

DOB Net-Zero Energy Participation Agreement

General Agreement This DOB Net-Zero Energy Participation Agreement (Participation Agreement) is between the Department of Buildings (DOB) and the participating party of: _____ (Participating Party or Participant). This Participation Agreement and the DOB Net-Zero Energy Technical Guide (Technical Guide) sets out the terms and conditions with which the Participating Party must comply in order to participate in the Net-Zero Energy Program (NZE Program). This program is designed to incentivize net-zero energy development in the District through items identified in the Technical guide.

The term of this Participation Agreement is effective: _____ and will end September 30, 2024. Any funding provided by the DC Sustainable Energy Utility (DCSEU) will be implemented and tracked through a separate agreement and is subject to available funds to be provided by DCSEU.

Project Team Enrollment Project teams that wish to participate in the program must submit the following:

1. Signed and dated DOB Participation Agreement
2. Project and Team Information sheet
3. Submittal checklist and all identified documentation

Enrollment into the program does not guarantee additional project approval or any DCSEU incentive. Each eligible project must submit a new application and be reviewed for approval.

DOB NZE Program Commitments This Participation Agreement provides the Participating Party with the following benefits:

1. Up to date materials, documentation, resources, and support that provide a clear path to program success
2. Pre and post construction marketing material packets.
3. Program development and support that bring long-term value to participating parties
[Incentives from DCSEU are implemented and tracked through a separate agreement.]

Participating Party Responsibilities In order to participate in the program, the Participating Party must meet the following requirements, as well as all requirements in the Technical Guide and must comply with all other terms and conditions of this Participation Agreement:

1. The project will follow design elements identified in the energy model or the Participating Party must re-submit an energy model incorporating changes and justification for changes.
2. Participating Party must schedule a rough and final inspection directly with DOB. The final

inspection may require documentation submittals. If issues are identified on final inspection, a commitment to remediate promptly, within the discretion of the Green Ambassador or DOB must be provided.

3. Provide clear and accurate information about how the project meets requirements listed in the Renewable Generation Target documentation.
4. Participants agree to adhere to all program rules and will immediately contact the Green Ambassador if the project team believes completion in the program is jeopardized.
5. Participating Party shall facilitate interaction between the Green Ambassador and the project owners. The Participating Party shall also provide descriptive information and supporting documentation related to energy efficiency and sustainability measures as it pertains to the project.
6. Participating Party agrees to provide evidence of costs for items crucial to achieving net-zero. Such evidence must be provided to the DCSEU to document that costs/expenses have been incurred toward the development of the project.

General Terms of the Participation Agreement

1. **Good Standing:** To the extent the Participant is an entity, the participant warrants that it is (i) duly organized, validly existing and in good standing under the laws of its state of jurisdiction and is qualified to do business and is in good standing under the laws of the District of Columbia, (ii) is authorized to perform under the Participation Agreement and (iii) has all necessary power to execute and deliver the Participation Agreement.
2. **Counterpart Execution:** This Participation Agreement may be executed in one or more counterparts, which counterparts, when taken together, shall constitute a single, binding instrument.
3. **Governing Law:** This Participation Agreement shall be governed by, construed and enforced in accordance with the laws of the District of Columbia.
4. **Valid Execution and Delivery:** This Participation Agreement has been duly executed and delivered by the participant, and constitutes the legal, valid, and binding obligations of the participant, enforceable against the participant and its successors and assigns, in accordance with its terms.
5. **Severability:** If any of the covenants, conditions or terms of this Participation Agreement shall be found void or unenforceable for whatever reason by any court of law or of equity, then every other covenant, condition or term herein set forth shall remain valid and binding.
6. **Anti-deficiency:** The parties acknowledge and agree that their respective obligations to fulfill financial obligations of any kind pursuant to any and all provision of this Participation Agreement, or any subsequent Participation Agreement entered into by the parties pursuant to this Participation Agreement, are and shall remain subject to the provision of (i) the Federal Anti-deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1351, (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01-355.08 (2001), (iii) D.C. Official Code § 47-105 (2001), and (iv) D.C. Official Code § 1-204.46 (2006 Supp.), as the foregoing statutes may be amended from time to time, regardless of whether a particular obligation has been expressly so conditioned.
7. **Confidential Information:** The parties to the Participation Agreement will use, restrict, safeguard and dispose of all information related to services provided by the Participation Agreement, in accordance with all applicable federal and local statutes, regulations and

policies.

8. **Applicable Law:** The parties shall comply with all applicable federal and/or District laws, regulations and rules, whether now in force or hereafter enacted or promulgated.
9. **Notice:** The following individuals are the contact points for each party under this Participation Agreement:

For DOB, Michael Brown, Department of Buildings
Affairs, 1100 4th Street SW, Washington, DC 20024, Telephone: (202) 442-
4400, Email: michael.brown@dc.gov

For DCSEU, Ernest Jolly, General Manager,
District of Columbia Sustainable Energy Utility,
1 M Street SE, 3rd floor, Washington, DC 20003,
Telephone: (202) 677-4806, Email: ejolly@dcseu.com

10. **Indemnification:** The Participant agrees to defend, indemnify and hold harmless the District, its officers, agencies, departments, agents, and employees (collectively the “District”) from and against any and all claims, losses, liabilities, penalties, fines, forfeitures, demands, causes or action, suits, costs and expenses incidental thereto (including cost of dense and attorneys’ fees), resulting from, arising out of, or in any way connected to activities or work performed by the Participating Party, Participating Party’s officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Participating Party in performance of this Participation Agreement. The Participating Party shall also repair or replace District property that is damaged by the Participating Party, Participating Party’s officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the participating party while performing work hereunder. The indemnification obligation under this section shall not be limited by the existence of any insurance policy or by any limitation on the amount of type of damages, compensations or benefits payable by or for the participating party or any subcontractor, and shall survive the termination of the Participation Agreement. The District agrees to give the Participating Party written notice of any claim of indemnity under this section. Additionally, the participating party shall have the right and sole authority to control the defense or settlement of such claim, provided that no contribution or action by the District is required in connection with the settlement. Monies due or to become due the Participating Party under the Participation Agreement may be retained by the District as necessary to satisfy any outstanding claim which the District may have against the Participating Party.
11. **Non-endorsement:** DOB is executing this Participation Agreement in furtherance of its NZE Participation Agreement and in cooperation of work being undertaken by DCSEU under its contract with DOEE. The execution of this Participation Agreement by DOB or any actions by DOB in furtherance of the purposes hereof shall not be deemed an endorsement of the Participating Party.
12. **Good Faith Conflict Resolution:** The parties hereto shall in good faith seek to resolve any conflicts hereunder. DOB may by written notice to the Participant, terminate this Participation Agreement without liability in the event of any breach or violation of the Participation Agreement. Notwithstanding the forgoing and in addition thereto, the District shall also have the right at its sole discretion without cause, upon thirty days’ notice to the Participating Party, to terminate this Participation Agreement.
13. **Information Disclosure:** The Participating Party shall at all times obtain the prior written approval of DOB before any of its officers, agents, employees or subcontractors, either during or

after the expiration or termination of this Participation Agreement, makes any materials relating to the work performed or data collected in connection with this Participation Agreement available to the public.

14. **Conflict between the Participation Agreement and the Memorandum of Understanding (MOU):** This Participation Agreement is entered into pursuant to the MOU for Fiscal Year 2021 by and between DOB and DCSEU. In the event of any conflict between this Participation Agreement and the MOU, the MOU shall supersede. In no event shall the obligations of DOB hereunder exceed those agreed to in the MOU.

For Participating Party:

For DOB:

By: _____ By: _____ Name:
_____ Name: _____

Title: _____ Title: _____

Date: _____ Date: _____