

Exhibit C
General Terms and Conditions

1. AGREEMENT MANAGEMENT

- A. The Recipient's Project Manager is responsible for the day-to-day project status, decisions, and communications with the Energy Commission's Agreement Manager. The Recipient may change its Project Manager by giving written notice to the Energy Commission, but the Energy Commission reserves the right to approve any substitution of the Project Manager.
- B. The Energy Commission may change its Agreement Manager at any time by giving written notice to the Recipient. The Energy Commission's Agreement Officer will sign the written notice.

2. STANDARD OF PERFORMANCE

The Recipient shall be responsible in the performance of its and its subawardee and vendor's work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures. Any costs for failure to meet these standards, shall be borne in total by the Recipient/subawardee/vendor and not the Energy Commission.

3. PROCUREMENT

When procuring property and services with funds awarded under this Agreement, the Recipient and subawardees shall follow the following procurement policies and procedures of 10 Code of Federal Regulations (CFR) Part 600: DOE Financial Assistance Regulations (<http://ecfr.gpoaccess.gov>), which are incorporated by reference in Exhibit E:

- A. State governments shall follow the same policies and procedures they use for procurements from their non-Federal funds.
- B. Local governments shall follow 10 CFR Section 600.236(b) through (i).
- C. Institutions of higher education, hospitals, and other nonprofit organizations shall follow 10 CFR Sections 600.140 through 600.149.
- D. For-profit organizations shall follow 10 CFR Section 600.331.

4. **SUBAWARDS**

The Recipient may enter into agreements with the other firms and/or individuals, and shall manage their performance.

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relationship between the Energy Commission and any subawardees or vendors, and no subaward shall relieve the Recipient of its responsibilities and obligations under this Agreement. The Recipient agrees to be as fully responsible to the Energy Commission for the acts and omissions of its subawardees or vendors and/or persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Recipient. The Recipient's obligation to pay its subawardees or vendors is an independent obligation from the Energy Commission's obligation to make payments to the Recipient. As a result, the Energy Commission shall have no obligation to pay or to enforce the payment of any monies to any subawardee or vendor.
- B. The Recipient shall be responsible for establishing and maintaining contractual agreements with and the reimbursement of each of the subawardees or vendors for work performed in accordance with the terms of this Agreement. The Recipient shall be responsible for: (1) scheduling and assigning subawardees or vendors to specific tasks in the manner described in this Agreement; (2) coordinating subawardee or vendor accessibility to Energy Commission staff; and (3) submitting completed products to the Agreement Manager.
- C. Required Subaward Provisions

All subawards shall contain the following in addition to any other requirements of this Agreement:

- 1) The provisions of Exhibit D. Vendor subawards shall only contain the provisions in Attachment 7 of Exhibit D (Exhibit D Vendor Flow-Down Provisions).
- 2) The provisions required by 10 CFR Section 600.236(i).
- 3) Section 6 "Recordkeeping and Inspection of Records" in this Exhibit C.
- 4) A provision that further assignments shall not be made to any third or subsequent tier subawardee without additional written consent of the Energy Commission.
- 5) Provisions recognizing the applicability of the funding limitations of 10 CFR Section 420.18, as modified by Section 9.7 of Exhibit 1 of the U.S.

- 6) A provision that directs subawardees to submit copies of executed subawards and applicable prevailing wage determinations to the Agreement Manager, pursuant to the "Subaward Documentation" provision in this Section 4 of this Exhibit C.
- 7) A provision that the Energy Commission must approve of executed subawards and prevailing wage determinations prior to the commencement of any work under a subaward, pursuant to the "Subaward Documentation" provision in this Section 4 of this Exhibit C.
- 8) Section 7 "Reports" in this Exhibit C.
- 9) Section 8 "Purchase of Equipment" in this Exhibit C.
- 10) Section 9 "Intellectual Property" in this Exhibit C.
- 11) Section 19 "Confidentiality" in this Exhibit C.
- 12) Section 21 "Indemnification" in this Exhibit C.
- 13) Section 22 "Fiscal Accounting Requirements" in this Exhibit C.
- 14) Section 23 "Certifications and Compliance" in this Exhibit C.
- 15) Section 30 "Survival" in this Exhibit C.
- 16) Section 31 "Recipient and All Subcontractors Shall Comply with the Information Practices Act" in this Exhibit C.

D. Prevailing Wages

- 1) The Recipient must ensure that any subawardees or vendors under this Agreement are paid in compliance with federal prevailing wage law as provided in Section 2.M. of Exhibit D ("Davis-Bacon Act and Contract Work Hours and Safety Standards Act"), and with California state prevailing wage law. When advertising for a public contract opportunity, the Recipient and its subawardees or vendors must attach the applicable wage determinations to the solicitation, assistance agreement, and resulting contract or grant.
- 2) The Recipient agrees to pay not less than the specified general prevailing wage rates to all workers employed in the execution of the Agreement subject to the requirements of California Labor Code Section 1770 et seq. The Recipient is responsible for ascertaining and complying with all public

work requirements, including current prevailing wage requirements and rates for crafts and any rate changes that occur during the life of the Agreement. Information on all prevailing wage rates and all rate changes are to be posted at the job site for all workers to view. The Recipient is further responsible to keep accurate payroll records and comply with all other applicable requirements, including those provided in the California Labor Code.

E. Subaward Documentation

1) Subawards and Prevailing Wage Determinations

(a) The Recipient must submit the following to the Agreement Manager within thirty (30) days or less of execution of any subaward under this Agreement:

- (1) The complete, executed subaward; and
- (2) The applicable wage determinations for all labor and mechanic work to be performed under the subaward.

The Energy Commission must approve the executed subaward and applicable wage determinations prior to the commencement of any work under the subaward. Execution of this Agreement does not constitute the Energy Commission's approval of prevailing wage rates identified by the Recipient prior to execution of the Agreement. The Energy Commission will review executed subawards and prevailing wage determinations after this Agreement has been approved and executed. Installation costs incurred by the Recipient prior to the Energy Commission's approval of the subaward and wage determinations are not reimbursable under this Agreement.

(b) The Recipient must include provisions in all subawards that:

- (1) Direct its subawardees to submit copies of executed subawards and applicable wage determinations to the Agreement Manager; and
- (2) State that the Energy Commission must approve the executed subawards and applicable wage determinations prior to the commencement of any work under the subaward.

(c) The requirements specified in (a) and (b) above also apply to subawards funded in whole or in part with cost share funds, where the purpose of such subawards is to carry out or support any portion of this Agreement.

2) Certified Payrolls

The Recipient must submit to the Energy Commission on a weekly basis a copy of all certified payrolls prepared in accordance with 29 CFR Section 5.5 (a)(3)(ii) for all subawardees that are subject to the Davis-Bacon Act. See Section 2.M. of Exhibit D, "Davis-Bacon Act and Contract Work Hours and Safety Standards Act."

3) Solicitations and Proposals/Bids

The Recipient shall maintain the following subaward documentation and provide it to the Agreement Manager or Agreement Officer, upon request:

- (a) All solicitations for services or products required to carry out the terms of this Agreement.
- (b) Copies of solicitation proposals or bids received.
- (c) *If the Recipient is a local government that has issued a noncompetitive proposal*, justification and cost analysis for noncompetitive proposals in accordance with 10 CFR Section 600.236(d)(4) specifying why competitive procurement was infeasible and which of the following circumstances applies:
 - (1) The item is available only from a single source;
 - (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - (3) The U.S. Department of Energy authorizes noncompetitive proposals; or
 - (4) After solicitation of a number of sources, competition is determined inadequate.

F. Assignment of Subawards

The Recipient shall not allow any subawardees or vendors to assign any portion of a subaward related to this Agreement to a third party or subsequent tier subawardees or vendors without first obtaining the written consent of the Agreement Manager and following the procedures below in the "Process for Additions, Removal or Substitutions of Subawardees or Vendors" provision of this Section 4 in this Exhibit C.

G. Notification of Subaward Termination

Upon the termination of any subaward, the Recipient shall notify the Agreement Manager and Agreement Officer immediately in writing.

H. Process for Offering Work; Process for Adding or Substituting People Listed in the Agreement

If the Energy Commission or Recipient requires the replacement or substitution of a person listed in the Agreement to provide a particular service, or requires that a new person is added, the Recipient shall:

- 1) First offer the work to qualified persons already listed in this Agreement (either an employee of the Recipient or a subawardee or vendor).
- 2) If there is no available person listed in this Agreement who can perform the work, then the Recipient shall provide documentation from all the persons who were offered and declined the work to the Agreement Manager. Then, the Recipient may request to add a new person to the Agreement. A person added to the Agreement is thereafter treated as a person listed in this Agreement and can be offered future work without first offering it to originally listed people.
- 3) If the person added is an employee of the Recipient or an existing subawardee or vendor, the Recipient shall provide the added employee's pay rate, classification and resume to the Agreement Manager, and the Agreement Manager may approve the new person and rate. The Agreement Manager approval is only valid if made in writing. In addition, any added person must fit within a classification and corresponding rate already listed in the Agreement. Adding classifications and/or higher rates requires a formal amendment and cannot be accomplished through this process.
- 4) If the person to be replaced or substituted was identified in the Agreement as a Disabled Veteran Business Enterprise (DVBE) firm, refer to the "Disabled Veteran Business Enterprise (DVBE) Requirements" paragraph below for changes to DVBEs.
- 5) If the person added is a new subawardee or vendor, the Recipient shall use the process outlined below.

I. Process for Additions, Removal or Substitutions of Subawardees or Vendors

The Energy Commission reserves the right to replace a subawardee or vendor, request additional subawardees or vendors, and approve additional subawardees or vendors requested by the Recipient. Such changes shall be subject to the following conditions:

- 1) If the Energy Commission or Recipient requires the replacement, substitution or addition of a subawardee or vendor, the subawardee or vendor shall be selected using either: (a) A competitive bid process with written evaluation criteria by obtaining three (3) or more bids and advertising the work to a suitable pool of subawardees or vendors including without limitation: California Contracts Register; the Recipient's mailing lists; mass media; professional papers or journals; posting on websites; and telephone

or email solicitations; or (b) Non-competitive bid (sole source) process with a specific subawardee or vendor.

- 2) The Recipient may also need to comply with Disabled Veteran Business Enterprise requirements for the proposed subawardees or vendors.
- 3) When a subawardee or vendor is proposed to be added, under either a competitive or non-competitive process, the Agreement Manager shall complete and submit to the Agreement Officer a "Subawardee or Vendor Add" form. This form identifies the new subawardee or vendor, resumes, what bidding method was used to obtain the subawardee or vendor (competitive or non-competitive), and rates. The proposed subaward can be executed only after the Agreement Officer approves the "Subawardee or Vendor Add" form.

5. **DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) REQUIREMENTS**

A. Reporting

If the Recipient made a commitment to achieve DVBE participation for this Agreement, the Recipient must within sixty (60) days of receiving final payment under this Agreement, certify in a report to the Agreement Officer: (1) the total amount the Recipient received under this Agreement; (2) the name and address of the DVBE(s) that participated in the performance of the Agreement; (3) the amount each DVBE received from the Recipient; (4) that all payments under the Agreement have been made to the DVBE(s); and (5) the actual percentage of DVBE participation that was achieved. Pursuant to California Military and Veterans Code Section 999.5(d), a person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

B. Substitution of DVBE

The Recipient shall use each DVBE identified in its proposal or listed in this Agreement. The Recipient understands and agrees that if DVBEs were identified in its proposal or listed in this Agreement, award of this Agreement is based in part on its commitment to use the DVBE subcontractor(s). If the Recipient believes an identified DVBE must be replaced or substituted, the Recipient shall inform the Agreement Manager and Agreement Officer in writing of the reason for the DVBE replacement. Pursuant to California Military and Veterans Code Section 999.5 (e), a DVBE subcontractor may only be replaced by another DVBE subcontractor and must be approved by the Department of General Services. The Recipient shall complete revised DVBE certification forms (provided by the Agreement Officer) identifying the new DVBE.

C. Amendment

This Agreement shall be amended if: a DVBE must be substituted; or there are changes to the scope of work that impact the DVBE subcontractor(s) identified in the proposal or listed in this Agreement.

D. Grounds for Termination; Damages; Penalties

Failure of the Recipient to seek substitution and adhere to the DVBE participation level identified in the proposal or listed in this Agreement may be cause for, along with any other rights and remedies: (1) termination of this Agreement; (2) recovery of damages under rights and remedies due to the State; and (3) penalties as outlined in California Military and Veterans Code Section 999.9 and California Public Contract Code Section 10115.10.

6. **RECORDKEEPING AND INSPECTION OF RECORDS**

The Recipient shall retain backup source documentation for audit purposes, and make the documentation available to the Energy Commission and the Federal government upon request. In accordance with 10 CFR Part 600, the Recipient accounting records must be supported by documentation that includes but is not limited to cancelled checks, paid bills, payrolls, time and attendance records, and Agreement and subgrant award documents. Pursuant to 10 CFR Section 600.242, the Recipient agrees to maintain records that directly pertain to, and involve transactions relating to, this Agreement for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Recipient shall include appropriate provisions in each of its subawards to secure adequate backup documentation to verify all subawardee and vendor services and expenses invoiced for payment under this Agreement.

Further, the Recipient agrees to incorporate an audit of this project within any scheduled audits, when specifically requested by the State. Recipient agrees to include a similar right to audit in any subcontract. Recipient is solely responsible for its costs of an audit.

Recipients are strongly encouraged to conduct annual audits in accordance with the single audit concept. The Recipient should provide two copies of the independent audit report and any resulting comments and correspondence to the CAM within 30 days of the completion of such audits.

In accordance with Sections 902, 1514 and 1515 of the American Recovery and Reinvestment Act of 2009 (ARRA), the Recipient agrees that it shall permit the State of California, the United States Comptroller General or his representative, or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this Agreement; and (2) interview any officer or employee of the Recipient or any of its subawardees or vendors regarding the activities funded with funds appropriated or otherwise made available by ARRA. The Recipient shall include this provision in all of its agreements with its subawardees, and vendors from whom it acquires goods or services in its execution of ARRA-funded work.

7. REPORTS

A. **Federal Reporting Requirements:** The Recipient shall submit progress reports to the Energy Commission in accordance with Agreement requirements.

B. **Additional Reporting Requirements:**

1) **Progress and Final Reports:** The Recipient shall prepare progress reports summarizing all activities conducted by the Recipient to date on a schedule as provided in Exhibit A. At the conclusion of this Agreement, the Recipient shall prepare a comprehensive Final Report, on a schedule as provided in Exhibit A.

2) **Title:** The Recipient's name shall only appear on the cover and title page of reports as follows:

California Energy Commission
Project Title
Agreement Number
By (Recipient)

3) **Non-disclosure:** During the Agreement, the Recipient must receive approval from the Commission Agreement Manager prior to disclosing to a third party the contents of any draft product.

4) **Disclaimer:** To the extent the Recipient has a right under this Agreement to publish or utilize an Agreement product (e.g., report or written document), the Recipient shall include the following acknowledgement and disclaimer:

"This material is based upon work supported by the California Energy Commission and the U.S. Department of Energy under Award Number(s) DE-0000221."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the California Energy Commission, the United States Government, nor any agency thereof, nor any employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the California Energy Commission, the United States

Government, or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the California Energy Commission, the United States Government, or any agency thereof.”

8. **PURCHASE OF EQUIPMENT**

- A. Equipment identified in this Agreement is approved for purchase.
- B. Equipment not identified in this Agreement shall be subject to prior written approval from the Contract Manager.
- C. For all equipment purchased with funds under this Agreement, Recipient shall adhere to all the provisions of Title 10 CFR Part 600, including 600.134, and any other applicable requirements. Subject to these requirements, as between the Energy Commission and the Recipient, title to equipment vests with the Recipient. However, the Recipient may not sell, lease, or encumber the property (i.e., place a legal burden on the property such as a lien) during the Agreement term without the Commission Agreement Manager’s prior written approval.

9. **INTELLECTUAL PROPERTY RIGHTS OF PARTIES**

If intellectual property will be used or developed under this Agreement, the following provisions apply.

- A. Exhibit D, Attachment 5 contains the intellectual property rights between the Energy Commission and the U.S. Department of Energy (DOE), which has funded this Agreement.
- B. The Contractor shall obtain the same rights for the Energy Commission and DOE from all subawardees, vendors, and others who produce copyrightable material, data, works of art, works of fine art or subject inventions under this Agreement. The Contractor shall incorporate these paragraphs, modified appropriately, into its agreements with subawardees and vendors. No subaward shall be entered into without these rights being assured to the Energy Commission and DOE from the subawardee or vendor.
- C. Rights to DOE
 - 1) The Contractor grants to DOE for all copyrightable work a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.
 - 2) The Contractor acknowledges and agrees that DOE has the right to:
 - (a) Obtain, reproduce, publish, or otherwise use the data first produced under the Agreement; and

- (b) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

D. Rights to Energy Commission

- 1) The Contractor grants to the Energy Commission for all copyrightable material, work of art and original work of authorship first produced, composed or authored in the performance of this Agreement a royalty-free, paid-up, non-exclusive, irrevocable, nontransferable, worldwide license to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art, and to authorize others to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art.
- 2) The Contractor grants to the Energy Commission a no-cost, nonexclusive, nontransferable, irrevocable license to use or have practiced for or on behalf of the State of California for governmental purposes any subject invention(s) first produced in the performance of this Agreement.
- 3) The Contractor grants to the Energy Commission the no-cost use of any technical data first produced or specifically used in the performance of this Agreement.
- 4) The Contractor grants to the Energy Commission, for all marks developed and first used under this Agreement, a no-cost, irrevocable license to use the marks for purposes of furthering programs funded under this Agreement or other related or successor programs implemented by the Energy Commission. For purposes of this paragraph, "marks" include logos, symbols, service marks, trademarks, registered marks, or other indicia of origin, whether or not registered.

E. "Data" as used in this Agreement means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research or experimental, developmental or engineering work, or be usable or be used to define a design or process, or to support a premise or conclusion asserted in any deliverable document required by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, data or information, etc. It may be in machine form, such as punched cards, magnetic tape or computer printouts, or may be retained in computer memory.

F. "Deliverable data" is that data which, under the terms of this Agreement, is required to be delivered to the Energy Commission and shall belong to the Energy Commission.

- G. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under the Contractor's control prior to commencement of performance of this Agreement, and which the Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Contract is commenced. The title to "proprietary data" shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of the Energy Commission's access to, and the testimony available regarding, the proprietary data shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.
- H. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Agreement at the Energy Commission's expense, together with complete documentation thereof, shall be treated in the same manner as "generated data." "Generated data" shall be the property of the Energy Commission, unless and only to the extent that it is specifically provided otherwise in this Agreement.
- I. As to "generated data" which is reserved to the Contractor by the express terms hereof, and as to any pre-existing or "proprietary data" which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, the Contractor shall preserve the same in a form which may be introduced as evidence in a court of law at the Contractor's own expense for a period of not less than three (3) years after receipt by the Energy Commission of the Final Report herein.
- J. Before the expiration of the three (3) years, and before changing the form of or destroying any data, the Contractor shall notify the Energy Commission of any contemplated action and the Energy Commission may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the Energy Commission so elects, the expense of further preserving data shall be paid for by the Energy Commission. The Contractor agrees that the Energy Commission may at its own expense, have reasonable access to data throughout the time during which data is preserved. The Contractor agrees to use its best efforts to furnish competent witnesses or to identify competent witnesses to testify in any court of law regarding data.
- K. The Contractor agrees that it shall not use or allow subcontractors or other third parties to use any deliverable or generated data owned by the Energy Commission and in the possession or control of the Contractor, subcontractor, or third party after termination of this Agreement. Neither the Contractor, subcontractors, nor other third parties have a license to use the data after

termination of this Agreement. The Contractor, subcontractor, and other third parties may use the data to the same extent as other members of the public if the Energy Commission makes the data publicly available after termination of this Agreement.

- L. The Contractor agrees that it shall return all deliverable and generated data owned by the Energy Commission to the Commission within thirty (30) days of termination of this Agreement, including any backup copies of the data. The Contractor shall destroy the data if its return is infeasible. "Destroy" means to physically or electronically eliminate or ruin the data beyond all possible recovery.

Destruction of the data is subject to the Energy Commission's approval. The Contractor must provide the Contract Manager written notice of its intent to destroy any deliverable or generated data owned by the Energy Commission within fifteen (15) days of termination of this Agreement. The notice of intent must identify the data and specify the reason that its return is infeasible. The Contract Manager will notify the Contractor of the Energy Commission's decision regarding destruction of the data within thirty (30) days of receipt of the notice of intent. The Contractor shall provide the Contract Manager with a written certification of destruction within five (5) days of destruction of the data.

The Contractor agrees to indemnify the Energy Commission in the event of breach of its agreement not to use the data and to destroy data for which return is infeasible.

10. **TERMINATION**

The parties agree that because the Energy Commission is a state entity, it must be able to immediately terminate the Agreement upon the default of Recipient, and to proceed with the work required under the Agreement in any manner the Energy Commission deems proper. The Recipient specifically acknowledges that the Energy Commission's unilateral termination of the Agreement under the terms set forth below is an essential term of the Agreement, without which the Energy Commission would not enter into the Agreement. The Recipient further agrees that upon any of the events triggering the unilateral termination the Agreement by the Energy Commission, the Energy Commission has the sole right to terminate the Agreement, and it would constitute bad faith of the Recipient to interfere with the immediate termination of the Agreement by the Energy Commission.

This Agreement may be terminated for any reason set forth below.

A. With Cause

In the event of any breach by the Recipient of the conditions set forth in this Agreement, the Energy Commission may, without prejudice to any of its legal

actions or remedies, terminate this Agreement for cause upon five (5) days written notice to the Recipient. "Cause" includes without limitation:

- 1) Failure to perform or breach of any of the terms or covenants at the time and in the manner provided in this Agreement;
- 2) Inability of the Recipient to pay its debts as they become due and/or the Recipient's default of an obligation that impacts its ability to perform under this Agreement;
- 3) Determination by the Energy Commission or the Executive Director after notice and hearing that the Recipient or any agent or representative of the Recipient offered or gave gratuities to any officer or employee of the Energy Commission, with a view toward securing an Agreement or securing favorable treatment with respect to awarding, amending or making a determination with respect to performance of the Agreement;
- 4) Significant change in Energy Commission policy such that the work or product being funded would not be supported by the Energy Commission;
- 5) Reorganization to a business entity unsatisfactory to the Energy Commission; and
- 6) The retention or hiring of subawardees/vendors, or the replacement or addition of personnel, that fail to perform to the standards and requirements of this Agreement.

B. Without Cause

The Energy Commission may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Recipient. In such event, the Recipient agrees to use all reasonable efforts to mitigate its expenses and obligations hereunder.

11. **ENFORCEABILITY**

The Recipient agrees that if it or one of its subawardees or vendors fails to comply with all applicable Federal and State requirements governing the use of the Agreement funds, the State may withhold or suspend, in whole or in part, funds awarded under the Agreement, or recover misspent funds. This provision is in addition to all other actions and remedies available to the Energy Commission and the State under this Agreement's terms and all applicable Federal and State laws.

12. **WAIVER**

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, meaning in addition to every other remedy provided therein or by law. The failure of the Energy Commission to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the Recipient of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Agreement or any part of it or the right of the Energy Commission to thereafter enforce each and every such provision.

13. **CAPTIONS**

The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.

14. **PRIOR DEALINGS, CUSTOM OR TRADE USAGE**

In no event shall any prior course of dealing, custom or trade usage modify, alter, or supplement any of these terms.

15. **NOTICE**

This paragraph applies to situations where notice is required to be given by this Agreement, or the parties are asserting their legal rights and remedies. This paragraph is not intended to apply to normal, daily communication between the parties related to progress of the work.

The parties to the Agreement must give legal notice using U.S. Mail, overnight mail, or personal delivery, providing evidence of receipt to the person identified in Exhibit F of this Agreement for legal notices. Delivery by fax or e-mail is not considered legal notice for the purpose of this paragraph.

Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In this event, the effective date shall be postponed until the next business day.

16. **STOP WORK**

The Agreement Officer may, at any time, by written notice to the Recipient, require the Recipient to stop all or any part of the work tasks in this Agreement. Stop Work Orders may be issued for reasons such as a project exceeding budget, work that falls below the applicable standard of performance, out of scope work, delay in project schedule, and misrepresentations.

- A. Compliance. Upon receipt of such stop work order, the Recipient shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- C. Revoking a Stop Work Order. The Recipient shall resume the stopped work only upon receipt of written instructions from the Energy Commission's Agreement Officer canceling the stop work order.

17. **INCORPORATION OF DOCUMENTS**

This Agreement was awarded under solicitation GFO 16-404 ("Solicitation") to which Recipient submitted a proposal ("Proposal"). Except for Solicitation Attachments 16, 17, and 18 (respectively Budget Detail and Payment Provisions, General Terms and Conditions, and Special Terms and Conditions), the Solicitation and Recipient's Proposal are not attached, but are expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between other parts of this Agreement and the Solicitation and Proposal, the other parts of this Agreement shall control. In the event of conflict or inconsistency between the Solicitation and Proposal, the Solicitation shall control.

18. **AMENDMENTS**

A. Procedure for Requesting Changes

The Recipient must submit a written request to the Commission Agreement Manager for any change to the Agreement. The request must include:

- A brief summary of the proposed change;
- A brief summary of the reason(s) for the change; and
- The revised section(s) of the Agreement, with changes made in underline/ strikethrough format.

B. Approval of Changes

Certain changes to the Agreement (e.g., changes that increase the Agreement amount or substitute one Recipient for another) must be approved at a Commission business meeting or by the Executive Director (or his/her designee). Generally, changes that are not significant to the Agreement may be documented in a Letter of Agreement signed by both parties (electronic signatures are acceptable).

The Commission Agreement Manager or Commission Agreement Officer will provide the Recipient with guidance regarding the level of Commission approval required for a proposed change.

19. **CONFIDENTIALITY**

A. Information Considered Confidential

If applicable, all Recipient information considered confidential at the commencement of this Agreement is designated in the Attachment to this Exhibit.

B. Confidential Deliverables: Labeling and Submitting Confidential Information

Prior to the commencement of this Agreement, if applicable, the parties have identified in the Attachment to this Exhibit, specific Confidential Information to be provided as a deliverable. All such confidential deliverables shall be marked, by the Recipient, as "Confidential" on each page of the document containing the Confidential Information and presented in a sealed package to the Commission's Contracts Officer. (Non-confidential deliverables are submitted to the Accounting Office.) All Confidential Information will be contained in the "confidential" volume: no Confidential Information will be in the "public" volume.

C. Submittal of Unanticipated Confidential Information as a Deliverable

The Recipient and the Energy Commission agree that during this Agreement, it is possible that the Recipient may develop additional data or information not originally anticipated as a confidential deliverable. In this case, the Recipient shall follow the procedures for a request for designation of Confidential Information specified in 20 California Code of Regulations (CCR) Section 2505. The Energy Commission's Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to the list of confidential deliverables in the Attachment to this Exhibit.

20. **RECOGNITION OF ARRA FUNDING**

The Recipient shall publicly recognize ARRA as a source of funding for project(s) funded under this Agreement. The Agreement Manager shall provide the Recipient with instructions on how to publicly recognize ARRA funding. Such instructions will include any DOE requirements on the proper notice and branding to publicize the use of ARRA funding.

21. **INDEMNIFICATION**

The Recipient agrees to indemnify, defend, and save harmless the Energy Commission and State, their officers, agents, and employees from any and all claims and losses accruing or resulting from Recipient and any and all of its subcontractors, vendors, materialmen, laborers, and any other person, firm, or corporation (collectively referred to in this section as "Recipient") furnishing or supplying anything, including work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Recipient in the performance of this Agreement.

22. **FISCAL ACCOUNTING REQUIREMENTS**

A. Accounting and Financial Methods

The Recipient shall establish a separate ledger account or fund for receipt and disbursement of Energy Commission funds for each project funded by the Energy Commission. Expenditure details must be maintained in accordance with the approved budget details using appropriate accounting practices.

B. Cost or Match Share

Cost or Match Share means cash or in-kind (non-cash) contributions provided by Recipient, subcontractors or other parties that will be used in performance of this Agreement.

If the grant Budget includes cost or match share under this Agreement, the Recipient agrees to be liable for the percentage of cost or match share identified in this Agreement of the total allowable project costs incurred even if the project is terminated early or is not funded to its completion.

Total allowable project cost is the sum of the Agreement share and Recipient share of the project costs. Cost share percentage is calculated by dividing Recipient cost share amount by the total allowable project cost. Match share percentage is calculated by dividing Recipient match share by the Agreement share of the project costs.

Failure to provide the minimum required cost or match share may result in the subsequent recovery of some or all of the funds provided under this Agreement.

The Recipient must maintain accounting records detailing the expenditure of the match (actual cash and in-kind services) and provide complete documentation of expenditures as described under "Payment of Funds."

23. **CERTIFICATIONS AND COMPLIANCE**

A. Federal, State and Municipal Requirements

Recipient must obtain any required permits and shall comply with all applicable federal, State, and municipal laws, rules, codes, and regulations for work performed under this Agreement.

B. Nondiscrimination Statement of Compliance

During the performance of this Agreement, Recipient and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Recipient and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Recipient and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part of it as if set forth in full. Recipient and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

The Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

C. Drug-Free Workplace Certification

By signing this Agreement, the Recipient hereby certifies under penalty of perjury under the laws of the State of California that the Recipient will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- (1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a)(1).
- (2) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - The dangers of drug abuse in the workplace;
 - The person's or organization's policy of maintaining a drug-free workplace;
 - Any available counseling, rehabilitation, and employee assistance programs; and
 - Penalties that may be imposed upon employees for drug abuse violations.
- (3) Provide, as required by Government Code Section 8355(a)(3), that every employee who works on the proposed project:
 - Will receive a copy of the company's drug-free policy statement;

- Will agree to abide by the terms of the company's statement as a condition of employment on the project.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and the Recipient may be ineligible for any future State awards if the Energy Commission determines that any of the following has occurred: (1) the Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

D. Child Support Compliance Act (Applicable to California Employers)

The Recipient acknowledges that:

- (1) It recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- (2) To the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

E. Americans with Disabilities Act

By signing this Agreement, Recipient assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA.

24. **ALLOWABLE COSTS**

- Allowable costs shall be determined in accordance with the provisions incorporated by reference in Exhibit D of this Agreement.
- The Recipient recognizes that Title 10 of Code of Federal Regulations (CFR) Section 420.18 places limitations on the use of funds available under this Agreement, and the Recipient shall comply with these limitations. The parties recognize and acknowledge that the funds available under this Agreement may be used for the purchase and installation of equipment and materials for energy efficient measures and renewable energy measures, including reasonable design costs, in accordance with 10 CFR Section 420.18(e). The parties further recognize and acknowledge that the 50 percent funding limitations of 10 CFR Section 420.18(e)(2) do not apply to the use of American Recovery and Reinvestment Act of 2009 (ARRA) funds under this Agreement. (Refer to Section 9.7 of Exhibit 1 of the U.S. Department of Energy Funding Opportunity Announcement DE-FOA-0000052.)

25. INVOICING PROCEDURES

- A. For services satisfactorily rendered, and upon receipt and approval of invoices, the Energy Commission agrees to compensate the Recipient for actual allowable expenditures incurred in accordance with Exhibit B. All of the rates in Exhibit B are rate caps, or the maximum amount allowed to be billed. For example, the Recipient can only bill for actual expenses incurred for hours worked at the Recipient's actual direct labor, fringe, and indirect rates, not to exceed the rates specified in Exhibit B.
- B. Invoices shall be submitted in duplicate not more frequently than monthly. In addition to any other certification that may be on the invoice form, the following certification shall be included on each invoice and signed by an authorized official of the Recipient:

I certify that this invoice is correct and proper for payment, and that reimbursement for these costs has not exceeded 20% of administrative costs, including office supplies, library materials, and other equipment, or is otherwise in compliance with 10 Code of Federal Regulations (CFR) Section 420.18, and will not be received through any other procurement method or from any other sources, including but not limited to a Government Entity contract, grant, or subcontract.

Send invoices to:

California Energy Commission
Accounting Office, MS-2
1516 Ninth Street
Sacramento, California 95814

C. Payment Request Format

The Energy Commission will accept computer generated or electronically transmitted invoices, provided the Recipient sends a paper copy the same day to the Energy Commission. The date of "invoice receipt" shall be the date the Energy Commission receives the paper copy.

The Recipient shall comply with 10 CFR Part 600: DOE Financial Assistance Regulations, including retaining backup source documentation for audit purposes, and shall make the documentation available to the Energy Commission upon request. In accordance with 10 CFR Part 600, the Recipient's accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, and Agreement and subcontractor and vendor documents. Pursuant to 10 CFR Section 600.242, the Recipient shall retain records for three (3) years or as otherwise required.

The Recipient shall include appropriate provisions in each of its subawards to secure adequate backup documentation to verify all subawardee and vendor services and expenses invoiced for payment under this Agreement.

- D. A request for payment shall reference the Agreement number and shall consist of, but not be limited to the following:
- 1) Agreement number, date prepared, and billing period.
 - 2) The Recipient's actual unloaded hourly labor rates by individual.
 - 3) Operating expenses, including equipment, travel, miscellaneous, and materials.
 - 4) Subawardee or vendor expenditures.
 - 5) An indication of whether a subawardee or vendor is a California Certified Small Business or a Certified Disabled Veteran Business Enterprise.
 - 6) Fees (fringe, direct and indirect overheads, general and administrative, profit, etc.). Identify actual, agreement, and billed amounts.
 - 7) Leverage fund expenditures, if applicable; and
 - 8) By task or category (as specified in Budget Detail): cumulative amounts, budgeted per agreement, billed to date, current billing, and balance of funds.
- E. All invoices must be accompanied by the following material to support the expenditure:
- 1) Subawardee or vendor invoices.
 - 2) Receipts for travel, including departure and return times.
 - 3) Receipts for materials, miscellaneous, and/or equipment.
 - 4) A report that documents the progress of the work during the billing period; and
 - 5) Any other deliverables due during the billing period.

26. **BUDGET CONTINGENCY CLAUSE**

- A. It is mutually agreed that this Agreement shall be of no further force and effect if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the work identified in Exhibit A or if the federal government requests the return of the funds. In this event, the Energy Commission shall have no liability to pay any funds whatsoever to the Recipient or to furnish any other consideration under this Agreement, and the Recipient shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act or federal government for purposes of this program, the Energy Commission shall have the option to either: (1) cancel this Agreement with no liability occurring to the Energy

Commission; or (2) offer an Agreement Amendment to the Recipient to reflect the reduced amount.

- B. It is mutually agreed that funding for this Agreement is dependent upon a federal agreement that is subject to the following provisions:
- 1) This Agreement is subject to any additional restrictions, limitations or conditions enacted by Congress or any statute enacted by Congress that may affect the provisions, terms or funding of this Agreement.
 - 2) Funding for this Agreement is subject to the approval of the U.S. Department of Energy (DOE) and to any additional restrictions, limitations, or conditions imposed by DOE, federal law, federal court judgments, and/or federal agency orders which may affect the provisions or terms of this Agreement.
 - 3) If Congress does not appropriate sufficient funds for the program or the federal government requests the return of the funds, in addition to any other rights and actions available to the Energy Commission, this Agreement can be amended to reflect any reduction in funds.
- C. The Energy Commission shall notify the Recipient if any funding for this Agreement is reduced or deleted as described above as soon as the Energy Commission becomes aware of such reductions or deletions, so that the Recipient may take steps to minimize the risk of any unfunded work under this Agreement.

27. **TRAVEL AND PER DIEM RATES**

The Recipient shall be reimbursed for travel and per diem expenses using the same rates provided to non-represented state employees. The Recipient must pay for travel in excess of these rates. The Recipient may obtain current rates from the Energy Commission's Web Site at: [http://energynet/Admin/fsb/Accounting/Travel%20Summary 1-09.pdf](http://energynet/Admin/fsb/Accounting/Travel%20Summary%201-09.pdf).

Travel identified in Exhibit B, Pre-Approved Travel List, as approved does not require further authorization.

- A. Travel that is not included in Exhibit B, Pre-Approved Travel List, or that is included and listed in a manner such as "tbd" or "to be determined," shall require written authorization from the Commission Agreement Manager prior to travel departure. The Energy Commission will reimburse travel expenses from the Recipient's office location.
- B. The Recipient must retain documentation of travel expenses in its financial records. The documentation must be listed by trip and include dates and times of departure and return. Travel receipts, except for travel meals and incidentals, shall be submitted with invoices requesting reimbursement from the Energy Commission.

28. **RETENTION**

It is the Commission's policy to retain ten percent (10%) of any payment request or of the total Commission award at the end of the project. After the project is complete, the Recipient must submit a completed payment request form requesting release of the retention. The Commission Agreement Manager will review the project file and authorize release of the retention when satisfied that the terms of the Agreement have been fulfilled.

Retention may be released upon completion of tasks that are considered separate and distinct (i.e., the task is a stand-alone piece of work and could be completed without the other tasks). Tasks for administration or management of the Agreement and/or subcontractors are not considered separate and distinct tasks. The tasks for which retention may be released prior to the end of the Agreement must be identified in Exhibit B (budget).

The Commission will not withhold retention from equipment expenditures.

29. **PAYMENT TERMS AND CONDITIONS**

Check all that apply:

- ☒ Monthly
- ☐ Quarterly
- ☐ Itemized
- ☐ Flat Rate
- ☒ In Arrears

- A. Payment shall only be made in accordance with this Exhibit B.
- B. The Recipient is not allowed to profit from its subawardee and vendors' costs. Subawardees and vendors are not allowed to profit from their subawardee and vendors' costs
- C. Each request for payment is subject to the Agreement Manager's approval.
- D. The Recipient shall use the salary and wage rates commensurate with approved personnel status and level of expertise.
- E. Payments will be made to the Recipient for undisputed invoices. An undisputed invoice is an invoice submitted by the Recipient for services rendered and for which additional evidence is not required to determine its validity. The invoice will be disputed if all deliverables due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. The Recipient will be notified via a Dispute Notification Form, within fifteen (15) working days of receipt of an invoice, if the Energy Commission disputes the submitted invoice. On any disputed invoice, the Energy Commission shall withhold payment only on the disputed portion of the invoice.

- F. The Recipient agrees that it has reviewed the applicable CMIA rules and regulations, and will follow their requirements in handling funds received pursuant to this Agreement. The Recipient also agrees that it will provide written notification to each of its subawardees or vendors, if any, of the CMIA and the need for each subawardee or vendor to comply with all applicable CMIA provisions and regulations.
- G. The Energy Commission must receive the final invoice no later than thirty (30) calendar days after the Agreement termination date. If Recipient does not comply with this requirement, it might not receive payment because the Energy Commission only has certain timeframes in which to use the Agreement funds.
- H. The Energy Commission will pay for State or local sales or use taxes on the services rendered or equipment, or parts to the Energy Commission pursuant to this Agreement. The State of California is exempt from Federal excise taxes, and no payment will be made for any excise taxes levied on employees' wages.
- I. No payment will be made for costs identified in the Recipient's invoices that have or will be reimbursed by any other source, including but not limited to a government entity contract or subcontract or other procurement agreement.

30. **SURVIVAL**

Certain Agreement provisions survive the completion or termination of this Agreement for any reason. The provisions include, but are not limited to, the following:

- A. Section 6 "Recordkeeping and Inspection of Records" in this Exhibit C.
- B. Section 8 "Purchase of Equipment" in this Exhibit C.
- C. Section 9 "Intellectual Property" in this Exhibit C.
- D. Section 11 "Enforceability" in this Exhibit C.
- E. Section 12 "Waiver" in this Exhibit C.
- F. Section 15 "Notice" in this Exhibit C.
- G. Section 19 "Confidentiality" in this Exhibit C.
- H. Section 20 "Recognition of ARRA Funding" in this Exhibit C.
- I. Section 21 "Indemnification" in this Exhibit C.
- J. Section 22 "Fiscal Accounting Requirements" in this Exhibit C.
- K. Section 24 "Allowable Costs" in this Exhibit C.
- L. Section 31 "Recipient and All Subcontractors Shall Comply with the Information Practices Act" in this Exhibit C.

M. Exhibit D and its Attachments.

31. **RECIPIENT AND ALL SUBCONTRACTORS SHALL COMPLY WITH THE INFORMATION PRACTICES ACT**

The Information Practices Act ("IPA") is codified at California Civil Code sections 1798 et seq. Personal Information is defined in the IPA at Civil Code section 1798.3(a). Recipient shall comply and ensure that all of its subcontractors and project partners shall comply with the IPA relative to the activities under this Agreement. This includes but is not limited to complying with Section 1798.16 (Personal Information; maintaining sources of information) and Section 1798.17 (Notice; periodic provision; contents). For example:

- Sources of information. Recipient, and Recipient's subcontractors and project partners, shall maintain a record of the source of an individual's Personal Information in accordance with § 1798.16. Per IPA § 1798.16, this requirement does not apply if the data subject is the source of the Personal Information.
- Use of information. Pursuant to IPA § 1798.14, the Recipient, and Recipient's subcontractors and project partners shall only use Personal Information for the purposes of this Agreement. Recipient, and Recipient's subcontractors and project partners shall not disclose any Personal Information to any person or entity other than the Energy Commission and Energy Commission employees.
- Security. Pursuant to IPA § 1798.21, Recipient, and Recipient's subcontractors and project partners, shall employ appropriate and reasonable safeguards to ensure the security and confidentiality of Personal Information and to protect against anticipated threats or hazards to their security or integrity which could result in any injury.
- Notice. On or with any form used to collect Personal Information from individuals, the Recipient, and Recipient's subcontractors and project partners, shall provide the notice required in § 1798.17. At the time of executing this agreement, § 1798.17 requires the following:
 - (a) The name of the agency and the division within the agency that is requesting the information.
 - (b) The title, business address, and telephone number of the agency official who is responsible for the system of records and who shall, upon request, inform an individual regarding the location of his or her records and the categories of any persons who use the information in those records.
 - (c) The authority, whether granted by statute, regulation, or executive order which authorizes the maintenance of the information.
 - (d) With respect to each item of information, whether submission of such information is mandatory or voluntary.
 - (e) The consequences, if any, of not providing all or any part of the requested information.

(f) The principal purpose or purposes within the agency for which the information is to be used.

(g) Any known or foreseeable disclosures which may be made of the information pursuant to subdivision (e) or (f) of Section 1798.24.

(h) The individual's right of access to records containing personal information which are maintained by the agency.

- A. The Recipient has, and the Recipient shall ensure that its subcontractors and project partners have, no ownership, license, or other rights in Personal Information or in any form in which it is used (e.g., Products). In this regard, the Personal Information shall NOT be treated like Data, Products, Intellectual Property, or other provisions in the Agreement that may indicate that Recipient has ownership, license, or other rights.
- B. To the extent that the Recipient uses Personal Information to derive anonymized information that no longer meets the definition of Personal Information, the rights to derived anonymized information follow the rights in other provisions in this Agreement.
- D. Some terms in this Agreement Require the Recipient (and Subcontractors via flow-down provisions) to maintain certain information for a specified period of time after this Agreements ends (referred to in this part as "Archived Timeframe"). Upon the request of the Energy Commission, or at the end of the Archived Timeframe, whichever is earlier, the Recipient and all subcontractors and project partners shall promptly deliver to the Energy Commission or destroy all Personal Information, regardless of form (e.g., written or electronic) and all copies, abstracts, media, and backups thereof, however stored in Recipient's and all of its subcontractors' and project partners' possession. No Personal Information shall remain with Recipient, its subcontractors, or its project partners upon request of the Energy Commission or after the Archived Timeframe, whichever occurs first.
- E. In the event of a conflict between this Section 31 and other terms in this Agreement, this Section 31 shall control.

