

CONTRACT

VEIC EEU Contract Number: **AAA-15-001** (Where AAA = Division Abbreviation, Where 15 = Budget Year Established, Where 001= Incremental number on the contract for that Division)

This agreement (hereinafter call "*Contract*") dated this **[fill in day]** day of **[fill in month and year]** is between the Vermont Energy Investment Corporation (VEIC) and **[fill in full name of contractor]** (*Contractor*).

WHEREAS, VEIC entered into an Order of Appointment (the *Order of Appointment*) with the State of Vermont Public Service Board to carry out the duties of the Energy Efficiency Utility (EEU);

WHEREAS, VEIC desires to employ a contractor to provide VEIC with certain services in connection with its implementation of the *Order of Appointment*; and

WHEREAS, *Contractor* offers unique services and desires to provide VEIC with such services in connection with the *Order of Appointment*;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

1. DEFINITIONS

When capitalized and italicized, whether in the singular or plural, the following words and phrases shall have the following meanings in constructing this *Contract*.

- A. *Board* means the Vermont Public Service *Board* identified in 30 V.S.A. § 3.
- B. *Appointee* means Vermont Energy Investment Corporation or VEIC.
- C. *Customized Software* means any computer software, including any related database structure, that is not readily available for purchase and that is modified, developed, and/or written by the *Appointee* or its contractor(s) specifically for the purpose of performing the responsibilities of the EEU under the *Order of Appointment*.
- D. *Department* or *DPS* means the Vermont *Department* of Public Service.

- E. *Docket 7466*** means the *Board's* investigation into a petition filed by the *Department* regarding the structure of the Energy Efficiency Utility program. This investigation was opened on 9/11/2008.
- F. *EEU*** means the Energy Efficiency Utility identified in the *Order of Appointment*, and in the *MOU*.
- G. *Fiscal Agent*** means the person or entity selected and retained by the *Board* to receive *EEU* funds and to disburse those funds under the direction of the *Board*.
- H. *Market Actor*** means a person, business or organization that affects the market availability and implementation of energy efficient technologies, products, practices and designs, including, but not limited to, design professionals, contractors, retailers, suppliers, manufacturers, associations and institutions.
- I. *MOU*** means the Memorandum of Understanding approved by the *Board* in Docket No. 5980 and attached to the *5980 Order* as Appendix A and as further modified by the *Board*.
- J. *Order of Appointment*** means the “Order of Appointment for Vermont Energy Investment Corporation” issued by the *Board* on December 20, 2010.
- K. *State*** means the *State* of Vermont including its agencies, departments, and boards.
- L. *VEIC*** means Vermont Energy Investment Corporation, a Vermont non-profit corporation with its principal offices at 128 Lakeside Avenue in Burlington, Vermont and whose Vermont Tax Identification Number is 430030304418F01.
- M. *Cut-off Date*** means the 5th business day of the subsequent calendar month.
- N. *Contractor*** means [fill in Organization/Company name] a [fill in type of organization, i.e. non-profit, for-profit, etc.] with its principal offices at [fill in address].
- O. *Contract Scope of Work*** means the *Contractor's* Scope of Work identified in Paragraph 2 and in Attachment A of this *Contract*.
- P. *Contract*** means this Contract and all Attachments hereto, as all may be amended from time to time.

2. CONTRACT SCOPE OF WORK

The *Contractor* shall furnish all necessary personnel, office space, equipment, materials, services, licenses, transportation, and other necessary resources to accomplish the *Contract Scope of Work* as set forth in Attachment A. Changes to the *Contract Scope of Work* may be made only by written agreement of both the *Contractor* and *VEIC*. Notwithstanding the foregoing, *VEIC* reserves the exclusive right, in its sole discretion, to temporarily or permanently reduce the level or scope of all or any elements of the *Contract Scope of Work* at any time; provided, that, *VEIC* must provide thirty (30) days' advance written notice to *Contractor* of any such reduction (unless such notice would be impracticable under the circumstances).

All work products under the *Contract Scope of Work* shall be provided to *VEIC* using the applicable Microsoft Office application software or other such software as may be specified by *VEIC*. Currently this software is Excel 2010, Word 2010, Access 2010 and PowerPoint 2010 -- Microsoft's Office 2010 XP Suite. *Contractor* shall upgrade to new versions of Microsoft Office or other such software as may be specified by *VEIC* at the same time *VEIC* does and shall use the same versions at the same time that *VEIC* does throughout the term of this *Contract*.

Contractor shall devote sufficient personnel to complete the *Contract Scope of Work* in a timely manner, consistent with any milestones or deadlines set forth in Attachment A. *Contractor* shall provide *VEIC* with a list of the key personnel upon execution of this *Contract*, and *VEIC* reserves the right to reasonably reject any or all of the *Contractor's* key personnel.

The *Contractor* shall carry out the *Contract Scope of Work* in a professional and workmanlike manner, consistent with best practices in the industry and with due diligence and efficiency, in a practical manner designed to promote the purposes of the *EEU* and with due regard to the obligations of the parties thereto.

3. TERM OF CONTRACT

The Term of this *Contract* shall begin on [date], [year] and end on [date], [year] unless amended or terminated earlier in accordance with the provisions of this *Contract*.

Time is of the essence and all deadlines detailed in the *Contract Scope of Work* shall be strictly adhered to.

4. FEES AND PAYMENTS

The *Contractor* will be paid in accordance with the following payment provisions: **[Note to Drafter: Edit Fees and Payments by deleting the method below that DOES NOT apply to this particular contract]**

Option # 1: Fixed Fee

The *Contractor* will be compensated based upon the Firm Fixed Fee amount of [\$-----] (----- dollars) for all work specified in the *Contract Scope of Work*, including all administrative and technical support. In addition to the Firm Fixed Fee, *Contractor's* reimbursable expenses will be compensated in accordance with the *Contractor's* Reimbursable Expenses Schedule (Attachment C) up to, but not to exceed, the estimated amount of [\$-----]. The reimbursable expenses shall be charged to *VEIC* at *Contractor's* actual cost, with no mark-up. No obligations for expenses beyond the estimated amount in Attachment C shall be reimbursed without prior written approval by *VEIC*. The schedule of rates set forth on Attachment B shall not change during the Term of this *Contract*, with the exception of mileage, which will be adjusted on a calendar year basis in accordance with changes in the IRS approved mileage rate for use of a personal automobile. Invoices shall be submitted monthly, based on the percentage completion of the *Contract Scope of Work*, and shall indicate the work progressed on Scope components that is being invoiced; for reimbursable expenses invoices will show the tasks for which each expense was incurred. Prior to making any monthly payment, *VEIC* may request supporting documentation from the *Contractor* evidencing the completion of such work scope and achievement of any related milestones or deadlines set forth in Attachment A. The Fixed Fee includes all General and Administrative Overhead; all *Contractor* administrative functions are understood to be compensated through the *Contractor's* Fixed Fee, and only administrative assistance that is in direct support of production of the deliverables in the *Contract Scope of Work* will be compensated by the Fixed Fee. Final Payment shall not be made until, as a minimum, review and approval by *VEIC* of the final deliverables is completed. If, following completion of such deliverables and final payment, *VEIC* determines that the deliverables contain errors or omissions, *Contractor* shall promptly correct such errors or omissions at no further cost to *VEIC*. *Contractor* acknowledges that it is required to complete the *Contract Scope of Work* in return for the Firm Fixed Fee and *Contractor* shall not be entitled to any additional compensation hereunder, with the exception of the reimbursable expenses described herein.

In cases where *VEIC* requests an amendment to the previously agreed upon *Contract Scope of Work* that is subject to a Firm Fixed Fee, *VEIC* and *Contractor* shall amend this *Contract* to include the additional scope and adjust the Firm Fixed Fee (in a manner consistent with how the original Fixed Firm Fee was determined) and any relevant deadlines.

Option # 2: Time and Materials

In performing the *Contract Scope of Work*, the *Contractor* will be compensated on an Hourly Basis for labor, with a Not-To-Exceed (NTE) amount of [\$-----] (-----dollars) in accordance with the *Contractor's* Standard Billing Rates (Attachment B) and on an incurred basis for Reimbursable Expenses Schedule (Attachment C) up to, but not to exceed, the estimated amount of [\$-----]. The reimbursable expenses shall be charged to *VEIC* at *Contractor's* actual cost, with no mark-up. *Contractor* shall not exceed these dollar amounts set forth above for labor and reimbursable expenses in performing the *Contract Scope of Work*, unless approved in advance in writing by an authorized representative of *VEIC*. During each yearly anniversary of the Term of this *Contract*, *Contractor* may only increase the Standard Billing Rates for labor set forth on

Attachment B by the lesser of (i) three percent (3%) or (ii) the average percentage change in the annual Consumer Price Index Northeast for all urban consumers (CPI-U) (1982-1984) over the then current contract year (CPI). The average percentage CPI change will be calculated by VEIC by January 1 of each year and will be used until the following January. [Do Not Use If a Single Year Contract] The schedule of rates set forth on Attachment C shall not change during the Term of this Contract, with the exception of mileage, which will be adjusted on a calendar year basis in accordance with changes in the IRS approved mileage rate for use of a personal automobile. With the exception of the increases provided for in the preceding 2 sentences regarding mileage and labor rates, Contractor shall not increase any other expenses set forth on Attachments B and C during the Term of this Contract. No obligations for expenses beyond the estimated amount in Attachment C shall be reimbursed without prior written approval by VEIC. The Standard Billing Rates include all General and Administrative Overhead; all Contractor administrative functions are understood to be compensated through the factor applied to determine the Standard Billing Rates, and only administrative assistance that is in direct support of production of the deliverables in the Scope of Work will be compensated on an hourly basis. Invoices shall be submitted monthly, including a breakdown showing the staff, hourly rate, hours, and the tasks progressed or completed for the invoice period. Prior to making any monthly payment, VEIC may request supporting documentation from the Contractor evidencing the completion of such tasks and achievement of any related milestones or deadlines set forth in Attachment A. Reimbursable expenses shall be invoiced in accordance with the Reimbursable Expenses Schedule; invoices must indicate the tasks for which the expenses were incurred, and the expenses itemized. If, following completion of the deliverables required under the Contract Scope of Work and final payment, VEIC determines that the deliverables contain errors or omissions, Contractor shall promptly correct such errors or omissions at no further cost to VEIC.

[Note to Drafter: If time and materials under Option # 2, (i) Attachment B should include the hourly labor rates and (ii) Attachment C should include the types of expenses (travel, copying, postage/delivery, etc.) that will be reimbursed at actual out-of-pocket cost. Also need to provide in Attachment C the basis for reimbursable costs, i.e. mileage reimbursement at the IRS-approved rate only for use of a personal motor vehicle; air travel via most direct route on coach class only, etc.]

5. INVOICE REQUIREMENTS AND PAYMENT TERMS

The Contractor shall submit monthly invoices of eligible Fees and Payments in accordance with Paragraph 4 above 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".

If invoices are submitted by mail they should be sent to:

Accounts Payable

Vermont Energy Investment Corporation
128 Lakeside Avenue
Burlington, VT 05401

If submitted via e-mail invoices should be sent to AccountsPayable@veic.org.

All invoices shall, at a minimum, include:

- *Contractor* name,
- *Contractor* address,
- Federal Employer I.D. number (or Social security number if *Contractor* is an individual) of the *Contractor*;
- period covered by invoice;
- work order being billed for;
- hourly rate(s);
- summary description of hours and reimbursable expenses;
- hours detailed daily by staff person with *VEIC* job and project codes;
line item detail of reimbursable expenses and receipts for all reimbursable expenses over \$10 coded to appropriate *VEIC* job and project codes.
- Administrative Contact Name, Phone Number, and E-mail

The *Contractor* shall cooperate with *VEIC* to develop an invoice format and requirements for implementation prior to the first invoice submitted under this *Contract*. *VEIC* may require modifications to the form of invoice during the Term of this Contract.

All labor and reimbursable expenses shall be clearly itemized and coded to appropriate *VEIC* job and project codes.

[Note to Drafter: Further invoice requirements will depend on payment terms detailed above. For example, the Scope of Work may stipulate a staged completion plan with interim deliverables, and compensation tied to completion and approval of those deliverables.]

If time and materials contract, invoice needs to detail name of staff being billed, hourly rate, task description, and line item detail of reimbursable expenses and receipts for all reimbursable expenses.

If fixed price contract, need to detail the milestone being billed for or any other basis for the payment.

These types of details should be developed on the form of invoice with each contractor.]

6. INVOICE REVIEW, APPROVAL AND PAYMENT

In order for the *Contractor's* invoice to be paid, it must be approved by *VEIC* and be included as part of a *VEIC* monthly *Order of Appointment* invoice.

No later than five (5) business days after its receipt of an invoice, *VEIC* shall review the invoice and either approve the invoice for payment or inform the *Contractor* in writing of any disputed amount and the basis for such dispute.

If an invoice is disputed by *VEIC*, the *Contractor* shall answer *VEIC*'s concerns in writing within five (5) business days of the *Contractor*'s receipt of the written notice from *VEIC*. If *VEIC* and the *Contractor* cannot resolve the dispute within ten (10) business days after *VEIC*'s receipt of the *Contractor*'s reply, each party agrees to submit the dispute to final and binding arbitration as provided in Paragraph 28 below.

Contractor's invoice will be submitted as part of *VEIC*'s current monthly *Order of Appointment* invoice to the Department of Public Service (DPS) only if it is received by *VEIC* by the *Cut-off Date* and only if it is not disputed by *VEIC*. If it is not received by the *Cut-off Date*, then *Contractor*'s approved invoice will not be submitted as part of *VEIC*'s current monthly *Order of Appointment* invoice. Instead it will be submitted the following month. Disputed *Contractor* invoices will not be submitted until the dispute has been resolved and will be submitted as part of *VEIC*'s *Order of Appointment* invoice based on the month in which the dispute was resolved (i.e., if the invoice was for May, but the dispute was not resolved until July, it would be submitted as part of *VEIC*'s July *Order of Appointment* invoice).

If the *DPS* disputes any part of *VEIC*'s invoice that involves the *Contractor*'s invoice, then the *Contractor* shall provide any and all information required by either the *DPS* or the *Board* to resolve such dispute. Such information will be provided by any deadlines specified by either the *DPS* or the *Board*. Any and all decisions made by the *DPS* or the *Board* concerning *Contractor*'s invoice shall be final and binding upon the *Contractor*.

Fully approved (meaning that the invoice has been approved by both the *DPS* and *VEIC*) *Contractor* invoices shall be paid by *VEIC* within thirty (30) days from the *Cut-off Date*.

Payment will be withheld on open invoices if a Certificate of Insurance showing coverage of the required insurances stated in Paragraph 21 of this contract is not on file with *VEIC*. It is the sole responsibility of the *Contractor* to have its insurance agent provide current certificates at each insurance renewal period of each type of insurance to *VEIC*.

7. TERMINATION OF CONTRACT

a) Termination of Order of Appointment

If the *Order of Appointment* is terminated for any reason whatsoever then this *Contract* shall automatically terminate on the same date as the *Order of Appointment*.

b) Termination For Cause

In the event that *Contractor* materially breaches the terms of this *Contract*, *VEIC* may without prejudice to any of its other legal remedies terminate this *Contract* upon fifteen (15) days

written notice to *Contractor* and be relieved of the payment of any amount due to *Contractor* for *Contract Scope of Work* performed prior to the date of such termination, except as provided in subparagraph “e” below. Alternatively, *VEIC* may, in its sole discretion, provide *Contractor* with time to cure any breach.

In the event this *Contract* is terminated for cause, *VEIC* may proceed in any manner it deems proper. *Contractor* shall be compensated for satisfactory services rendered and eligible costs and expenses as provided in subparagraph “e” below; however, in its discretion, *VEIC* may deduct from any sum due to *Contractor* under this *Contract*, all expense, damage or other harm incurred by *VEIC*, the *State*, or the *Board* or any of their agents as a result of *Contractor*’s failure to perform its obligation under this *Contract*. *Contractor* reserves all other rights and remedies at law and in equity, in the event of a breach of this *Contract* by *Contractor*.

c) Termination – Bankruptcy

In the event proceedings in bankruptcy are commenced against the *Contractor*, it is adjudged bankrupt, or a receiver of any of its assets is appointed, *VEIC* may terminate this *Contract* by giving five (5) days notice in writing to the *Contractor*.

d) Termination at Will

VEIC may in its discretion terminate the *Contract* at any time without good cause upon giving thirty (30) days written notice to *Contractor* prior to said termination date. *Contractor* may terminate this *Contract* without good cause upon giving sixty (60) days written notice to *VEIC* prior to said termination date.

e) Responsibility of Parties Upon Expiration or Termination of *Contract*

Upon expiration or termination of this *Contract*, *Contractor* shall, as specifically directed by *VEIC*, provide reasonable transition assistance as requested by *VEIC* to *VEIC* to ensure that the functions being performed by the *Contractor* for the *EEU* are continuously carried out without interruption. In such event, *Contractor* shall use all reasonable efforts to mitigate its expenses and obligations hereunder.

Upon termination of this *Contract*, *VEIC* shall pay the *Contractor*, pursuant to the compensation terms set forth above in the Paragraph 4, for all satisfactory services rendered and eligible fees, costs and expenses prior to the notice of termination and until the actual *Contract* termination date. *VEIC* shall also pay *Contractor* for all reasonable services rendered and costs and expenses incurred by the *Contractor* subsequent to termination, but only for reasonable transition assistance as specifically directed by *VEIC* which could not, by reasonable efforts of the *Contractor*, have been avoided.

Notwithstanding the above, no payments shall be made by *VEIC* to the *Contractor* for eligible fees, costs and expenses prior to the notice of termination or for reasonable transition assistance thereafter unless such expenses are approved for payment to *VEIC* from the *State* under the *Order of Appointment*.

All work product(s), records and data related to *Contract Scope of Work* performed under this *Contract* in the possession of the *Contractor* and its subcontractor(s) shall be made available and turned over to the *VEIC* or its designated representative upon the expiration or termination of the *Contract*, at *VEIC's* request. These transfers shall be accomplished no later than ten (10) business days after the date of notification to the *Contractor* to transfer the data and documents. Following a termination of this *Contract*, *Contractor* shall continue to adhere to the confidentiality provisions of this *Contract*.

8. REPORTING REQUIREMENTS

The *Contractor* shall provide progress reports to *VEIC* and any other entity designated by *VEIC* according to the schedule, formats, information and data, and other requirements set forth in and developed pursuant to the *Contract Scope of Work* and in accordance with *VEIC's Order of Appointment*. The *Contractor* shall work cooperatively with *VEIC* and any other entities designated by *VEIC* to develop appropriate formats for the required reports under this *Contract*. The *Contractor* shall also provide information, data and other materials to support, as needed, *VEIC's* ongoing reporting requirements to the *Board*. All written reports that are to be submitted to any *State* agency must be printed or copied using both sides of the paper.

9. RECORDS AVAILABLE FOR AUDIT AND INSPECTION

The *Contractor* shall maintain all books, documents, payroll papers, accounting records and all other evidence pertaining to this *Contract*, in accordance with Generally Accepted Accounting Principles consistently applied, and make them available at reasonable times during the term of this *Contract* and for three (3) years thereafter for inspection for any reason whatsoever by *VEIC*, the *Board*, the *DPS*, or any other authorized representative of the *State*, or agents of the federal government. Storage of electronic images of documents shall comply with the requirements of this paragraph. All such records shall also be available for inspection by *VEIC* for purposes of assessing the *Contractor's* performance under this *Contract*; responding to any inquiry by the *Board*, the *DPS*, or any other authorized representative of the *State*, or agents of the federal government; to provide information pertaining to any pending or ongoing litigation, claim or audit; or in the event that *Contractor* breaches any of the terms of this *Contract*. If any litigation, claim, or audit is commenced before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records has been resolved.

Contractor shall include in its contract(s) a provision that states that its contractor(s)' records related to the *Contract Scope of Work* shall be subject to audit and examination during the term of this *Contract* in accordance with the terms of this paragraph and for a period of three years after final payment under the relevant contract(s). *Contractor* shall comply with any standard format and documentation developed by *VEIC* and the *DPS* to implement the requirements of this Paragraph.

The fact that such inspection or monitoring is undertaken shall in no way relieve the *Contractor* of its obligations to properly perform its duties in accordance with this *Contract* nor from *Contractor's* full responsibility and liability for damages or loss caused by *Contractor*, its subcontractor(s), employees or agents. *Contractor's* obligations under this Paragraph shall be continual and shall not be affected by *VEIC's* acceptance of an invoice from *Contractor*.

10. DISPUTE RESOLUTION PROCESS

In conjunction with the Director of the Consumer Affairs and Public Information Division at the *DPS*, *VEIC* has developed procedures for addressing and resolving complaints concerning performance of its responsibilities from customers and other interested parties such as electric utilities, subcontractors, trade allies, and participants in the Commercial and Industrial Customer Credit program or Energy Savings Account program. These procedures are defined in *VEIC* Service Quality and Reliability Plan filed with the *Board*. *Contractor* agrees to comply with all aspects of this dispute resolution process, as amended from time to time.

11. MANAGE CUSTOMER-SPECIFIC AND COMPETITIVELY-SENSITIVE INFORMATION

VEIC has developed and maintains a system that provides appropriate protections in the collection, processing, storage and retrieval of information that is customer-specific or could otherwise provide an unfair competitive advantage to an entity performing services outside of the energy efficiency programs approved by the *Board* for *EEU* implementation. *Contractor* and its subcontractor(s) shall strictly observe all aspects of these systems and protect the confidentiality of any such information and agrees to abide by the guidelines developed by *VEIC* pursuant to its *Order of Appointment*.

In addition, *Contractor's* employees and its subcontractor(s)' employees with access to confidential information shall be required to sign a protective agreement and a guidelines memo. To ensure that *VEIC* has a complete accounting of all of *Contractor's* employees and its subcontractor(s)' employees who are required to sign such a protective agreement and guidelines memo *Contractor* will provide *VEIC* a list of all of its employees and its subcontractor(s) employees who will require access to confidential information in order for the *Contractor* to undertake the *Contract Scope of Work*. This list will be provided to *VEIC* within seven (7) days of the execution of this *Contract*. *Contractor* will provide *VEIC* with any additions or deletions to this list within seven (7) days of such addition or deletion throughout the term of this *Contract*.

The *Contractor* agrees to indemnify *VEIC* for and hold *VEIC* harmless against any claims resulting from the release of any confidential information by *Contractor's* employees, subcontractor(s), or agents.

Contractor will execute the form of Confidentiality Non-Disclosure Agreement attached as Attachment H upon signing this *Contract*. Contractor will adhere to the provisions of the Confidentiality Memo attached as Attachment G.

12. QUALITY ASSURANCE

VEIC and the *Contractor* will develop, maintain and adhere to a set of mutually agreeable quality assurance standards and tracking and monitoring mechanisms, for the implementation of the *Contract Scope of Work*. These quality assurance standards and tracking and monitoring mechanisms must also adhere to the *Order of Appointment*.

13. INSPECTION OF WORK

VEIC, the *Board*, or any other authorized representative, and the *DPS* shall have the right at all reasonable times, to inspect, monitor, or otherwise evaluate the *Contract Scope of Work*. The *Contractor* shall provide the above entities with any relevant information requested and shall permit access to its premises, upon reasonable notice, during normal business hours for all relevant purposes including, but not limited to, interviewing employees (including those of its subcontractor(s)) and inspecting and/or copying such books, records, accounts, work papers, equipment and products, and any and all other materials that may be relevant to the *Contract Scope of Work*. *Contractor* shall include in its subcontract(s) a provision that requires that the subcontractor(s)' records, information, equipment, personnel and all relevant materials related to the *Contract Scope of Work* performed under this *Contract* to be subject to inspection during the term of this *Contract*. *Contractor* shall comply with the process and requirements necessary to implement the requirements of this Paragraph as they are developed by *VEIC*, the *DPS*, or any other authorized representative designated by the *Board*.

The fact that such inspection or monitoring is undertaken shall in no way relieve the *Contractor* from its obligations to properly perform its duties in accordance with this *Contract* nor from *Contractor's* full responsibility and liability for damages or loss caused by *Contractor*, its subcontractor(s), employees or agents.

14. OWNERSHIP OF DATA, RECORDS, AND INTELLECTUAL PROPERTY

a) Data

All data obtained by *Contractor* or any of its subcontractor(s) in the course of performing the duties outlined in this *Contract Scope of Work* shall be the property of the *State* and available to *VEIC* and the *Board* and their designated representatives for the oversight of this *Contract*.

b) Work Product

All products of the *Contractor's* and its subcontractor(s) including logos, trademarks, service marks, data, communications and records originated, developed or prepared by the *Contractor* or its subcontractor(s), or jointly by the *Contractor*, subcontractor(s), and *VEIC*, the *Board* or their agents pursuant to this *Contract*, including but not limited to papers, outlines, drawings,

sketches, art work, plans, photographs, specifications, estimates, reports, charts, surveys, survey results, and spreadsheets and other similar documentation, and any *Contract Scope of Work* product determined by *VEIC* or the *Board* to be necessary to the success of the programs approved for implementation by the *EEU* shall be delivered to and shall become the exclusive property of the *State* and may be copyrighted by the *State*. The preceding sentence shall not apply to customized software or administrative communications between *VEIC* and the *Contractor*, or administrative communications between *the Contractor* and its subcontractor(s), and attorney-client communications between the *Contractor* and its attorneys. All customized software, computer databases, and applications will be considered work for hire by *VEIC* and all rights and ownership of such products shall be *VEIC's*. *Contractor* and its subcontractor(s) may not copyright or resell any of the above *Contract Scope of Work* product.

c) Equipment and Materials Provided by or for Use by *VEIC* or the *State*

All property, equipment or materials purchased directly by the *VEIC* or the *State*, or furnished to the *Contractor* by *VEIC* or the *State*, under this *Contract*, is provided on a loan basis only and remains the sole property of either *VEIC* or the *State* as applicable. Property or equipment purchased by *Contractor* to perform this *Contract* shall be the sole property of the *Contractor* unless specified otherwise in this *Contract*.

Contractor agrees that all products used to perform this *Contract*, including computer software, hardware and program products must be currently manufactured and available for general sale, lease or license on the date of consummation of or during the term of this *Contract*. The intent of this paragraph is to ensure that all products, including computer software, necessary for the successful operation of the *EEU* are available (via sale, lease or license) to any subsequent appointee or contractor who assumes any of the duties of the *EEU*.

In addition, during the term of this *Contract*, *VEIC* or the *State* reserves the right to use any of the equipment purchased and/or materials or programs developed by the *Contractor* or any of its subcontractor(s) to perform this *Contract*, excluding equipment and/or material in the possession of the *Contractor* or any of its subcontractor(s) prior to the execution of this *Contract*, and also excluding equipment, materials or programs purchased by the *Contractor* that *Contractor* uses jointly in connection with the *Contract Scope of Work* and with *Contractor's* other activities.

d) Research Reports or Similar Publications

Prior written approval by *VEIC* is required in order for the *Contractor* to prepare or present any research report, conference presentation, journal paper or similar other publication that identifies the *EEU* or relies on data acquired from the *Contractor's* or its subcontractor(s)' performance of this *Contract*. If *VEIC* does provide its approval, *VEIC* shall review and approve, prior to public release, any such research report or similar publication.

e) Paragraph 14 Survives Expiration or Termination of This *Contract*

The terms of Paragraph 14 shall continue in effect after the expiration or termination of this *Contract*.

15. CONFLICT-OF-INTEREST PROVISION

Contractor and its subcontractor(s) may engage in business activities other than those described directly below, as long as these activities do not create a conflict of interest with the performance of the *Contract Scope of Work*. *Contractor* also affirms that it, its applicable employees and subcontractor(s) shall promptly and fully inform *VEIC* in writing of any business activities and/or relationships which any person, fully acquainted with the circumstances, might reasonably conclude could unfairly disadvantage another party, and agree that they shall abide by *VEIC's* or the *Board's* reasonable determination as to whether such activities or relationships are prohibited by the terms of this Paragraph.

Contractor affirms that neither it, nor any of its applicable personnel or subcontractor(s), have or presently expect any beneficial, contractual or business relationship with the *Fiscal Agent* that will be directly affected by the *Contractor's* performance of the *Contract Scope of Work*. *Contractor* further affirms that it and its applicable personnel and subcontractor(s) shall not develop, pursue, or confirm any such beneficial, contractual, or business relationships with the *Fiscal Agent* throughout the term of this *Contract*, and for six (6) months thereafter.

The *Contractor* may perform work for distribution utilities, the *DPS*, or other parties that appear in proceedings before the *Board* as long as such work does not create a conflict of interest with the Order of Appointment and is in compliance with the terms of Paragraph 33 of this *Contract*. The *Contractor* shall disclose in writing to *VEIC*, on an on-going basis throughout the term of this *Contract* any contracts it enters into with any distribution utilities, the *DPS*, or other entities that appear in proceedings before the *Board*.

16. LEGISLATIVE TESTIMONY

In order to prevent confusion regarding whether legislative testimony is being presented on behalf of the *EEU* or on behalf of *Contractor*, the parties agree to the following guidelines:

- The *Contractor* shall not provide legislative testimony on any subject that pertains to the work of the *EEU* without the prior written approval of *VEIC*. If the *Contractor* does, based on such written approval from *VEIC*, provide legislative testimony in its capacity as a *Contractor* to the *EEU*, it shall allow *VEIC* to review and comment on such testimony prior to presenting or submitting such testimony. In addition, *Contractor* shall provide *VEIC* with a copy of any written materials specifically developed for, and handed out at, any appearance.
- Any person testifying at the legislature on behalf of the *Contractor* or the *EEU* shall state on the record at the beginning of his/her testimony which entity he/she is representing.
- Any person testifying at the legislature on behalf of the *Contractor* or the *EEU* shall not provide testimony that would, in the reasonable judgment of *VEIC*, diminish the *Contractor's* effectiveness in providing support under this *Contract* or diminish legislative support for the *EEU*.

17. APPEARANCE IN BOARD PROCEEDINGS

The *Contractor* may not intervene or participate in any form whatsoever in any *Board* proceedings that directly relate to the *EEU's* operation without prior written approval of *VEIC*. With the prior written permission of *VEIC*, the *Contractor* may participate as the *Contractor*, or provide expert testimony as the *Contractor* on behalf of other parties, in *Board* proceedings not directly related to the *EEU's* operation.

18. PERFORMANCE CONTRACTING

If the *Contractor* or any of its subcontractors advises an *EEU* customer to use performance contracting and the *Contractor* or its subcontractor desires to bid for that contract, the *Contractor* or its subcontractor shall notify *VEIC* in advance of submitting a bid. *VEIC* may contact the customer and/or use other mechanisms to ensure that the *Contractor's* or its subcontractor's relationship with the *EEU* does not give either of them an unfair advantage in the bidding process.

19. RETAIL SALES RESTRICTION

Contractor agrees not to sell electric energy at retail in the *State* prior to the expiration or termination of this *Contract* nor for a period of one year thereafter. *Contractor* also agrees that it:

- shall not disclose non-public Vermont market information to any of its affiliates which, during the term of this *Contract* and for a period of one year thereafter, is engaged in selling, or may sell electric energy at retail in the *State* ("Competitive Affiliate"); and
- shall not utilize any employee of such Competitive Affiliate to perform services under this *Contract*.

The *Contractor* shall require its subcontractor(s) to agree in writing to the provisions of this Paragraph.

20. USE OF EEU'S NAME

The *EEU's* official name shall be "Efficiency Vermont" or such other name as the *Board* may approve after consultation with *VEIC*. This is the name that shall appear on all *EEU* marketing materials. The *Contractor* and its subcontractor(s) shall use only the official name of the *EEU* when providing *EEU* services and making public representations on behalf of the *EEU*. The name(s) of the *Contractor's* firm, its subcontractor(s)' firm, or their affiliate(s)' firms shall not appear on any *EEU* marketing materials or other *EEU* documents provided to Vermont ratepayers, trade allies, or *Market Actors*.

The *Contractor* or its subcontractor(s) may use the official *EEU* name for *EEU* purposes only, except that the *Contractor* will not be precluded from including its work with the *EEU* in its individual companies' project lists, or from describing its work with the *EEU* to other potential employers. The preceding paragraph is intended to prevent confusion among Vermont ratepayers and trade allies: the *EEU* shall have one name and one identity that will be the only name and identity used by individuals and firms when they are providing *EEU* products and services.

21. INSURANCE

Before commencing *Work* on this *Contract*, the *Contractor* shall provide Certificates of Insurance to show that the following minimum coverages are in effect. Where applicable the Certificates of Insurance shall name *VEIC* as additionally insured party as its interests may appear. All policies shall be noncancellable without 30 days prior written notice from the insurance carrier to *VEIC*. It is the responsibility of the *Contractor* to maintain current Certificates of Insurance on file with *VEIC* through the term of this *Contract*.

Workers' Compensation: With respect to all operations performed under this *Contract*, the *Contractor* shall carry workers' compensation insurance in accordance with the laws of the *State* and any other state in which it is performing the *Contract Scope of Work*.

General Liability and Property Insurance: With respect to all operations performed under this *Contract*, the *Contractor* shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises – Operations
Independent Contractors' Protective
Products and Completed Operations (where appropriate)
Personal Injury Liability
Contractual Liability.

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence
\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Products Aggregate (where appropriate)
\$50,000 Fire Legal Liability.

Automotive Liability: The *Contractor* shall carry automotive liability insurance covering all motor vehicles, no matter the ownership status, used in connection with this *Contract*. Limits of coverage shall not be less than \$1,000,000 combined single limit or the amount required by any applicable state law, whichever is greater.

No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the *Contractor* for the *Contractor's* operations. These are solely minimums that have been set to protect the interests of *VEIC*.

22. INDEPENDENT CONTRACTOR

For the purposes hereof, the *Contractor* is an independent contractor, and shall not be deemed to be an employee or agent of *VEIC*, the *State* or the *Board*. Except as specifically provided herein, neither party, nor their employees, agents, or representatives shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other. The *Contractor* shall pay any and all taxes and fees on it imposed by any government under this *Contract*.

23. ASSIGNMENT OR SUBLET OF SUBCONTRACT

Contractor may not assign or sublet any performance of the *Contract Scope of Work* without the prior written approval of *VEIC*. Such approval will not be unreasonably withheld. *VEIC* reserves the right to reject any substitution of *Contractor's* key personnel.

The performance of the *Contract Scope of Work* shall be the sole responsibility of and under the sole control, management, and supervision of the *Contractor*. The *Contractor* shall be responsible for all matters involving any of its subcontractors engaged under this *Contract*, including contract compliance, performance and dispute resolution between itself and its subcontractor(s). *Contractor* shall be responsible for all actions of its subcontractor(s) and all payments to its subcontractor(s). Failure of its subcontractor(s) to perform for any reason does not relieve *Contractor* of responsibility for the competent and timely performance of the *Contract Scope of Work*. *VEIC* shall have no responsibility for *Contractor's* subcontractor(s)' compliance, performance, or dispute resolution hereunder. *Contractor* shall include in all its subcontract agreement(s) a tax certification in a form that is substantially identical to that required for *Contractor* by Paragraph 30 of this *Contract* as well as all other notices to and requirements of its subcontractor(s) required by this *Contract*.

24. INDEMNIFICATION

The *Contractor* shall indemnify, defend and hold harmless *VEIC* and the *State* and their respective officers and employees from and against any liability and any claims, suits, judgments, and damages arising as a result in whole or in part from any of the *Contractor's*, its employees' or its subcontractors' acts and/or omissions in the performance of this *Contract*.

25. NOTIFICATIONS REQUIRED UNDER THIS CONTRACT

Correspondence and transmittals of formal notifications, requests, reports or other documents concerning this *Contract*, to be effective, shall be addressed to the respective persons as follows:

Efficiency Vermont Jim Merriam
Efficiency Vermont
128 Lakeside Avenue
Burlington, VT 05401-4717
802-658-6060
Fax 802-658-1643

Contractor **[Fill in contractor main contact, name of contractor organization, mailing address, phone and fax number AND E-MAIL ADDRESS]**

VEIC and the *Contractor* may change their contact person, address or telephone numbers at any time upon written notice to the other party.

26. REPRESENTATIONS AND WARRANTIES

The *Contractor* represents and warrants that it is in the business of providing the *Contract Scope of Work* and that it shall perform the *Contract Scope of Work*:

- in accordance with generally accepted best industry principles and practices; and
- in a manner consistent with that level of care normally exercised by members of its profession undertaking services of the sort described herein.
- as to any products delivered by *Contractor* under this *Contract*, they shall be free from defects in materials and workmanship and shall be of merchantable quality.

27. PERMITS, LAWS, REGULATIONS AND PUBLIC ORDINANCES

Contractor shall secure and pay for all permits and licenses required to perform the *Contract Scope of Work*, shall comply with all applicable federal, state and local laws, regulations, and ordinances governing the performance of the *Contract Scope of Work*, and shall indemnify, defend, and save *VEIC* and the *State* harmless from any and all liability, fine, damage, cost and expense arising from *Contractor's* failure to do so.

28. SETTLEMENT OF DISPUTES

Any disputes or differences arising out of this *Contract* which cannot be amicably settled between the parties shall be finally settled 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 shall take place in Burlington, Vermont. Each party to the arbitration shall fully bear their own costs. The costs of the arbitrator shall be borne equally.

29. NO EMPLOYEE BENEFITS FOR CONTRACTOR

The *Contractor* understands that neither *VEIC* nor the *State* will provide *Contractor* or *Contractor's* employees or subcontractors with any individual retirement benefits, group life insurance, group health and dental insurance, vacation and sick leave, Workers' Compensation or other benefits or services available to *VEIC* employees, nor will *VEIC* withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of this *Contract*. The *Contractor* understands that all tax returns required by the Internal Revenue Code and any state, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the *Contractor*.

30. TAXES DUE TO THE STATE

Contractor understands and acknowledges responsibility, if applicable, for compliance with all *State* tax laws, including income tax withholding for employees performing services within the *State*, payment of use tax on property used within the *State*, and corporate and/or personal income tax on income earned within the *State*.

Contractor certifies under the pains and penalties of perjury that, as of the date this *Contract* is signed, the *Contractor* is in good standing with respect to, or in full compliance with a plan to pay any and all taxes due the *State*.

31. SUSPENSION OF PAYMENT TO CONTRACTOR

In addition to other remedies, *VEIC* reserves the right to suspend all payments to *Contractor* if required reports are not provided to *VEIC* or its designated representatives on a timely basis; if there are continuing deficiencies in *Contractor's* reporting, record keeping or invoicing responsibilities and requirements; or if the performance of the *Contract Scope of Work* is not adequately evidenced.

32. NO GIFTS OR GRATUITIES

Contractor, its employees, agents or subcontractor(s) shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of *VEIC*, the *State*, or the *Fiscal Agent* during the term of this *Contract*.

33. CONFIDENTIALITY

Contractor acknowledges that *VEIC* shall or may in reliance on this agreement provide *Contractor* access to trade secrets, customer-specific information, competitively sensitive

information, aggregated data, and other confidential data and good will. *Contractor* agrees to retain said information as confidential and not to use said information on his or her own behalf or disclose same to any third party. *Contractor* also agrees to abide by the other provisions regarding confidentiality contained herein and any other confidentiality related guidelines or directives that *VEIC* may promulgate from time to time. *VEIC* shall have the right to enforce this provision through judicial action, including injunctive relief.

This confidentiality agreement shall be binding upon and inure to the benefit of the parties, their successors, assigns, and personal representatives.

34. FAIR EMPLOYMENT PRACTICES AND AMERICAN DISABILITIES ACT

Contractor shall comply with the requirements of Title 21, V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. *Contractor* shall also ensure, to the full extent required by the Americans With Disabilities Act of 1990, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the *Contractor* under this *Contract*. *Contractor* further agrees to include this provision in all of its subcontracts.

35. FORCE MAJEURE

Either party's performance of any part of this *Contract* shall be excused to the extent that it is hindered, delayed or otherwise made impractical by reason of flood, riot, fire, explosion, war, acts or omissions of the other party or any other cause, whether similar or dissimilar to those listed, beyond the reasonable control of the non-performing party. If any such event occurs, the non-performing party shall make reasonable efforts to notify the other party of the nature of such condition and the extent of the delay and shall make reasonable, good faith efforts to resume performance as soon as possible.

36. SEVERABILITY

If any provision of this *Contract* shall be adjudged to be invalid, then that provision shall be deemed null and void and severable from the remaining provisions, shall in no way affect the validity of this *Contract*, and the remaining provisions shall be integrated so as to give the greatest effect thereto.

37. SURVIVAL OF REQUIREMENTS

Unless otherwise authorized in writing by *VEIC*, the terms and conditions of this *Contract* shall survive the performance period and shall continue in full force and effect until the *Contractor* has completed and is in compliance with all of the requirements hereof. Any confidentiality requirements set forth in or developed pursuant to this *Contract* shall continue after the expiration or termination of this *Contract* in perpetuity.

38. WAIVER

Failure or delay on the part of either party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. A waiver of any default shall not operate as a waiver of any other default or of the same type of default on a future occasion.

39. APPLICABLE LAW

This *Contract* shall be governed by the laws of the *State* of Vermont.

40. AMENDMENT

No changes, modifications, amendments or extensions in the terms and conditions of this *Contract* shall be effective unless reduced to writing and signed by the duly authorized representatives of *VEIC* and the *Contractor*.

41. POLITICAL ACTIVITY

Whenever the *Contractor* is representing themselves as and/or conducting work for *VEIC* under this *Contract* the *Contractor* agrees to strictly adhere to *VEIC's* policy on political activity as detailed in Attachment D.

42. ENTIRE AGREEMENT

This *Contract* with the following Attachments represents the entire agreement between the parties relating to the subject hereof. All prior agreements, representations, statements, negotiations, and understandings are merged herein and shall have no effect. This *Contract* consists of the following documents listed in order of precedence from highest to lowest:

Option # 1: Fixed Fee

Main Body of the *Contract*

Attachment A: *Contract Scope of Work*

Attachment B: Standard Billing Rates

Attachment C: Reimbursable Expenses Schedule

Attachment D: *VEIC* Policy on Political Activity

Attachment E: *VEIC* Policy 1020 Provision of Mailing Lists

Attachment F: *VEIC* Policy 1045 Release of Customer-Specific Information

Attachment G: Confidentiality Memorandum

Attachment H: Confidentiality Non-Disclosure Agreement

Addendum 1 – ARRA Requirements
Addendum 2 – ARRA Reporting
[list any other Attachments to Contract here]

Option # 2: Time and Materials

Main Body of the *Contract*
Attachment A: *Contract Scope of Work*
Attachment B: Standard Billing Rates
Attachment C: Reimbursable Expenses Schedule
Attachment D: *VEIC* Policy on Political Activity
Attachment E: *VEIC* Policy 1020 Provision of Mailing Lists
Attachment F: *VEIC* Policy 1045 Release of Customer-Specific Information
Attachment G: Confidentiality Memorandum
Attachment H: Confidentiality Non-Disclosure Agreement

Addendum 1 – ARRA Requirements
Addendum 2 – ARRA Reporting

[list any other Attachments to Contract here]

[Note to drafters: delete the list of schedules that you ARE NOT using.]

The above Attachments are hereby incorporated into this *Contract* and made a part hereof for all purposes. If there is any conflict between the terms of these documents, the order of precedence indicated above shall be controlling.

43. CAPACITY CREDITS/ENVIRONMENTAL CREDITS

The *Contractor* agrees that Efficiency Vermont holds the sole rights to any electric system capacity credits and/or environmental credits associated with the energy efficiency measures for which incentives have been received. These credits will be used for the benefit of Vermont ratepayers.

44. ACCEPTANCE OF CONTRACT

This *Contract* will become effective when signed by both parties. Transmittal of signatures by facsimile, internet or other means is as valid for all purposes as the delivery of signed original documents.

IN WITNESS WHEREOF, *Contractor* and *VEIC* have caused this *Contract* to be executed.

FOR *CONTRACTOR*

FOR *VEIC*

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

FED ID #

ATTACHMENT B: STANDARD BILLING RATES

Please check the appropriate box:

Time and Materials *Attach estimate for basis of N-T-E amount. (Hours, labor class and rates)*

Total not-to-exceed amount of [\$_____]

Fixed Fee *(Defined scope of work for a fixed fee, plus reimbursable expenses.)*

(Attach estimate to establish fixed fee.)

Firm Fixed Fee amount of [\$_____]

ATTACHMENT C: REIMBURSABLE EXPENSES SCHEDULE

Copy in, or attach rate schedule with expenses.

Please check all boxes that apply:

Mileage (Current IRS Rate)

Photocopying (Cost)

Postage (Cost)

Miscellaneous Expenses (Cost)

ATTACHMENT D:

VEIC POLICY ON POLITICAL ACTIVITY

It is imperative that all *VEIC* employees clearly understand and abide by the limitations and prohibitions against using *VEIC* resources to conduct political activity. These restrictions also apply to contractors and members of the *VEIC* Board of Directors at the time they are representing themselves as and/or conducting work for *VEIC*.

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 Code. That status comes with rules that strictly prohibit *VEIC* employees, Board members and contractors from engaging in any of the following political activities:

- supporting or endorsing any candidate for political office;
- opposing any candidate for public office;
- publishing or distributing campaign literature or statements on behalf of or in opposition to any candidate for public office; and
- using the signature, letterhead, or return envelopes of any candidate for public office in conjunction with any fundraising or service solicitation(s) on behalf of *VEIC*, particularly if the recipient of the mailing could reasonably infer that the solicitation represents a cooperative effort between the candidate and *VEIC*.

In addition, *VEIC* employees, Board members and contractors are prohibited from engaging in other campaign-related activity, even if not directed toward a specific candidate, including the following:

- hosting or sponsoring candidates' debates or forums, unless very specific guidelines for the invitation and participation of candidates are followed;
- holding a public *VEIC* event to which candidate(s) for public office are invited, unless it is stated explicitly that *VEIC* neither supports nor opposes any person's candidacy. However, *VEIC* may invite a candidate to appear at a public event for reasons unrelated to the person's candidacy, such as because the candidate has a particular expertise, or holds a particular public office. In such a case, *VEIC* must avoid any and all references to either the election or the individual's candidacy.;
- attempting to influence legislation;

- forwarding *VEIC* or other general energy efficiency educational materials to some candidates in a race for office and not to others or undertaking additional efforts when responding to a candidate's inquiries concerning *VEIC*'s position's on public policy issues. *VEIC* may send its pre-existing educational materials to candidates, campaigns or political parties, unsolicited, in order to educate the candidates or parties about *VEIC*'s views and activities only if such materials are sent to all candidates in a race. *VEIC* may respond to candidates' inquires with available educational materials, but may not undertake any special work or research to respond to such requests because this would be seen by the I.R.S. as providing services to the campaign.;
- publishing or distributing the voting records of incumbent candidates unless strict nonpartisan guidelines are followed;
- requesting a candidate to pledge her or his support of a *VEIC* position if she or he is elected;
- conducting voter registration or "Get Out The Vote" drives unless carried out in the context of addressing a wide variety of general, unrelated issues;
- undertaking any activity or disseminating any information that exhibits, either implicitly or explicitly, a preference by *VEIC* for or against a particular candidate or political party.

Employees may engage in political activities only as private citizens and may not do so on behalf of *VEIC* or in any capacity as a representative of *VEIC*. An employee may not indicate that he or she represents *VEIC* or its views while taking part in any political campaign. Any participation in political activities must be conducted on an employee's own time and without use of any *VEIC* facilities, equipment or resources. Accordingly, employees are prohibited from:

- working for any political campaign during employee's *VEIC* work hours or on *VEIC* office premises;
- using *VEIC* letterhead, stationery, envelopes, office supplies, logo, or any other *VEIC* materials in connection with a political campaign;
- using *VEIC*'s photocopiers, postage meter, computer hardware or software, office space, or any other *VEIC* equipment in connection with any political campaign, even if *VEIC* would be reimbursed by the campaign. This prohibition means that employees may not:

- use *VEIC* telephones, fax machines or e-mails for outgoing messages in conjunction with a political campaign that contain material in opposition or in support of a candidate;
 - use a *VEIC* computer to forward any incoming political e-mails to other *VEIC* employees or to e-mail addresses outside of *VEIC*'s system;
 - subscribe via *VEIC*'s e-mail system to any e-mail list services that automatically sends e-mails in support of or in opposition to a particular candidate.
- selling, loaning, or providing *VEIC*'s customer, donor, or other mailing lists to any candidate for political office; and
 - utilizing *VEIC*'s mailing list(s) or e-mail lists to distribute any campaign-related literature.

Failure to adhere to this policy may result in termination of contracts and employee disciplinary action including termination of employment.

ATTACHMENT E: VEIC POLICY 1020 PROVIDING MAILING LISTS BASED ON ENERGY EFFICIENCY UTILITY (EEU) TRACKING SYSTEM DATA

Policy Statement

Vermont Energy Investment Corporation (VEIC) currently provides services as an Energy Efficiency Utility (EEU) through three separate publicly funded programs: Efficiency Vermont, Efficiency Smart, and the District of Columbia Sustainable Energy Utility. In the course of providing these efficiency services, as well as any similar EEU services in the future, VEIC compiles customer tracking system data.

The EEU data tracking system shall not be used for the purpose of providing mailing lists, including electronic mailing lists, for non-EEU purposes. The EEU Director may make exceptions to this policy.

It should be noted that this policy includes Vermont Energy Investment Corporation (VEIC) when it is acting as an energy service provider either inside or outside of Vermont. It should also be noted that there is a separate policy on the Release of Customer-Specific Information for Non-Energy Efficiency Utility (EEU) Purposes (Policy #1045).

Need

Periodic requests have been received from various entities for access to address lists based on the EEU data tracking system. Vermont Energy Investment Corporation needs to have a consistent policy for timely response to these requests.

Background

All Vermont Energy Investment Corporation staff and contractors have signed an agreement regarding the handling of confidential information that prohibits providing customer-specific information to any party for non-EEU purposes (see “General Confidentiality Guidelines” at G:\Efficiency Utility\Confidentiality\CIMS General Confidentiality Guidelines Memo.pdf). Under these confidentiality guidelines, we have agreed to “access, use, or disclose Confidential Information only for the purposes of implementing EEU energy efficiency services.”

Application Examples

Individuals and entities have made inquiries in the past regarding the provision of mailing lists to promote non-EEU conferences or events, to provide information to, or to market products or services to groups of customers or businesses that are identified in the EEU data tracking system. In general, our contractual confidentiality guidelines prohibit such non-EEU uses of tracking system information. There may be some limited situations where providing such

information to outside parties may be deemed to be for “EEU purposes.” These exceptions to this policy shall only be made by the EEU Director.

Audience: Who Needs to Understand the Policy?

- The Confidential Information Systems (CIMS) Coordinator
- All staff and contractors with access to customer information covered by the CIMS

Implementation Plan

By whom (and when) are noted in bold following each implementation step.

This Policy shall be distributed to:

- **All affected staff (by Human Resources Generalist at time of hire as part of new staff orientation and ongoing annually through key policy training).**
- **Contractors (by Vermont Energy Investment Corporation (VEIC) staff member who is responsible for obtaining contractor’s signature on the contract at time of contract execution).**

This revised policy shall be communicated to all existing staff, by the CIMS Coordinator (within 30 days of approval by Executive Leadership Team).

Senior Management Team approval date:	January 17, 2006
Effective date	February 1, 2006
Revision date	October 23, 2012
Revised Policy Executive Leadership Team Approval Date	November 30, 2012

ATTACHMENT F: VEIC POLICY 1045: POLICY ON RELEASE OF CUSTOMER SPECIFIC INFORMATION FOR NON-ENERGY EFFICIENCY UTILITY (EEU) PURPOSES

Policy Statement

Vermont Energy Investment Corporation (VEIC) currently provides services as an Energy Efficiency Utility (EEU) through three separate publicly funded programs: Efficiency Vermont, Efficiency Smart, and the District of Columbia Sustainable Energy Utility. In the course of providing these efficiency services, as well as any similar EEU services in the future, VEIC has access to certain customer-specific information that VEIC is obligated to keep confidential. Any customer-specific information obtained in the course of EEU operations may only be provided for purposes outside of that EEU's operations when there is a specific written request from the customer. This request shall be signed by the customer and shall specifically include:

- The date of the request
- The scope of customer information that is authorized to be provided
- The name and contact information of the party to whom it is to be provided

All such requests shall be provided to the Confidential Information Management System (CIMS) Coordinator prior to the provision of such information. The CIMS Coordinator shall keep copies of all such requests.

This policy includes the provision of customer-specific information to VEIC when it is acting as an energy service provider outside of its EEU role. It should also be noted that there is a separate policy on use of the EEU tracking system data (Policy #1020).

Any exception to this policy needs to have approval from the CIMS Coordinator

Need

There may be times when a customer wishes VEIC as their EEU to provide their customer-specific information to a third party for the benefit or convenience of the customer. Consistent with our goals of customer service and efficiency, we would want to respond positively to such customer requests, but need to assure that the confidentiality of customer information is adequately protected.

Background

All VEIC staff and contractors have signed an agreement regarding the handling of confidential information that prohibits providing customer-specific information to any party for non-EEU purposes (see "General Confidentiality Guidelines" at G:\Efficiency

Utility\Confidentiality\CIMS General Confidentiality Guidelines Memo.pdf). Under these confidentiality guidelines, we have agreed to “access, use, or disclose Confidential Information only for the purposes of implementing” EEU services.

Application Examples

A customer may request their EEU to provide electric consumption history or prior audit results to an energy service provider who is working for them outside any work on an EEU project. The EEU may have such information readily available from prior work with the customer and having the EEU provide this information to the energy service provider may be useful, as well as far more convenient and efficient for the customer. As a matter of customer service, we can honor such requests, but only in response to a specific, written request.

Audience: Who Needs to Understand the Policy?

- **The Confidential Information Systems (CIMS) Coordinator**
- **All staff and contractors with access to customer information covered by the CIMS who may be in communication with customers**

Implementation Plan

By whom (and when) are noted in bold following each implementation step.

This Policy shall be distributed to:

- All affected staff (by **HR Generalist at time of hire as part of new staff orientation and ongoing annually through key policy training**).
- Contractors (by **VEIC staff member who is responsible for obtaining contractor’s signature on the contract at time of contract execution**).

This revised policy shall be communicated to all existing staff, by the CIMS Coordinator (**within 30 days of approval by Executive Leadership Team**).

Senior Management Team approval date:	January 17, 2006
Effective date	January 30, 2006
Revision date	October 22, 2012
Revised Policy Executive Leadership Team Approval Date	November 30, 2012

ATTACHMENT G: GENERAL CONFIDENTIALITY GUIDELINES MEMO



To: Individuals handling confidential data
From: CIMS Coordinator
Date: November 8, 2013
RE: EFFICIENCY VERMONT CONFIDENTIAL INFORMATION

The Vermont Energy Investment Corporation (VEIC) operates Efficiency Vermont on behalf of the Vermont Public Service Board. In carrying out these duties VEIC and its Contractors 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 Efficiency Vermont’s confidential information.

The basic underlying principle for all Efficiency Vermont Confidential Information is to be used by VEIC and its Contractors only for the purposes of implementing Efficiency Vermont energy efficiency services. Thus, no Confidential Information should be made available to the public or provided to any VEIC or Contractors who will not be using the Confidential Information for Efficiency Vermont purposes.

This memo provides procedures and guidelines for the handling of Efficiency Vermont confidential information by VEIC staff and Contractors.

THE CIMS COORDINATOR

Efficiency Vermont 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 Efficiency Vermont Contractors and any other individuals or entities who have access to the Confidential Information have been provided a copy of this General Confidentiality Guidelines Memo. 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 gaining access to the Confidential Information.

2. Ensuring that all VEIC Employees, all Efficiency Vermont Contractors and any other individuals or entities who have access to Confidential Information have signed the protective agreement (see Appendix B) 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 Efficiency Vermont services and will use such Confidential Information strictly for Efficiency Vermont purposes.
4. Determining whether or not data or any particular item of information is or is not Confidential Information as defined above.
5. Conducting investigations into any alleged compromises, incidents and/or problems regarding Confidential Information, and reporting the results of such investigations to the senior managers or director of Efficiency Vermont.
6. If the results of such investigations determine that Confidential Information was actually improperly released, the CIMS Coordinator shall immediately notify the Department of Public Service (“Department”) Chief of Consumer Affairs and Public Information. 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 Efficiency Vermont Contractors 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 safeguarding of Confidential Information. The CIMS Coordinator shall gain approval of the Efficiency Vermont senior managers prior to implementing any CIMS modifications. The CIMS Coordinator will inform the Department’s Chief of Consumer Affairs and Public Information of the changes.
9. Providing VEIC and Efficiency Vermont Contractors with training on 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 on computer disks, tapes, or any other medium, drawings,

schematics, or any other tangible item. Once it has been determined that information is Confidential Information, it is subject to the procedures detailed in this memo.

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, 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 town allowed one to determine information about a specific customer because there was clearly only one customer in a particular town, 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 services approved by the Board for Efficiency Vermont 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-Efficiency Vermont energy efficiency services over any other entities. 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 is data related to the specific customer that it was providing Efficiency Vermont energy efficiency services to. 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 CONTRACTORS

1. All VEIC employees and all Efficiency Vermont Contractors, and any other individuals or entities shall, prior to receiving any Confidential Information, be provided with this "General Confidentiality Guidelines Memo". VEIC employees and Contractors will also sign a protective agreement prior to gaining access to Confidential Information. The protective agreement states that they shall access, use, or disclose to any other person, Confidential Information except in accordance with the CIMS procedures and only for the purposes of implementing Efficiency Vermont energy efficiency programs or services. The Contractor shall limit access to the Confidential Information to only those of the Contractor's employees or authorized representatives who (a) have a need to know the Confidential Information for the provision of services to Efficiency Vermont or to Efficiency Vermont customers, and (b) have signed confidentiality agreements containing confidentiality obligations at least as restrictive as those contained herein.

2. VEIC and Contractors shall deny all requests for Confidential Information from any and all parties whose intent is to use such confidential information for non-Efficiency Vermont purposes. If there is any question as to whether or not the requesting party will be using the Confidential Information to provide Efficiency Vermont energy efficiency services, then this request shall 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 requests shall also be referred to the CIMS Coordinator.
3. VEIC employees and Contractors shall 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 employees who are providing non-Efficiency Vermont services shall not use any Confidential Information in providing these non-Efficiency Vermont services.
5. VEIC employees 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 the CIMS procedures.
6. All paper copies of Confidential Information that are being disposed of shall first be shredded.
7. Efficiency Vermont cannot publish or print promotional materials identifying a specific customer, their location or identifiable Efficiency Vermont project information without prior written permission from the customer. Such materials can only be used for Efficiency Vermont marketing or promotional purposes.
8. All senior managers of VEIC and Efficiency Vermont shall receive a copy of this document and will read and fully understand the procedures outlined herein.
9. VEIC employees and Efficiency Vermont Contractors provided with a VEIC Computer Network login to access VEIC's computer network shall adhere to the following password provisions:
 - Users shall choose passwords that are difficult to guess.
 - Passwords must be seven characters in length or greater.
 - Passwords must contain any two of the following: alpha, numeric, capitalization, characters.
 - Passwords must not be a dictionary word or include personal names.
 - Passwords must not be written down and left in a place where unauthorized persons might discover them.
 - Under no circumstances, shall VEIC employees or Contractors share or reveal their passwords to anyone at all.

10. 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.

11. 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 Efficiency Vermont'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.
- There are any other problems or concerns regarding Efficiency Vermont's Confidential Information Management Systems.

If further clarification or additional assistance is needed please consult the CIMS Plan or contact Efficiency Vermont's CIMS Coordinator (email: cimscoordinator@veic.org; phone 802-540-7815).

Please sign on the line below, indicating that you have read and understand this memo; and should the scope of your work change making it applicable, acknowledging that you are required to abide by the procedures detailed in these documents.

Signature

Printed Name

Organization Name

Date

ATTACHMENT H: CONFIDENTIALITY NON-DISCLOSURE AGREEMENT

PROTECTIVE AGREEMENT

This PROTECTIVE AGREEMENT is made by and between the Vermont Energy Investment Corporation (“VEIC”) and _____ (the “Recipient”), effective as of _____ [DATE].

WHEREAS, on December 20th, 2010, VEIC Received an Order of Appointment from the Vermont Public Service Board (the “Board”) implementing Vermont’s Energy Efficiency Utility (operated as “Efficiency Vermont”) that was authorized in Docket No. 7466, and

WHEREAS, pursuant to that Order of Appointment, VEIC and all VEIC Contractors are required to maintain the confidentiality of information and must agree (1) to abide by the guidelines detailed in the Confidential Information Management System, and (2) not to provide any confidential information to affiliates not directly involved with Efficiency Vermont activities.

NOW THEREFORE, 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 Efficiency Vermont.
- b) "Customer-specific information" is defined as any information which specifically identifies a single Efficiency Vermont or Vermont electric utility customer using one or more unique references including, but not limited to, customer name, mailing address, phone numbers or e-mail addresses, 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.
- 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 services approved by the Board for Efficiency Vermont implementation. 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-Efficiency Vermont energy efficiency services over any other entities.
- d) "Confidential Information" shall not include any materials or information which:

- 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
- Is known to the Recipient and was not Confidential Information at the time of its original disclosure to the Recipient; or
- Is furnished to the Recipient by a third party who legally obtained said information and the right to disclose it.

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 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 Efficiency Vermont, 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, 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 Efficiency Vermont.
- 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 Order of Appointment between VEIC and the Board, 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 Agreement by the Recipient or his/her assigns, employees, consultants, affiliates or related parties, and will cooperate with VEIC and the Board 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 either a VEIC employee or a VEIC Contractor is grounds for immediate termination in the case of the VEIC employee and in the case of a VEIC Contractor grounds for immediate default termination.

- c) The Recipient understands and acknowledges that any disclosure or misappropriation of any of the Confidential Information in violation of this 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 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 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 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 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 State of Vermont, and both parties further consent to jurisdiction by the state and federal courts sitting in the State of Vermont.
- e) If any provision of this 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 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 agreement shall be strictly adhered to by all individuals, subcontractors and consultants employed by such organization that have access to Confidential Information.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

VEIC By:

Signature: _____ Date: _____

Printed Name _____

Title _____

RECIPIENT By:

Signature: _____ Date: _____

Printed Name: _____

Organization Name: _____

Sample for Review