 1925.
- H. Records: The Subcontractor shall maintain for three (3) years from the completion of work, and make available for inspection and transcription by authorized ESA representatives, a record of the following:
1. For each employee subject to the Act:
 - a. Name and address;
 - b. Work classification or classifications, rate or rates of wages and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;
 - c. Daily and weekly hours worked; and
 - d. Any deductions, rebates, or refunds from total daily or weekly compensation.
 2. For those classes of service employees not included in any wage determination attached to this Subcontract, wage rates or fringe benefits determined by the interested parties or by ESA under the terms of subsection C.2 of this Section X. A copy of the report required by subsection H.1 of this Section X will fulfill this requirement.
 3. Any list of the predecessor contractor's employees which had been furnished to the Subcontractor as prescribed by this Section X. The Subcontractor shall also make available a copy of this Subcontract for inspection or transcription by authorized representatives of the Wage and Hour Division. Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this Subcontract, and in the case of failure to produce these records, the CO, upon direction of the Department of Labor and notification to the Subcontractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases. The Subcontractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

- I. Pay periods: The Subcontractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.
- J. Withholding of payments and termination of contract: The Contracting Officer shall withhold from the Prime Contractor under this or any other District contract with Prime Contractor any sums the Contracting Officer, or an appropriate officer of the Labor Department, decides may be necessary to pay underpaid employees of Subcontractor or its subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Subcontractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this Section X may be grounds for termination for default. In such event, the District may enter into other contracts or arrangements for completion of the work, charging the Subcontractor in default with any additional cost.
- K. Subcontracts: The Subcontractor agrees to insert this Section X in all of its subcontracts.
- L. Subcontractor's report:
1. If there is a wage determination attachment to this Subcontract and any classes of service employees not listed on it are to be employed under this Subcontract, the Subcontractor shall report promptly to the CO the wages to be paid and the fringe benefits to be provided each of these classes.
 2. If wages to be paid or fringe benefits to be furnished any service employees under this Subcontract are covered in a collective bargaining agreement effective at any time when this Subcontract is being performed, the Subcontractor shall provide to the Contracting Officer a copy of the agreement and full information on the application and accrual of wages and benefits (including any prospective increases) to service employees working on this Subcontract. The Subcontractor shall report when Subcontract performance begins, in the case of agreements then in effect, and shall report subsequently effective agreements, provisions, or amendments promptly after they are negotiated.
- M. Subcontractor's Certification: By entering into this Subcontract, Subcontractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Subcontractor's firm is a person or firm ineligible to be awarded District contracts by virtue of the sanctions imposed under section 5 of the Act. No part of this Subcontract shall be subcontracted to any person or firm ineligible for award of a District contract under section 5 of the Act. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. §1001.

N. Variations, tolerances, and exemptions involving employment: Notwithstanding any of the provisions in this Section X, the following employees may be employed in accordance with the following variations, tolerances, and exemptions authorized by the Secretary of Labor.

1. In accordance with regulations issued under Section 14 of the Fair Labor Standards Act of 1938 by the Administrator of the Wage and Hour Division, ESA (29 CFR 520, 521, 524, and 525), apprentices, student learners, and workers whose earning capacity is impaired by age or by physical or mental deficiency or injury, may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act, without diminishing any fringe benefits or payments in lieu of these benefits required under section 2(a)(2) of the Act.
 - a. The Administrator will issue certificates under the Act for employing apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages, but without changing requirements concerning fringe benefits or supplementary cash payments in lieu of these benefits.
 - b. The Administrator may also withdraw, annul, or cancel such certificates under 29 CFR 525 and 528.
2. An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips shall be credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with regulations in 29 CFR 531. However, the amount of credit shall not exceed 40 percent of the minimum rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended.

XI. DISTRICT OF COLUMBIA VACCINATION CERTIFICATION AND MASK REQUIREMENTS

All subcontractors are required to comply with the Mayor's Order 2021-099, COVID-19 Vaccination Certification Requirement for District Government Employees, Contractors, Interns and Grantees, dated August 10, 2021, and all substantially similar vaccination requirements including any modifications to this Order, unless and until they are rescinded or superseded. At the request of VEIC, DOEE or the District Government, subcontractor may be asked to provide certification of compliance with this requirement and/or documents and records in support of this certification.

All subcontractors are also required to comply with the District's Administrator's Order 2022-4, Mask Requirements Inside Certain District Government Buildings and Offices, dated June 17, 2021, and all substantially similar mask requirements including any modifications to this Order, unless and until they are rescinded or superseded.

XII. AMERICAN RESCUE PLAN ACT OF 2021. All subcontractors must comply with all applicable requirements of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2, 135 Stat. 4 (Mar. 11, 2021)), and at the request of VEIC, DOEE, or the District Government, provide a certification of compliance and/or documents and records in support of this certification.

ATTACHMENT G

DISTRICT OF COLUMBIA SUSTAINABLE ENERGY UTILITY GENERAL CONFIDENTIALITY GUIDELINES MEMO

The Vermont Energy Investment Corporation (VEIC) operates District of Columbia Sustainable Energy Utility (DCSEU) on behalf of District of Columbia Department of Energy and Environment. In carrying out these duties VEIC and its subcontractors will have access to and receive large amounts of data from the utilities and other sources. Most of this data is Confidential Information as defined below. VEIC has established the Confidential Information Management System ("CIMS") to ensure that there are procedures in place to ensure the proper handling of DCSEU's confidential information.

The basic underlying principle for all DCSEU Confidential Information is that it is to be used by VEIC and Subcontractor staff only for the purposes of implementing DCSEU energy efficiency and renewable energy services. Thus, no Confidential Information should be made available to the public or provided to any VEIC or Subcontractor staff who will not be using the Confidential Information for DCSEU purposes.

This memo provides procedures and guidelines for the handling of DCSEU confidential information by VEIC staff and subcontractors.

The CIMS Coordinator

VEIC has established the position of "CIMS Coordinator" to maintain the adequacy of current procedures and guidelines to assure that the contractual obligations with respect to the handling of Confidential Information are met.

Specifically the CIMS Coordinator is responsible for:

1. Ensuring that all VEIC Employees, all DCSEU Subcontractor staff, and any other individuals who have access to the Confidential Information have read and understand the General Confidentiality Guidelines Memo prior to gaining access to the Confidential Information. The memo will be provided prior to the granting of access to the Confidential Information.
2. Ensuring that all VEIC Employees, all DCSEU Subcontractor staff, and any other individuals who have access to Confidential Information have signed the Protective Agreement (Attachment G1). The CIMS Coordinator will ensure that each individual understands their obligations as detailed in the Protective Agreement. The Protective Agreement shall be signed prior to the granting of access to the Confidential Information.
3. Determining whether or not a party requesting access to Confidential Information is actually providing DCSEU services and will use such Confidential Information strictly for DCSEU purposes.
4. Determining whether or not data or any particular item of information is or is not Confidential Information as defined below.

5. Conducting investigations into any alleged compromises, incidents and/or problems regarding Confidential Information, and reporting the results of such investigations to the DCSEU Senior Management Team.
6. If the results of such investigations determine that Confidential Information was actually improperly released, the CIMS Coordinator will immediately notify the District of Columbia Sustainable Energy Utility Contract Administrator. All prudent steps will be taken to ensure that no further Confidential Information is improperly disclosed. All prudent steps will be taken to retrieve such Confidential Information from the unauthorized receiving party.
7. Ensuring that all new VEIC and DCSEU Subcontractor staff are provided with adequate training such that they fully understand the CIMS procedures and guidelines.
8. Revising or modifying CIMS procedures as deemed necessary to ensure the continued safeguard of Confidential Information. The CIMS Coordinator will obtain approval of the DCSEU Senior Management Team and District of Columbia Sustainable Energy Utility Contract Administrator prior to implementing any CIMS modifications.
9. Providing VEIC and DCSEU Subcontractor staff with training on any CIMS modifications and as needed refresher training regarding the operation of CIMS.

Confidential Information

Confidential Information consists of (1) customer-specific information, or (2) competitively-sensitive information. Confidential Information is not restricted in format. It can be any material containing data meeting the definitions below, including without limitation, written or printed documents, electronic data, drawings, schematics, or any other tangible item.

Customer-Specific Information

"Customer-specific information" is defined as any information which specifically identifies a single customer using one or more unique references including, but not limited to, customer name, mailing address, phone numbers, e-mail addresses, and designations of physical location, electric utility usage data or electric utility account numbers. Generally, customer-specific information will be un-aggregated. However, if it is possible to ascertain customer-specific information from a collection of aggregated data then such aggregated data will be considered confidential. For example if a collection of data by municipality allowed one to determine information about a specific customer because there was clearly only one customer in a particular municipality then that data should be treated as confidential information.

Competitively-Sensitive Information

"Competitively-sensitive information" is defined as information that "could provide an unfair competitive advantage to an entity delivering services outside of the energy efficiency and renewable energy services approved by the District of Columbia Department of Energy and Environment for DCSEU implementation". The intent is to ensure that no information (either customer specific, aggregated customer data, or market related data) is provided to any entity such that the entity would have an unfair advantage in providing non-DCSEU energy efficiency and renewable energy services over any other entities in its market. For example, providing a particular HVAC contractor with data about the commercial new construction market could give that contractor an advantage over other HVAC contractors. The only information the HVAC contractor should have access to are data related to the specific customer to whom it was providing DCSEU energy efficiency and renewable energy services.

Other examples of competitively sensitive market data may include, but is not limited to, customer surveys, aggregated sales data, load research and appliance saturation data.

Procedures for VEIC Employees and Subcontractor Staff

1. All VEIC Employees and all DCSEU Subcontractor staff and other individuals will, prior to receiving any Confidential Information, be provided with this “General Confidentiality Guidelines Memo.”

VEIC and Subcontractor staff will also sign the attached Protective Agreement prior to gaining access to Confidential Information. The attached Protective Agreement states that they will access, use, or disclose to any other person, Confidential Information only for the purposes of implementing DCSEU energy efficiency and renewable energy services.

2. VEIC and Subcontractor staff will deny all requests for Confidential Information from any and all parties that are not providing DCSEU services. If there is any question as to whether or not the requesting party will be using the Confidential Information to provide DCSEU services, then this request will be referred to the CIMS Coordinator. If there is any question as to whether or not the information being requested is Confidential Information as defined above, such request will also be referred to the CIMS Coordinator.
3. VEIC and Subcontractor staff will verify with the CIMS Coordinator that any party that is authorized to receive Confidential Information has received a copy of the General Confidentiality Guidelines Memo and has signed the Protective Agreement prior to releasing any Confidential Information to such a party.
4. VEIC staff that are providing non-DCSEU services will not use any Confidential Information in providing these non-DCSEU services.
5. VEIC staff will ensure that any visitors to VEIC’s offices are not allowed access to any Confidential Information unless they are specifically authorized in accordance with these procedures.
6. All paper copies of Confidential Information that are being disposed of will first be shredded.
7. Any customer specific DCSEU project information that is used in any DCSEU promotional or marketing materials will not disclose the name, address, or specific location of such customer. In addition specific permission to use customer specific DCSEU project information will be obtained directly from the customer prior to using this information.
8. VEIC and DCSEU Subcontractor staff provided with a VEIC Computer Network Login to access VEIC’s computer network will adhere to the following password provisions:
 - Password must be seven characters in length or greater
 - They must contain any 2 of the following (alpha, numeric, capitalization, characters)
 - They must not be a dictionary word or include personal names
9. Portable, laptop, notebook, personal data assistants, tablet computers, smart phones, and other transportable computers containing Confidential Information, must not be left unsecured at any time.

10. The CIMS Coordinator must be notified immediately when:
- Any materials or equipment containing or suspected of containing Confidential Information is lost, disclosed to unauthorized parties, or suspected of being lost or disclosed to unauthorized parties.
 - Unauthorized use of DCSEU's information systems has taken place, or is suspected of taking place.
 - Network Logins and or passwords are lost, stolen, or disclosed, or are suspected of being lost, stolen, or disclosed.
 - Any other problems or concerns regarding DCSEU's Confidential Information Management Systems.

By executing this Memo, the undersigned agrees that due to the unique nature of the Confidential Information, any breach of this Memo and the procedures stated herein would cause irreparable harm for which damages are not an adequate remedy and that the party owning the Confidential Information, any party harmed by the disclosure of the Confidential Information, and/or VEIC will be entitled to equitable relief, in addition to all other remedies available at law.

If further clarification or additional assistance is needed, please contact VEIC's CIMS Coordinator by email: cimscoordinator@veic.org.

Please sign on the line below, indicating that you have read and understand this Memo; and acknowledging that you are required to abide by the procedures detailed in this Memo.

[SUBCONTRACTOR NAME]

By: _____

Name: _____

Title: _____

Email: _____

Date: _____

ATTACHMENT G1

PROTECTIVE AGREEMENT

This PROTECTIVE AGREEMENT is made by and between the Vermont Energy Investment Corporation (“VEIC”) which operates the District of Columbia Sustainable Energy Utility (“DCSEU”), and [SUBCONTRACTOR NAME] (the “Recipient”), effective as of the Effective Date of this Subcontract.

In accordance with the DCSEU General Confidentiality Guidelines Memo, the Parties hereto agree as follows:

1. **Confidential Information and Materials**

- a. “Confidential Information” means information from any source whatsoever that is “customer-specific” or “competitively-sensitive” as defined below that is received by Recipient or his/her employees, consultants, affiliates or related parties in connection with Recipient fulfilling his/her obligations and duties to VEIC and the DCSEU. Confidential Information is not restricted in format, and includes, without limitation, written or printed documents, electronic data, drawings, schematics, any other tangible item, and information that is communicated orally or visually.
- b. “Customer-specific information” is defined as any information which specifically identifies a single DCSEU customer using one or more unique references including, but not limited to, customer name, mailing address, phone numbers, e-mail addresses, and designations of physical location, electric utility usage data or electric utility account numbers. Generally, customer-specific information will be un-aggregated. However, if it is possible to ascertain customer-specific information from a collection of aggregated data then such aggregated data shall be considered confidential. For example if a collection of data by municipality allowed one to determine information about a specific customer because there was clearly only one customer in a particular municipality then that data should be treated as confidential information.
- c. “Competitively-sensitive information” is defined as information that could provide an unfair competitive advantage to an entity delivering services outside of the energy efficiency and renewable services delivered by DCSEU. The intent is to ensure that no information (including, but not limited to, customer specific data, aggregated customer data, or market related data) is provided to any entity such that the entity would have an unfair advantage in providing non-DCSEU energy efficiency and renewable energy services over any other entities.
- d. “Confidential Information” shall not include any materials or information which (i) is at the time of disclosure generally known by or available to the public or became so known or available thereafter through no act or omission of the Recipient; or (ii) is known to the Recipient and was not Confidential Information at the time of its original disclosure to the Recipient.

2. **Restrictions**

- a. The Recipient shall not disclose any Confidential Information to third parties unless VEIC has signed a non-disclosure agreement substantially similar to this Protective Agreement

with such third parties. Furthermore, the Recipient shall not disclose any Confidential Information to any third parties unless such disclosure is reasonably related to the Recipient's exercise of his/her obligations and duties to VEIC and the DCSEU, and unless VEIC has specifically authorized such disclosure. Notwithstanding the above, the Recipient may disclose Confidential Information in accordance with judicial or other governmental orders, or pursuant to the District's Freedom of Information Act (D.C. Official Code §2-532), provided the Recipient shall give VEIC reasonable notice prior to such disclosure and shall comply with any applicable protective order or equivalent.

- b. The Recipient, and his/her assigns, shall not use any Confidential Information for any purposes except those consistent with the Recipient's fulfillment of his/her obligations and duties to VEIC and the DCSEU.
- c. The Recipient, and his/her assigns, shall take reasonable security precautions, which shall in any event be as great as the precautions it takes to protect the Recipient's own confidential information, to keep confidential the Confidential Information. The Recipient may disclose Confidential Information to his/her employees, consultants, affiliates or related parties only on a need-to-know basis, and only if such person has signed a protective agreement containing confidentiality obligations at least as restrictive as those contained herein. The Recipient shall instruct all of his/her employees, consultants, affiliates or related parties who have access to the information to maintain its confidentiality and to refrain from making unauthorized copies.
- d. The Recipient, and his/her assigns, employees, consultants, affiliates or related parties, who receive, or have access to, Confidential Information shall abide by and comply with the internal operating guidelines developed by VEIC regarding confidentiality as required by the DCSEU and the District, and any other confidentiality related directives which VEIC may promulgate from time to time.

3. **Rights and Remedies**

- a. The Recipient shall notify VEIC immediately upon discovery of any unauthorized use or disclosure of Confidential Information, or any other breach of this Protective Agreement by the Recipient or his/her assigns, employees, consultants, affiliates or related parties, and will cooperate with VEIC in every reasonable way to help regain possession of the Confidential Information and prevent its further unauthorized use or disclosure.
- b. Any willful or deliberate disclosure or unauthorized use of Confidential Information with the clear intent of violating this Protective Agreement by Recipient is grounds for immediate default termination of this Subcontract.
- c. The Recipient understands and acknowledges that any disclosure or misappropriation of any of the Confidential Information in violation of this Protective Agreement may cause VEIC irreparable harm, the amount of which may be difficult to ascertain and, therefore, agrees that VEIC shall have the right to apply to a tribunal of competent jurisdiction for an order restraining any such further disclosure or misappropriation and for such other relief as VEIC may request. Such rights shall be in addition to remedies otherwise available to VEIC at law or in equity.

4. **Miscellaneous**

- a. This Protective Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. It shall not be modified except by a written agreement dated subsequent to the date of this Protective Agreement and signed by both Parties.
- b. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of VEIC or their agents, or employees, unless such waiver is in writing signed by VEIC. No waiver of any provision of this Protective Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion. Failure of either Party to enforce any provision of this Agreement shall not constitute waiver of such provision or any other provisions of this Agreement.
- c. If any action at law or in equity is necessary to enforce or interpret the rights or obligations arising out of or relating to this Protective Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which it may be entitled.
- d. This Agreement shall be construed and governed by the laws of the District of Columbia, and both Parties further consent to jurisdiction by courts located in the District of Columbia.
- e. If any provision of this Protective Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect. Should any of the obligations of this Protective Agreement be found illegal or unenforceable as being too broad with respect to the duration, scope, or subject matter thereof, such obligations shall be deemed and construed to be reduced to the maximum duration, scope, or subject matter allowable by law.
- f. If the Recipient is an organization that employs more than one individual then this Protective Agreement shall be strictly adhered to by all individuals, subcontractors and consultants employed by such organization that have access to Confidential Information.

IN WITNESS WHEREOF, the Parties hereto have executed this Protective Agreement by their duly authorized representatives as of the date first set forth above.

[SUBCONTRACTOR NAME]:

VEIC:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

ATTACHMENT H

RIGHTS IN DATA

1. “Data,” as used herein, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
2. The term “Technical Data,” as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.
3. The term “Computer Software,” as used herein, means computer programs and computer databases. “Computer Programs,” as used herein means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. “Computer Programs” include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort merge programs, and automated data processing equipment maintenance diagnostic programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.
4. The term “computer databases,” as used herein, means a collection of data in a form capable of being processed and operated on by a computer.
5. All data first produced in the performance of this Subcontract will be the sole property of the District. Subcontractor hereby acknowledges that all data, including, without limitation, computer program codes produced by Subcontractor for the District under this Subcontract, are works made for hire and are the sole property of the District; but, to the extent any such data may not, by operation of law, be works made for hire, Subcontractor hereby transfers and assigns to the District the ownership of copyright in such works, whether published or unpublished. Subcontractor agrees to give the District all assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. Subcontractor agrees not to assert any rights in common law or in equity in such data. Subcontractor will not publish or reproduce such data in whole or in part or in

any manner or form, or authorize others to do so, without written consent of the District until such time as the District may have released such data to the public.

6. The District will have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of this Subcontract, which the parties have agreed will be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights will include, as a minimum the right to:
 - 6.1 Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired, including use at any District installation to which the computer may be transferred by the District;
 - 6.2 Use the computer software and all accompanying documentation and manuals or instructional materials with a backup computer if the computer for which or with which it was acquired is inoperative;
 - 6.3 Copy computer programs for safekeeping (archives) or backup purposes; and modify the computer software and all accompanying documentation and manuals or instructional materials, or combine it with other software, subject to the provision that the modified portions will remain subject to these restrictions.
7. The restricted rights set forth in paragraph 6 are of no effect unless
 - (i) the data is marked by Subcontractor with the following legend:

RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure is subject to restrictions stated in the Subcontract between **[SUBCONTRACTOR NAME]** and VEIC.

and

- (ii) If the data is computer software, the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. Subcontractor may not place any legend on the computer software indicating restrictions on the District's rights in such software unless the restrictions are set forth in a license or agreement made a part of this Subcontract prior to the delivery date of the software. Failure of Subcontractor to apply a restricted rights legend to such computer software will relieve the District of liability with respect to such unmarked software.
8. In addition to the rights granted in paragraph 6 above, Subcontractor hereby grants to the District a nonexclusive, paid-up license throughout the world, of the same scope as restricted rights set forth in paragraph 6 above, under any copyright owned by Subcontractor, in any work of authorship prepared for or acquired by the District under this Subcontract. Unless written approval of the Contracting Officer is obtained, Subcontractor

will not include in technical data or computer software prepared for or acquired by the District under this Subcontract any works of authorship in which copyright is not owned by Subcontractor without acquiring for the District any rights necessary to perfect a copyright license of the scope specified in the first sentence of this paragraph.

9. Whenever any data, including computer software, are to be obtained from a subcontractor under this Subcontract, Subcontractor will use the terms of this **Attachment J**, Rights in Data, in the subcontract, without alteration, and no other clause will be used to enlarge or diminish the District's or Subcontractor's rights in that subcontractor's data or computer software which is required for the District.
10. For all computer software furnished to the District with the rights specified in paragraph 5, Subcontractor will furnish to the District, a copy of the source code with such rights of the scope specified in paragraph 5. For all computer software furnished to the District with the restricted rights specified in paragraph 6, the District, if Subcontractor, either directly or through a successor or affiliate will cease to provide the maintenance or warranty services provided the District under this Subcontract or any paid-up maintenance agreement, or if Subcontractor should be declared bankrupt or insolvent by a court of competent jurisdiction, will have the right to obtain, for its own and sole use only, a single copy of the then current version of the source code supplied under this Subcontract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.
11. Notwithstanding any additional indemnification provisions contained in the Subcontract, Subcontractor will indemnify and save and hold harmless the District, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any data furnished under this Subcontract, or (ii) based upon any data furnished under this Subcontract, or based upon libelous or other unlawful matter contained in such data.
12. Nothing contained in this clause will imply a license to the District under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the District under any patent.
13. Paragraphs 6, 7, 8, 11 and 12 above are not applicable to material furnished to Subcontractor by the District and incorporated in the work furnished under contract, provided that such incorporated material is identified by Subcontractor at the time of delivery of such work.

ATTACHMENT I: MONTHLY SPEND REPORT

Date: Click or tap to enter a date.

CONTRACTOR/SUBCONTRACTOR DETAILS:

Company Name:	Click or tap here to enter text.
Subcontract Number:	Insert Subcontract Number
Subcontract NTE:	\$Insert Subcontract Value
CBE Number (If Applicable):	Enter CBE Number.
CBE Expiration Date (If Applicable):	Click or tap to enter a date.

COMPANY'S SUBCONTRACTS TO LOWER TIER CBE OR NON-CBE (☒ ONE):

- ☐ a) Company provided 100% of all services and/or products provided for the Entire Subcontract **using its own organization and resources** and did not subcontract ANY portion to a lower tier subcontractor.
- ☐ b) Company **subcontracted a portion of the Contract/Subcontract** to a lower tier subcontractor. (List EVERY CBE and non-CBE lower tier subcontractor below.)

Lower Tier Subcontractor Name (Full, Legal Name)	Lower Tier Subcontractor is: CBE or Non-CBE	Amount Paid to Lower Tier Subcontractor <i>This Month</i>	Total Amount of Lower Tier Subcontract	Amount Paid to Lower Tier Subcontractor to Date	Lower Tier CBE Certification Number (If Applicable)
	Select				
	Select				
	Select				
	Select				
	Select				
	Select				
	Select				

MONTHLY SPEND SUMMARY:

Total amount invoiced to the DCSEU for CHOOSE MONTH: \$00.00

Total amount completed by Company within its own organization and resources this month: \$00.00

Total amount subcontracted to SBE & CBE lower tier subcontractors this month: \$00.00

Total amount subcontracted to non-CBE lower tier subcontractors this month: \$00.00

ATTACHMENT J

QUARTERLY VENDOR VERIFICATION FORM



VENDOR VERIFICATION FORM (“VVF”)

Year: Select

Quarter: Select

PART I. Agency Contract/ Project Details:

Contract/Project Name: _____

(✓ one)

☐ District Agency Contract: Prime Contractor _____ District Agency _____ & Contract # _____
☐ Private Project: Beneficiary _____

PART II. SBE/ CBE Contractor/ Subcontractor & Lower Tier Subcontractor Details:

Insert Company Name is an (✓ one) ☐ **SBE/CBE Subcontractor** ☐ **SBE/CBE Lower Tier Subcontractor** ☐ **SBE/CBE General Contractor** providing the following scope of work/ products **using its own organization and resources (specify) :** _____. The SBE/CBE Company’s CBE certification is active and the number is _____.

PART III. SBE/CBE Company’s Subcontracts to Lower Tier SBE/CBE or Non-CBE Companies:
(✓ one)

☐ a. SBE/CBE Company provided 100% of all services and/or products provided for the **Entire Project/Contract** using its own organization and resources, and did not subcontract any portion to a lower tier subcontractor. (Skip to Part IV.)

☐ b. SBE/CBE Company provided 100% of all services and/or products provided for the **Entire Subcontract** using its own organization and resources, and did not subcontract any portion to a lower tier subcontractor. (Skip to Part IV.)

☐ c. SBE/CBE Company **subcontracted a portion of the Contract/Subcontract** to a lower tier subcontractor. (List every CBE and non-CBE lower tier subcontractor.)

Lower Tier Subcontractor Name	Lower Tier Subcontractor is: SBE, CBE or Non-CBE	Total Amount of Lower Tier Subcontract	Amount Paid to Lower Tier Subcontractor This Quarter	Amount Paid to Lower Tier Subcontractor to Date	Detailed Description of lower tier subcontractor’s scope of work	CBE Certification Number	Fully Executed Lower Tier Subcontract provided with this VVF*
1.	Select	\$	\$	\$			Select
2.	Select	\$	\$	\$			Select

3.	Select	\$	\$	\$		Select
4.	Select	\$	\$	\$		Select

***THIS VVF WILL NOT BE ACCEPTED, AND NO CREDIT GIVEN, UNTIL THE FULLY EXECUTED CONTRACTS/ SUBCONTRACTS AND VVFs FOR ALL SBEs & CBEs LISTED IN PART III c. ARE PROVIDED!**

SBE/ CBE Subcontracting Credit will only be assessed for the portion of services & goods provided by each SBE/ CBE Company AND each SBE/ CBE Lower Tier Subcontractor ***USING ITS OWN ORGANIZATION AND RESOURCES.***

PART IV: Provide DETAILED Description of Scope of Work Provided by SBE/CBE Company:

The total amount of the contract/subcontract = \$ _____ (amount should include all change orders); the total amount subcontracted to SBE & CBE lower tier subcontractors = \$ _____ (amount should include all change orders). SBE/CBE Company was paid total of \$ _____, during this quarter. The total amount SBE/CBE has been paid to date for portion of contract/subcontract performed with its own organization and resources is \$ _____. The remaining amount to be paid to the SBE/CBE Company for portion of contract/subcontract performed with its own organization and resources is \$ _____.

ACKNOWLEDGEMENT

I declare, certify, verify, attest or state under penalty of perjury that the information contained in this Vendor Verification Form, and any supporting documents submitted, are true and correct to the best of my knowledge and belief. I further declare, certify, verify, attest or state under penalty of perjury that I have the authority and specific knowledge of the goods and services provided under each contract/subcontract contained in this Vendor Verification Form. I understand that pursuant to D.C. Official Code § 22-2402, any person convicted of perjury shall be fined not more than \$5,000 or imprisoned for not more than 10 years, or both. I understand that any false or fraudulent statement contained in this Vendor Verification Form may be grounds for revocation of my CBE registration pursuant to D.C. Official Code § 2-218.63. I also understand that failure to complete this Vendor Verification Form properly will result in no credit towards the SBE and CBE Subcontracting Requirements. Further, a Prime Contractor, Developer, CBE, or Certified Joint Venture, if subject to, that fails to comply with the requirements of the Small and Certified Business Enterprise Development and Assistance Amendment Act of 2014 (D.C. Law 20-108) (the "Act"), shall be subject to penalties as outlined in the Act.

NOTARIZATION

The undersigned, as a duly authorized representative of _____, CBE/SBE Company, swears or affirms that the statements made herein are true and correct.

Signature: _____

Title: _____

Print Name: _____

Date: _____

District of Columbia (or State/Commonwealth of _____); to wit:

Signed and sworn to or affirmed before me on this _____ day of _____,

_____, by _____, who is well known to me or has been sufficiently verified as the person who executed the foregoing affidavit and who acknowledged the same to be his/her free act and deed.

Notary signature: _____

(Seal)

My commission expires: _____