

EXHIBIT C

TERMS AND CONDITIONS

FOR FEDERALLY FUNDED GRANTS

AWARD # FED-10-001



TERMS AND CONDITIONS

TABLE OF CONTENTS

SECTION	PAGE NO.
1. Grant Agreement	2
2. Attachments and References	2
3. Funding Limitations	3
4. Due Diligence	3
5. Products	3
6. Reports	3
7. Legal Statement on Reports and Products	4
8. Amendments	4
9. Contracting and Procurement Procedures	7
10. Bonding and Insurance	8
11. Permits and Clearances	9
12. Equipment	9
13. Termination	9
14. Travel and Per Diem	9
15. License	10
16. Standard of Performance	11
17. Payment of Funds	11
18. Fiscal Accounting Requirements	13
19. Indemnification	15
20. Disputes	16
21. Workers' Compensation Insurance	17
22. General Provisions	20
23. Certifications and Compliance	21
24. Additional Requirements for Federally Funded Grants	25

TERMS AND CONDITIONS

1. *Grant Agreement*

This project is being funded with a grant from the California Energy Commission (Energy Commission). The Energy Commission obtained the funds to make this grant through a federal grant agreement DE-FG26-04R021591 with the U.S. Department of Energy.

This Agreement is comprised of the grant funding award, the Terms and Conditions, and all attachments. These Terms and Conditions are standard requirements for grant awards. The Energy Commission may impose additional special conditions in this grant Agreement that address the unique circumstances of this project.

All work and/or the expenditure of funds (Energy Commission-reimbursed and/or match share) must occur within the approved term of this Agreement. The Energy Commission cannot authorize any payments until all parties sign this Agreement. The start term of this Agreement is either the specified start term or the date the Energy Commission signs the Agreement, whichever is later. The Energy Commission will only sign the Agreement after the Recipient signs it and it has been approved at an Energy Commission Business Meeting.

2. *Attachments and References*

The following are attached and hereby expressly incorporated into this Agreement.

- Assurances of Compliance, Nondiscrimination in Federally Assisted Programs.
- Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements.
- Disclosure of Lobbying Activities
- National Policy Assurances
- Intellectual Property Provisions.
- Work Statement.
- Budget.
- Special Conditions (if applicable).

The Office of Management and Budget (OMB) Circulars and/or federal regulations identified below are incorporated by reference as part of this Agreement. In general, the incorporated OMB Circulars and federal regulations supplement these terms and conditions. If this Agreement is silent on specific issues, the OMB Circulars will prevail unless the provision is contrary to California State law or regulation (as set forth in the California Code of Regulations). OMB Circulars may be accessed on the OMB website at <http://www.whitehouse.gov/omb/circulars/>.

- OMB CIRCULAR A-110: UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS (ALSO APPLICABLE TO PRIVATE ENTITIES)
- OMB Circular A-21: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Institutions of Higher Education (public and private colleges and universities)
- OMB Circular A-133: Audits of States, Local Governments, and Non-Profit Organizations

3. *Applicable Laws & Funding Limitations*

Applicable Laws

Recipient agrees to abide by all federal, state, and local laws and regulations applicable to the project even if they are not stated in this Agreement.

Funding Limitations

Funding for this Agreement is dependent upon a federal grant agreement, which is scheduled to terminate on September 30, 2011. Funding for this Agreement is subject to the approval of the applicable federal government agency, federal law, federal court judgments, and/or federal agency orders that may affect the provisions or terms of this Agreement

4. *Due Diligence*

The Recipient is required to take timely actions which, taken collectively, move this project to completion. The Commission Project Manager will periodically evaluate the schedule for completion of Work Statement tasks. If the Commission Project Manager determines (1) the Recipient is not being diligent in completing the tasks in the Work Statement or (2) the time remaining in the funding award is insufficient to complete all project work tasks by the approved Agreement end term date, the Project Manager shall consult with the Recipient to determine whether the tasks will be completed according to schedule. If completion cannot be completed on schedule or by a mutually agreeable extension in time, the Project Manager may recommend to the Policy Committee of the Energy Commission (Committee) that this Agreement be terminated, and the Committee may, without prejudice to any of its remedies, terminate this Agreement in accordance with the Termination provisions stated in Clause 13.

5. *Products*

Products are defined as any tangible item specified for delivery in the Work Statement, including required reports. Unless otherwise directed, two copies of all Products identified in the Work Statement shall be submitted to the Energy Commission's Accounting Office at the address below. The Accounting Office will forward Products to the Commission Project Manager for review and comment.

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

6. *Reports*

a. Submission of Reports

All reports will be submitted to the Accounting Office at the address listed in Section 5 above.

b. Progress Reports

The Recipient shall prepare progress reports on the schedule provided in the work statement.

The Recipient shall prepare progress reports which summarize all grant activities conducted by the Recipient for the reporting period, including an assessment of the ability to complete the project within the current budget and any anticipated cost overruns. See Attachment 1 “Content and Format of Progress Reports” for more information.

c. Final Reports

The Recipient shall prepare a final report outline, draft final report and final report on the schedule provided in the work statement. The final report shall describe the original purpose, approach, results and conclusions of the work done under this Agreement. See *Style Manual: Preparing Contract and Consultant Reports for the California Energy Commission* located online at http://www.energy.ca.gov/contracts/consultant_reports/index.html."

d. Failure to Comply with Reporting Requirements

Failure to comply with the reporting requirements contained in this award will be considered a material noncompliance with the terms of the award.

7. *Legal Statement on Reports and Products*

- a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.
- b. An acknowledgment of California Energy Commission and Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: “This material is based upon work sponsored by the California Energy Commission through federal grant agreement number DE-FG26-04R021591 with the U.S. Department of Energy.

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. *Amendments*

- A. Budget Reallocations

1. The Energy Commission, through its Project Manager and Grant Officer, and the Recipient can agree upon and make certain budget reallocations without a formal amendment to this Agreement as long as ALL of the following conditions are met:

a) The total of all budget reallocations cannot exceed ten percent (10%) of the Agreement Amount, with a cap amount of \$75,000. For purposes of this provision, “Agreement Amount” means the total amount of funds being paid by the Energy Commission to Recipient under this Agreement. It does not include any match funds provided by Recipient.

For example, if under an agreement the Energy Commission agrees to pay a recipient \$100,000 and the recipient is supplying \$500,000 in match funding, the ten percent (10%) limitation applies to the \$100,000. Only up to \$10,000 can be reallocated without a formal amendment. If under an agreement the Energy Commission agrees to pay a recipient \$800,000, ten percent would be \$80,000, but the cap is \$75,000, so the most that could be reallocated without a formal amendment is \$75,000.

b) The budget reallocation cannot substantially change the Scope of Work. Examples of budget reallocations that **do not** substantially change the Scope of Work include, but are not limited to, the following:

- Increasing or decreasing the overall travel budget.
- Increasing or decreasing the equipment budget.
- Increasing or decreasing the number of personnel assigned to complete tasks. This does not include increasing the rates of the personnel and classifications. Increasing personnel rates beyond the maximum rates specified in the budget documents of this Agreement requires a formal amendment. The addition of personnel also requires a formal amendment unless there is already an identified classification of rates in the budget that the new personnel will be filling.

c) The budget reallocation only involves moving funds between category line items in the category budget. The total Agreement Amount must remain unchanged. Increasing the total amount of the Agreement requires a formal amendment.

d) The budget reallocation does not increase the percentage rate of Salary and Fringe Benefits, Indirect Costs, or General and Administrative Costs the budget documents of this Agreement.

2. To effectuate a budget reallocation under this section, the Recipient must make a request in writing to both the Project Manager and the Grant Officer. Both the Project Manager and Grant Officer will then approve or disapprove the request in writing; the approval or disapproval is not effective or binding unless signed by both the Project Manager and the Grant Officer. Oral communications cannot be used or relied upon. Electronic communication is acceptable for changes below the limits described in section 1 above. If the request is approved, the Project Manager shall revise the Budget Attachments to reflect the changes and send them to the Grant Officer and Recipient.

Any desired budget reallocations that do not meet the four criteria in this section must be made through a formal amendment. For purposes of this provision, a “formal amendment” means

that the following must occur: approval by the Energy Commission at a Commission Business Meeting and a written amendment signed by both parties.

Attempted budget reallocations that are not processed in accordance with the procedures set forth above are not legally binding upon the parties.

B. Non-Significant Changes

Changes that are not significant to the Agreement do not need to be approved at an Energy Commission Business Meeting through a formal amendment. These changes shall be documented in writing to the Commission Project Manager. Only the following changes are deemed non-significant:

1. Budget revisions that do not affect the scope of the project or the overall Agreement amount as long as such revisions adhere to requirements in paragraph 8.A above. However, increases in personnel, fringe benefits, and indirect costs rates, and any other rates specified in the budget documents the Agreement are deemed significant and must follow the requirements in paragraph 8.C below.
2. Changes to the Work Statement that only correct grammatical errors or reference mistakes.
3. Revisions to Product Due Dates as long as the revised dates are within the current approved term of the Agreement and agreed to in writing by the Commission Project Manager.
4. Designation of Project Managers and other contact information.
5. Recipient's increase of match share.

C. Significant Changes

Significant changes to this Agreement require a formal amendment which must be approved at an Energy Commission Business Meeting. Significant Changes are defined as any modifications to the Agreement that do not meet the requirements in paragraph 8.B above. Examples of significant changes include, but are not limited to:

- Change of Recipient's legal name.
- Change of Recipient.
- Changes in order to disencumber funds.
- Changes to the Work Statement that modify the scope of the Agreement.
- Changes to the Work Statement that extend the due dates beyond the term of the Agreement.
- Changes to the Budget that increase the amount of funds paid by the Energy Commission to Recipient within the Agreement.
- Changes to the Budget that increase the Salary, Fringe Benefits, or Indirect Costs rates in the budget documents, including those for subcontractors. Increasing these rates requires a formal amendment. The addition of personnel also requires a formal amendment unless there is already an identified classification of rates in the budget that the new personnel will be filling.

When seeking to change this Agreement, Recipient understands and acknowledges that it can take the Energy Commission six (6) months or more to process an amendment. For federally funded grants, amendments may also require prior written approval from the federal granting agency.

9. Contracting and Procurement Procedures

This section provides general requirements for an agreement between the Recipient and a third party (“subcontractor”).

Subcontracting criteria are specified in the applicable OMB Circulars and/or federal regulations incorporated by reference in this Agreement. The Energy Commission will defer to the Recipient's own regulations and procedures as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in this Agreement and any OMB Circulars and/or federal regulations incorporated by reference in this Agreement.

Upon request, the Recipient must submit to the Commission Project Manager a copy of all solicitations for services or products required to carry out the terms of this Agreement, copies of the proposals or bids received, and copies of subcontracts executed. If a specific subcontractor was identified in the original grant application and the grant was evaluated based in part on this subcontractor's qualifications, then prior written approval from the Commission Project Manager is required before substituting a new subcontractor.

The Recipient is responsible for handling all contractual and administrative issues arising out of or related to any subcontracts it enters into under this Agreement.

In subcontracts to UC-managed DOE laboratories, UC shall use terms approved by DOE. Subcontracts to other DOE laboratories shall use the terms and conditions negotiated between DOE and the Energy Commission. All other subcontracts must incorporate all of the following:

- A clear and accurate description of the material, products, or services to be procured as well as a detailed budget and timeline.
- Provisions that allow for administrative, contractual, or legal remedies in instances where subcontractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
- Provisions for termination by the Recipient, including termination procedures and the basis for settlement.
- Language conforming to the "Nondiscrimination" provision in this Agreement.
- Any additional requirements specified in the OMB Circulars incorporated by reference in this Agreement.
- The Standard of Performance provisions specified in this Agreement.
- Audit provisions regarding record retention specified in this Agreement.
- Language conforming to the “Indemnification” provision in this Agreement.

- Language conforming to the “License” provision in this Agreement.

Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Energy Commission and any subcontractors, and no subcontract shall relieve the Recipient of its responsibilities and obligations hereunder.

Recipient shall be responsible for establishing and maintaining contractual agreements with and reimbursement of each subcontractor for work performed in accordance with the terms of this Agreement.

Replacement or substitution of all non-key subcontractors is permitted with reasonable advance written notification to the Commission Project Manager.

All subcontracts entered into pursuant to this Agreement shall be subject to examination and audit by the Bureau of State Audits for a period of three years after final payment under this Agreement.

10. Key Personnel and Key Subcontractors

a. Key Personnel

Key personnel are employees of the Recipient who are critical to the outcome of the project. For example, they may have expertise in the particular field or have experience that is not available from another source. Replacing these individuals may affect the outcome of the project. Key personnel, listed in the Statement of Work and/or Budget exhibits, may not be substituted without the Commission Project Manager’s approval. Such approval shall not be unreasonably withheld.

b. Key Subcontractors

Key subcontractors are subcontractors or vendors to the Recipient who are critical to the outcome of the project. As with key personnel, key subcontractors may have expertise in the particular field or have experience that is not available from another source. Replacing these subcontractors may affect the outcome of the project. An employee of the Recipient’s subcontractor or vendor may also qualify as “key.” Key subcontractors, listed in the Statement of Work and/or Budget exhibits, may not be substituted without the Commission Project Manager’s approval. Such approval shall not be unreasonably withheld. Recipient may substitute all other subcontractors, with reasonable advance notification made to the Commission Project Manager. Replacement of key subcontractors is subject to the “Contracting and Procurement Procedures” section contained within these terms and conditions.

11. Bonding and Insurance

The Recipient will follow its own bonding and insurance requirements relating to bid guarantees, performance bonds, and payment bonds without regard to the dollar value of the subcontract(s) as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in the OMB Circulars and/or federal regulations incorporated by reference in this Agreement.

12. *Permits and Clearances*

The Recipient is responsible for ensuring all necessary permits and environmental documents are prepared and clearances are obtained from the appropriate agencies.

13. *Equipment*

Title to equipment acquired by the Recipient with grant funds shall vest in the Recipient. The Recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by grant funds, and the Recipient shall not encumber the property without Commission Project Manager approval.

Recipient should refer to the applicable OMB circulars and/or federal regulations incorporated by reference in this Agreement for additional equipment requirements.

14. *Termination***A. Default**

In the event of any default of this Agreement or any individual Work Authorization, the Commission may, without prejudice to any of its other legal remedies, terminate this Agreement upon five (5)-days written notice to UC.

B. For Cause

The Commission may, for cause, and at its option, terminate this Agreement or any individual Work Authorization upon giving thirty (30)-days' advance written notice to UC. In such event, UC agrees to use all reasonable efforts to mitigate its expenses and obligations.

The term "for cause" includes, but is not limited to, the following reasons:

- 1) Loss or redirection of State or Federal funding for this Agreement;
- 2) Significant change in State or Commission policy such that the work or product being funded would not be supported by the Commission;
- 3) Change in Commission's staffing such that the work or product being funded can be done by staff of the Commission.

C. Allowable Costs

OMB Circular No. A-21, Section J.50, shall be used to determine allowable termination costs, but not in excess of the total amount of the Agreement or an individual Work Authorization, as applicable.

15. *Travel and Per Diem*

- a. Recipient shall be reimbursed for travel and per diem for trips in accordance with the Regents-approved rates for University of California (UC) employees. Recipient shall provide

a copy of the current Regents-approved rates to the Energy Commission upon request. Travel expenses in excess of Regents-approved rates cannot be reimbursed.

- b. Those trips already identified in the Budget section are considered approved when this Agreement goes into effect. Travel not listed in the Budget section of this Agreement shall require prior written authorization from the Commission Project Manager. When requesting such approval, Recipient will identify who shall travel, the purpose of travel and the destination.
- c. UC must document travel expenses in its financial records as follows:
 - 1) Expenses must be detailed using the most current UC Regents / federally-approved rates.
 - 2) Expenses must be listed by trip, including dates and times of departure and return.
 - 3) UC/DOE must retain receipts for travel expenses claimed for audit and verification.

16. *Rights of Parties Regarding Intellectual Property*

UC and the Energy Commission shall adhere to terms related to intellectual property rights and any reservation of rights to the federal government, if any, contained in the federal award leading to this Agreement. If not in conflict with such provisions, the following shall apply:

- Each delivered product and report becomes the property of the Energy Commission. The Energy Commission reserves the right to use and reproduce all products and reports produced and delivered pursuant to this Agreement, and it reserves the right to authorize others to use or reproduce such materials.
- The Energy Commission shall be granted a no-cost, nonexclusive, nontransferable, irrevocable worldwide license to use or have practiced for or on behalf of the State of California, for governmental purposes, Subject Inventions developed hereunder and patents or patent applications derived from such inventions. Commission shall not purposefully enter into competition with a Licensee or take affirmative actions intended to effectively destroy the commercial market where a Licensee has introduced a Licensed Product. If UC becomes aware of such actions on behalf of the Energy Commission, it shall immediately notify CEC and provide 30 days for correction. Recipient must obtain agreements to effectuate this clause with all persons or entities obtaining ownership interest in the patented subject inventions (except for the U.S. Department of Energy (DOE), as other terms apply).
- The Energy Commission makes no claim to intellectual property that existed prior to this Agreement and was developed without Energy Commission funding. If applicable, the Recipient gives notice that the items listed in the Intellectual Property attachment or exhibit have been developed without Energy Commission funding and prior to the start of this Agreement. This list represents a brief description of the prior developed intellectual property. A detailed description of the intellectual property, as it exists on the effective date of this Agreement, may be necessary if Energy

Commission funds are used to further develop the listed intellectual property. This information will assist the parties to make an informed decision regarding intellectual property rights.

- For other than computer software the Energy Commission, and others acting on its behalf, shall be granted a paid-up nonexclusive, irrevocable, nontransferable worldwide license in Technical Data first produced in the performance of this Agreement, to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the State of California. For computer software, the Energy Commission, and others acting on its behalf, shall be granted a paid-up non-exclusive, irrevocable, nontransferable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the State of California for governmental purposes.

17. *Standard of Performance*

- a. Recipient, its subcontractors and their employees in the performance of Recipient's work under this Agreement shall be responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures used in scientific and engineering research fields.
- b. The failure of a project to achieve the technical or economic goals stated in the Work Statement is not a basis for the Energy Commission to determine that the work is unacceptable, unless the work conducted by the Recipient or its subcontractors is deemed by the Energy Commission to have failed the foregoing standard of performance.
- c. In the event that Recipient or its subcontractor fails to perform in accordance with the foregoing standard of performance, the Commission Project Manager and the Recipient Project Manager shall seek to negotiate in good faith an equitable resolution satisfactory to both parties. If such a resolution cannot be reached, the parties shall work through the Energy Commission's dispute resolution process described in the Disputes Section herein.
- d. Nothing contained in this section is intended to limit any of the rights or remedies which the Energy Commission may have under law.

18. *Payment of Funds*

- a. Payment Requests

Unless indicated otherwise in this Agreement, the Recipient may request payment from the Energy Commission at any time during the term of this Agreement, but no more frequently than monthly. It is preferred that payment requests be submitted with the progress reports.

Payments will generally be made on a reimbursement basis for Recipient's expenditures, i.e., after the Recipient has paid for a service, product, supplies, or other approved budget item. No reimbursement for food or beverages shall be made other than allowable per diem charges.

Funds in this award have a limited period in which they must be expended. All Recipient expenditures must occur within the approved term of this Agreement.

b. Advance Payment

- 1) If not prohibited by the federal terms within or incorporated into this Agreement, and if the federal agency advances funds to the Energy Commission, a UC prime recipient may make advance payments to subawardees, including other UC campuses, Federal Laboratories, California State Agencies, the California State University and Community College systems, and Federal Agencies. Except for advance payments to Federal Laboratories, UC shall not provide advance payment without prior written approval from both the Commission Project Manager and the Commission Grant Officer. The Energy Commission will only advance funds if it receives federal funds in advance.
- 2) In the event that advance payments are necessary, UC may submit the first invoice for advance payment when the Agreement is approved. Thereafter, UC shall submit all invoices for advance payment on a calendar quarter basis.
- 3) If the estimated period of performance exceeds one hundred and twenty (120) days and the estimated cost exceeds \$25,000, the Commission shall advance funds incrementally. In such a case, UC will initially invoice the Commission in an amount sufficient to permit the work to proceed for one hundred and eighty (180) days and thereafter invoice the Commission to maintain approximately a one hundred and twenty (120) day period that is funded in advance.
- 4) A reconciliation report, reflecting actual costs, shall be submitted every quarter after the initial advance payment. This report is due within 30 days after the end of each quarter. The reconciliation report shall include detail as provided in the Payment Request Format clause below.
- 5) Other than the initial advance payment, the Commission Project Manager will approve advance payments provided that the Commission Project Manager has received and approved the progress reports, and any other required Products for the previous period.
- 6) Upon completion or termination of this Agreement, Contractor shall refund any excess funds to the Commission within sixty (60) calendar days.

c. Payment Request Format

A request for payment shall consist of, but not be limited to, the following:

- 1) Agreement number, date prepared, and billing period.
- 2) Operating expenses, including equipment, travel, miscellaneous, and materials.
- 3) Fees (fringe, direct and indirect overheads, general and administrative, profit, etc.). Identify actual and cumulative amounts by budget category.

The Energy Commission will accept computer-generated or electronically transmitted invoices without backup documentation provided that the Recipient sends a hardcopy the same day.

Recipient shall submit all invoices to the following address:

California Energy Commission
Accounting Office
Federal Grant Program (FED-10-001)
1516 Ninth Street, MS-2
Sacramento, CA 95814

d. Release of Funds

Each invoice is subject to both Commission Project Manager and Commission Grants Officer approval. The Commission Project Manager will not process any payment request during the Agreement term if the following conditions have not been met:

- All required Products and reports due to date have been submitted and are in accordance with the Standard of Performance Clause.
- All applicable special conditions due to date have been met.
- All appropriate permits or permit waivers due to date from governmental agencies have been issued to the Recipient and copies have been received by the Commission Project Manager.

Payments shall be made to the Recipient only for undisputed invoices. An undisputed invoice is an invoice executed by the Recipient for project expenditures, that meets all payment conditions of the Agreement, and for which additional evidence is not required to make payment. The invoice may be disputed if all Products 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. If the invoice is disputed the Recipient will be notified via a Dispute Notification Form within 15 working days of receipt of the invoice. On any disputed invoice, the Commission shall withhold payment only on that portion of the invoice that is disputed.

e. Retention

No retention will be withheld under this Agreement.

f. State Controller's Office

Payments are made by the State Controller's Office.

19. *Recordkeeping, Cost Accounting, and Auditing*

a. Cost Accounting

Recipient agrees to keep separate, complete, and correct accounting of the costs involved in completing the grant and match funded (if any) portion of this project. The Energy

Commission or its agent shall have the right to examine Recipient's books of accounts at all reasonable times to the extent and as is necessary to verify the accuracy of Recipient's reports.

b. Accounting Procedures

The Recipient's costs shall be determined on the basis of the Recipient's accounting system procedures and practices employed as of the effective date of this Agreement, provided that the Recipient shall use generally accepted accounting principles and cost reimbursement practices. The Recipient's cost accounting practices used in accumulating and reporting costs during the performance of this Agreement shall be consistent with the practices used in estimating costs for any proposal to which this Agreement relates; provided that such practices are consistent with the other terms of this Agreement and provided, further, that such costs may be accumulated and reported in greater detail during performance of this Agreement. The Recipient's accounting system shall distinguish between direct costs and indirect costs. All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to costs incurred under this Agreement.

c. Allowability of Costs

1) Allowable Costs

The costs for which the Recipient shall be reimbursed under this Agreement include all costs, direct and indirect, incurred in the performance of work that are identified in the grant Budget. Costs must be incurred within the term of the Agreement. Factors to be considered in determining whether an individual item of cost is allowable include (i) reasonableness of the item, (ii) appropriate use of the allocability of the item to the work, (iii) applicable federal OMB circulars and/or federal regulations incorporated by reference in this Agreement, and (iv) the terms and conditions of this Agreement.

2) Unallowable Costs

The following is a description of some specific items of cost that are unallowable; provided, however, that the fact that a particular item of cost is not included shall not mean that it is allowable. Details concerning the allowability of costs are available from the Energy Commission's Accounting Office.

a) Profit or Fees, Contingency Costs, Imputed Costs, Fines and Penalties, Losses, Excess Profit Taxes and increased rates and fees for this Agreement (if not otherwise approved by the Energy Commission as described in Section 8 of this Agreement).

b) The Energy Commission will pay for state or local sales or use taxes on expenditures. The State of California is exempt from Federal excise taxes.

3) Except as provided for in this Agreement, Recipient shall use the federal OMB circulars and/or federal regulations incorporated by reference in this Agreement when determining allowable and unallowable costs.

d. Audit Rights

Recipient shall maintain books, records, documents, and other evidence, based on the procedures set forth above, sufficient to reflect properly all costs claimed to have been incurred in performing this Agreement. The Energy Commission, an agency of the state or, at the Energy Commission's option, a public accounting firm designated by the Energy Commission, may audit such accounting records at all reasonable times with prior notice by the Energy Commission. The Energy Commission shall bear the expense of such audits. It is the intent of the parties that such audits shall ordinarily be performed not more frequently than once every twelve (12) months during the performance of the work and once at any time within three (3) years following payment by the Energy Commission of the Recipient's final invoice. However, performance of any such interim audits by the Energy Commission does not preclude further audit.

Recipient agrees that the Energy Commission, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting source documentation pertaining to the performance of this Agreement. Recipient agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated. Recipient agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Recipient agrees to include a similar right of the state to audit records and interview staff in any subcontract related to performance of this Agreement.

e. Refund to the Energy Commission

If the Energy Commission determines, that any invoiced and paid amounts exceed the actual allowable incurred costs, Recipient shall repay such amounts to the Energy Commission within thirty (30) days of request or as otherwise agreed by the Energy Commission and Recipient. If the Energy Commission does not receive such repayments, the Energy Commission shall be entitled to withhold further payments under this Agreement to the Recipient or seek repayment from the Recipient.

f. Match or Cost Share (match)

If the Budget includes a match share requirement, the Recipient's commitment of resources, as described in this Agreement, is a required expenditure for receipt of Energy Commission funds. Grant funds will be released only if the required match percentages are expended. The Recipient must maintain accounting records detailing the expenditure of the match (actual cash and in-kind services) and report on match share expenditures on the Recipient's request for payment.

20. Indemnification

- A. UC shall defend, indemnify and hold the State of California and its agencies, their respective officers, employees and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability,

loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of UC, its officers, agents or employees.

- B. The Commission shall defend, indemnify and hold UC, its officers, employees and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the State of California, its officers, agents or employees.

21. *Disputes*

In the event of a dispute or grievance between Recipient and the Energy Commission, both parties shall follow the procedure below. Recipient shall continue with the responsibilities under this Agreement during any dispute.

a. Energy Commission Dispute Resolution

The Recipient shall first discuss the problem informally with the Commission Project Manager. If the problem cannot be resolved at this stage, the Recipient must direct the grievance together with any evidence, in writing, to the Grants and Loans Office. The grievance must state the issues in the dispute, the legal authority or other basis for the Recipient's position and the remedy sought. The Grants and Loans Office and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the Recipient. The Grants and Loans Office shall respond in writing to the Recipient, indicating a decision and explanation for the decision. Should the Recipient disagree with the Grants and Loans Office's decision, the Recipient may appeal to the second level.

The Recipient must prepare a letter indicating why the Grants and Loans Office's decision is unacceptable, attaching to it the Recipient's original statement of the dispute with supporting documents, along with a copy of the Grants and Loans Office's response. This letter shall be sent to the Energy Commission's Executive Director within ten (10) working days from receipt of the Grants and Loans Office's decision. The Executive Director or designee shall meet with the Recipient to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Recipient within twenty (20) working days of receipt of the Recipient's letter. The Executive Director may inform the Energy Commission of the decision at an Energy Commission business meeting. Should the Recipient disagree with the Executive Director's decision, the Recipient may appeal to the Energy Commission at a regularly scheduled business meeting. Recipient will be provided with the current procedures for placing the appeal on an Energy Commission business meeting agenda.

b. Binding Arbitration

Should the Energy Commission's Dispute Resolution procedure above fail to resolve an Agreement dispute or grievance to the satisfaction of either party, the Recipient and the Energy Commission mutually may elect to have the dispute or grievance resolved through binding arbitration. If one party does not agree, the matter shall not be submitted to arbitration. The arbitration proceeding shall take place in Sacramento County, California,

and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the AAA commercial arbitration rules. If arbitration is mutually decided by the parties, arbitration is in lieu of any court action and the decision rendered by the arbitrator shall be final and may not be appealed to a court through the civil process). However, judgment may be entered upon the arbitrator's decision and is enforceable in accordance with the applicable law in any court having jurisdiction over this Agreement. The demand for arbitration shall be made no later six (6) months after the date of the Agreement's termination, despite when the dispute or grievance arose, and despite the applicable statute of limitations for a suit based on the dispute or grievance.

The cost of arbitration shall be borne by the parties as follows:

- 1) The AAA's administrative fees shall be borne equally by the parties;
- 2) The expense of a stenographer shall be borne by the party requesting a stenographic record;
- 3) Witness expenses for either side shall be paid by the party producing the witness;
- 4) Each party shall bear the cost of its own travel expenses;
- 5) All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of the award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of Agreement funds. Both parties must agree, in writing, to utilize Agreement funds to pay for arbitration costs.

22. *Workers' Compensation Insurance*

- a. Recipient hereby warrants that it carries Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this Agreement, and agrees to furnish to the Commission Project Manager satisfactory evidence of this insurance at any time the Commission Project Manager may request.
- b. If Recipient is self-insured for worker's compensation, it hereby warrants such self-insurance is permissible under the laws of the State of California and agrees to furnish to the Commission Project Manager satisfactory evidence of this insurance at any time the Commission Project Manager may request.

23. *Confidentiality*

- a. Information Considered Confidential

All Recipient information considered confidential at the commencement of this Agreement is designated an Attachment to this Agreement.

b. Confidential Products: Labeling and Submitting Confidential Information

Prior to the commencement of this Agreement, the parties have identified in an Attachment to this Agreement, specific Confidential Information to be provided as a product. All such confidential products 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 Grants and Loans Office. (Non-confidential products are submitted to the Commission Project Manager.) 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 Product

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 product. In this case, Recipient shall follow the procedures for a request for designation of Confidential Information specified in title 20 CCR 2505. The Energy Commission’s Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to the list of confidential products in an Attachment to this Agreement.

d. Disclosure of Confidential Information

Disclosure of Confidential Information by the Energy Commission may only be made pursuant to 20 CCR 2506 and 2507. All confidential data, records or products that are legally disclosed by the Recipient or any other entity become public records and are no longer subject to the above confidentiality designation.

24. Royalty Payments to the Energy Commission

Royalty provisions apply under this Agreement. These terms apply to both UC and non-UC personnel. These royalty provisions only apply to Intellectual Property developed under this Agreement.

- a. In consideration of the Commission providing funding to the UC, UC agrees to pay the Commission a portion of either Net Revenues or Net Royalties under the terms and conditions hereinafter set forth.
- b. Net Royalties. If UC or its subcontractor licenses to a Licensee, the UC’s obligation to make payments to the Commission shall commence from the date that the Net Royalties calculation is positive. Payments are payable in annual installments and are due the first day of March for Net Royalties calculation made for the UC’s prior fiscal year. UC agrees to pay to Commission an amount equivalent to 10% of the total cumulative Net Royalties, less payments made by UC to Commission in previous years when Net Royalties were positive. Payments shall be made by check and made payable to the California Energy Commission, PIER Fund.
- c. Net Revenues. If the UC or its subcontractor is the Licensee, the UC’s obligation to make payments to the Commission shall commence upon the first sale of the Licensed Product. Payments are payable in annual installments and are due the first day of March for the prior fiscal year of the UC. UC agrees to pay an amount equivalent to 1.5% of the Net

Revenues by check made payable to the California Energy Commission, PIER Fund.

- d. UC agrees to and shall require each subcontractor to agree not to make any sale, license, lease, gift or other transfer of any Subject Invention, Copyrightable Work or Project-Related Product (PRP) with the intent of, or for the purpose of, depriving Commission of Net Royalties or Net Revenues hereunder. Generally, this means that the UC and its subcontractor will not make any sale, license, lease or other transfer of PRP for consideration other than fair market value except for research, educational, or other mutually agreed to purposes intended to serve the public benefit.
- e. UC and its subcontractor shall maintain separate accounts within their financial and other records for purposes of tracking royalties and revenues due to the Commission under this Agreement.
- f. Audits on Payments to Commission. Payments to the Commission are subject to the Audit clause.
- g. Defaults. In the event of default hereunder, the Commission shall be free to exercise all rights and remedies available to it herein, and under law and at equity. UC's failure to pay when due, any amount due and payable under the terms of this contract constitutes a default under this Agreement.
- h. UC acknowledges that a late payment of royalties/revenues owed to the Commission will cause the Commission to incur costs not contemplated by the parties. If a royalty/revenue payment is not paid when due, UC agrees to pay the Commission a late fee equal to two percent (2%) of the payment due. Additionally, UC agrees that royalty/revenue payments not paid within fifteen (15) days of the due date shall thereupon become debt obligations of UC to the Commission, due upon demand and bearing interest at the maximum interest rate allowed by law.
- i. The parties agree that UC does not guarantee compliance with payments under this clause in the event of default by a subcontractor. Amounts in default and not paid by a subcontractor will not be paid by UC under this clause, and the fees and obligations of this clause pursuant to such default and non-payment shall not be a responsibility of UC. However, UC has an affirmative duty to monitor subcontractors' compliance and take reasonable enforcement measures calculated to obtain subcontractors' performance of their payment obligations under this clause.

UC and its subcontractor may exercise the Early Buyout. UC and its subcontractors have the option of paying its royalty obligations to Energy Commission without a pre-payment penalty, provided UC and or its subcontractor makes the royalty payment within two (2) years from the date at which royalties are first due to the Energy Commission. Royalty payment must be in a lump sum amount equal to two (2) times the amount of funds drawn down on the Agreement.

25. General Provisions

a. Governing Law

It is hereby understood and agreed that this Agreement shall be governed by the laws of the State of California as to interpretation and performance.

b. Independent Capacity

The Recipient, and the agents and employees of the Recipient, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

c. Assignment

Without the written consent of the Energy Commission in the form of a formal written amendment, this Agreement is not assignable or transferable by Recipient either in whole or in part.

d. Timeliness

Time is of the essence in this Agreement.

e. Unenforceable Provision

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

f. 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, that is, in addition to every other remedy provided therein or by law.

g. Assurances

The Energy Commission reserves the right to seek further written assurances from the Recipient and its team that the work of the project under this Agreement will be performed consistent with the terms of the Agreement.

h. Changes

Recipient shall promptly notify the Energy Commission of the occurrence of each of the following:

- (a) A change of address.
- (b) The existence of any litigation or other legal proceeding affecting the project.

- (c) The occurrence of any casualty or other loss to Key Project Personnel, equipment or Key subcontractors.
- (d) Receipt of notice of any claim or potential claim against Recipient for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the Energy Commission's rights.

i. Access to Sites and Records

The Energy Commission staff or its representatives shall have reasonable access to all project sites and to all records related to this Agreement.

j. Survival of Terms

It is understood and agreed that certain provisions shall survive the completion or termination date of this Agreement for any reason. The provisions include, but are not limited to:

- "Payments of Funds"
- "Equipment"
- "Changes "
- "Disputes"
- "Termination"
- "Audit Rights"
- "Indemnification"
- "License"

26. *Certifications and Compliance*

a. 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, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (40), marital status, and denial of family care leave. 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.

b. 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:

- i) 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).
- ii) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) 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.
 - iii) Provide, as required by Government Code Section 8355(c), 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.

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

For any Agreement in excess of \$100,000, the Recipient acknowledges that:

- i) 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

ii) 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.

d. Air or Water Pollution Violation

Under the state laws, the Recipient shall not be:

- 1) In violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;
- 2) Subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
- 3) Finally determined to be in violation of provisions of federal law relating to air or water pollution.

f. 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.

27. Definitions

- a. **Agreement Period** is the length of this Agreement between the Energy Commission and the Recipient. The Recipient's Project may coincide with or extend outside the Agreement Period.
- b. **Confidential Information** is information Recipient has submitted to the Energy Commission and has satisfactorily identified and which the Energy Commission has agreed to designate as confidential pursuant to Title 20 CCR 2501 and following (and amendments).
- c. **Technical Data or Data** as used throughout this Agreement means recorded information regardless of form or characteristic, of a scientific or technical nature and used in the performance of this Agreement. It may, for example, document research; document experimental, developmental, demonstration, or engineering work; or be usable or used to define a design or process; or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, test specifications or related performance or design type documents or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of Technical Data include manufacturing techniques and methods, machinery, devices such as tools, products, or components, research and engineering data, engineering drawings and associated lists, specifications, engineering calculations, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical Data as used herein does not include

financial reports, cost analyses and other information incidental to administration of this Agreement.

- d. **Licensed Product** means any product commercialized by a Licensee that embodies or utilizes a Subject Invention, Copyrightable Work, or Project Related Products.
- e. **Licensee** means the organization (or its affiliates, joint venture or sublicensee) that develops any Subject Invention, Copyrightable Work, or Project Related Products into a commercial product that is made available to the public in the marketplace. Licensee may be the UC, a Performing Institution, or a company to whom the UC or the Performing Institution licenses commercial rights.
- f. **Match Funds** means cash or in-kind (non-cash) contributions provided by Recipient, subcontractors or other parties that will be used in performance of this Agreement.
- g. **Net Revenues** means the total of the gross invoice prices of Licensed Product sold, less the sum of the following actual and customary deductions where applicable: cash; quantity discounts; sales, use, tariff, import/export duties or other excise taxes imposed upon particular sales; transportation charges; and allowance or credits to customers because of rejections or returns.
- h. **Net Royalties** means gross royalties and fees received by UC or a Performing Institution from a Licensee as consideration for commercially licensing any Subject Invention, Copyrightable Work or Project-Related Product, less the following:
 1. Legal or other direct expenses (that are not otherwise reimbursed under an option or license agreement from a third party) of patenting, protecting and preserving patent, copyright and related property rights, maintaining patents and other such costs, taxes, or reimbursements as may be necessary or required by law, except patent infringement expenses, and
 2. Inventor or author shares in accordance with UC's, or as appropriate, the Performing Institution's patent or copyright policy.

Direct expenses include operating expenses of UC and Performing Institutions. Net Royalties do not include any payments to joint holders nor research funding accepted by a Performing Institution in association with an option or licensing agreement. Net Royalties shall be aggregated cumulatively, over time, by UC for each Performing Institution and for all of each Performing Institution's disclosed Subject Inventions, Copyrightable Works and Project-Related Products.

- i. **Performing Institution** means (i) any non-UC not-for-profit organization, for-profit organization, or Federal laboratory, or (ii) any part of the University of California, such as a campus or UC-managed Department of Energy Laboratory performing research under this Agreement.
- j. **Project** refers to the entire effort undertaken and planned by the Recipient and consisting of the work co-funded by the Energy Commission.

- k. ***Project-Related Products and Rights*** means all tangible research products first made by UC or a Performing Institution in the performance of this agreement, but not a Subject Invention nor a Copyrightable Work.
- l. ***Sale*** is sale, license, lease, gift or other transfer of Project-Related Product and Rights.
- m. ***Sales Price*** means gross revenues, excluding normal returns and allowances such as sales tax, freight and insurance, if applicable, derived from a Sale.
- n. ***Subject Invention*** means any patentable invention or discovery that is either:
 - 1) Conceived and first actually reduced to practice in the performance of this Agreement;
 - 2) Conceived in the performance of this Agreement elected by the Commission pursuant and reduced to practice within 42 months following the termination or expiration of the applicable WA; or
 - 3) Conceived prior to and reduced to practice in the performance of this Agreement, provided that such conception was incorporated into the Project and the parties mutually agree in writing to include such conception.

28. *Additional Requirements for Federally Funded Grants*

- a. Cost Sharing (Oct. 2004)

Cost share under this Agreement must come from non-Federal sources. By accepting Federal funds under this Agreement, Recipient agrees to be liable for the percentage of cost 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 Estimated Project Cost is the sum of the Government share and Recipient share of the estimated project costs. The required minimum cost share percentage is calculated by dividing Recipient Cost Share amount by the Total Estimated Project Cost.

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

- b. Site Visits (Oct. 2004)

The California Energy Commission, the federal awarding agency, and/or their designees have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. Recipient must provide and must require subawardees to provide reasonable facilities and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

c. Agreement on Buy American Act Requirements

- 1) The Recipient agrees to comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a-10c, popularly known as the “Buy American Act”). The Recipient should review the provisions of the Act to ensure that expenditures made under this agreement are in accordance with it.
- 2) It is the sense of the Congress of the United States that to the greatest extent possible all equipment and products purchased with funds made available under this award should be American-made.

d. Nondiscrimination Clause

This award is subject to the provisions of 10 Code of Federal Regulations (CFR) Part 1040.1 *et seq.* The Recipient will complete and certify by signature on the DOE Form 1600.5, U.S. DOE “Assurance of Compliance, Nondiscrimination in Federally Assisted Programs” (Exhibit B) its commitment to comply with this law.

e. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements

This award is subject to the provisions 10 CFR Part 601, 10 CFR Part 606, and 10 CFR Part 607. The Recipient will complete and certify by signature on the attached federal Form “Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements” (Exhibit C) its commitment to comply with these requirements.

By accepting funds under this award, Recipient agrees that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

f. Disclosure of Lobbying Activities

Recipient shall disclose lobbying activities by completing and signing the “Disclosure of Lobbying Activities” (Exhibit D).

g. National Policy Assurances

Recipient agrees to adhere to and include in all subcontracts the requirements set forth in the attached “National Policy Assurances” (Exhibit E).

h. Federal Intellectual Property Provisions

In addition to the “License” provisions in Section 15 of this Agreement, Recipient must conform to “Federal Intellectual Property Provisions” (Exhibit F) included in this Agreement.

Attachment A

ASSURANCE OF COMPLIANCE
U.S. Department of Energy
Assurance of Compliance

OMB Control No.
1910-0400

DOE F 1600.5
(06-94)
All Other Editions are Obsolete

Nondiscrimination in Federally Assisted Programs**OMB Burden Disclosure Statement**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Resources Management Policy, Plans, and Oversight, Records Management Division, HR-422 - GTN, Paperwork Reduction Project (1900-0400), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (1900-0400), Washington, DC 20503.

(Hereinafter called the "Applicant")

HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L.88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub.L.93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub.L.93-438), Title IX of the Education Amendments of 1972, as amended (Pub.L.92-318, Pub.L.93-568, and Pub.L.94-482), Section 504 of the Rehabilitation Act of 1973 (Pub.L.93-112), the Age Discrimination Act of 1975 (Pub.L.94-135), Title VIII of the Civil Rights Act of 1968 (Pub.L.90-284), the Department of Energy Organization Act of 1977 (Pub.L.95-91), and the Energy Conservation and Production Act of 1976, as amended (Pub.L.94-385) and Title 10, Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.

Applicability and Period of Obligation

In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance extended to the Applicant by the Department of Energy, this assurance obligates the Applicant for the period during which Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant by the Department of Energy.

Employment Practices

Where a primary objective of the Federal assistance is to provide employment or where the Applicant's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department, the Applicant agrees not to discriminate on the ground of race, color, national origin, sex, age, or disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs; or other forms of compensation and use of facilities.

Subrecipient Assurance

The Applicant shall require any individual, organization, or other entity with whom it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws cited above. To this end, the subrecipient shall be required to sign a written assurance form, however, the obligation or both recipient and subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

Data Collection and Access to Records

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to, the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be served by race, color, national origin, sex, age, and disability; (3) data regarding covered employment including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, age, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to its obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

DOE F 1600.5
(06-94)
All Other Editions are Obsolete

OMB Control No.
1910-0400

The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal assistance funds extended by the Department of Energy, Facilities of the Applicant (including the physical plants, building, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours on request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U.S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicants by the Department of Energy, including installment payments on account after such data of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representation and agreements made in this assurance and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, the successors, transferees, and assignees, as well as the person(s) whose signature appears below and who are authorized to sign this assurance on behalf of the Applicant.

Applicant Certification

The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to the Applicant upon written request to DOE).

Designated Responsible Employee

Name and Title (Printed to Typed)

() - _____
Telephone Number

Signature

Date

Applicant's Name

() - _____
Telephone Number

Address:

Date



Attachment B

**CERTIFICATIONS REGARDING LOBBYING;
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS;
AND DRUG-FREE WORKPLACE REQUIREMENTS**

THIS PAGE IS INTENTIONALLY LEFT BLANK.

**CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 10 CFR Part 601 "New Restrictions on Lobbying," and 10 CFR Part 1036 "Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Energy determines to award the covered transaction, grant, or cooperative agreement.

1. Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
 - (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
-

3. DRUG-FREE WORKPLACE

This certification is required by the Drug-Free Workplace Act of 1988 (Pub.L. 100-690, Title V, Subtitle D) and is implemented through additions to the Debarment and Suspension regulations, published in the Federal Register on January 31, 1989, and May 25, 1990.

ALTERNATE I (GRANTEES OTHER THAN INDIVIDUALS)

- (1) The grantee certifies that it will or will continue to provide a drug-free workplace by:
 - (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

- (1) Abide by the terms of the statement; and
- (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace not later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug- free workplace through implementation of paragraphs (a),(b),(c),(d),(e), and (f).

(2) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance: (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

ALTERNATE II (GRANTEES WHO ARE INDIVIDUALS)

(1) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant.

(2) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT and PR/AWARD NUMBER and/or PROJECT NAME

PRINTED NAME and TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE and DATE

THIS PAGE IS INTENTIONALLY LEFT BLANK.

ATTACHMENT C
DISCLOSURE OF LOBBYING ACTIVITIES

THIS PAGE IS INTENTIONALLY LEFT BLANK

Approved by OMB

0348-0046

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

<p>1. Type of Federal Action: a. contract _____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance</p>	<p>2. Status of Federal Action: a. bid/offer/application _____ b. initial award c. post-award</p>	<p>3. Report Type: a. initial filing _____ b. material change</p> <p>For material change only: Year _____ quarter _____ Date of last report _____</p>
<p>4. Name and Address of Reporting Entity: _____ Prime _____ Subawardee Tier _____, if Known:</p> <p>Congressional District, if known:</p>		<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, if known:</p>
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable: _____</p>	
<p>7. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p> <p>\$ _____</p>	
<p>10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):</p>	<p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</p>	
<p>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>	<p>Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____</p>	
<p>Federal Use Only</p>	<p>Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)</p>	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

ATTACHMENT D**NATIONAL POLICY ASSURANCES****NATIONAL POLICY ASSURANCES TO BE INCORPORATED AS
AWARD TERMS (SEPTEMBER 2007)****I. Nondiscrimination Policies**

You must comply with applicable provisions of the following national policies prohibiting discrimination:

- 1 On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), as implemented by DOE regulations at 10 CFR part 1040;
- 2 On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), as implemented by DOE regulations at 10 CFR parts 1041 and 1042;
- 3 On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C.6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90 and DOE regulations at 10 CFR part 1040;
- 4 On the basis of disability, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DOE regulations at 10 CFR part 1041;
- 5 On the basis of race, color, national origin, religion, disability, familial status, and sex under Title VIII of the Civil Rights Act (42 U.S.C. 3601 et seq.) as implemented by the Department of Housing and Urban Development at 24 CFR part 100; and
- 6 On the basis of disability in the Architectural Barriers Act of 1968(42 U.S.C. 4151 et seq.) for the design, construction, and alteration of buildings and facilities financed with Federal funds.

II. Environmental Policies

You must:

- 1 Comply with applicable provisions of the Clean Air Act (42 U.S.C.7401, et. seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency rules at 40 CFR part 32, Subpart J.
- 2 Immediately identify to us, as the awarding agency, any potential impact that you find this award may have on:

- a. The quality of the human environment, including wetlands, and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321 et. seq.) and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives until we provide written notification of Federal compliance with NEPA, as implemented by DOE at 10 CFR part 1021.
 - b. Flood-prone areas, and provide any help we may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas, as implemented by DOE at 10 CFR part 1022.
 - c. Use of land and water resources of coastal zones, and provide any help we may need to comply with the Coastal Zone Management Act of 1972(16 U.S.C. 1451, et. seq.).
 - d. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores, and provide help we may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et. seq.), concerning preservation of barrier resources.
 - e. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide any help we may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et.seq.
 - f. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide any help we may need to comply with the Safe Drinking Water Act(42 U.S.C. 300h-3).
- 3 Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in housing owned by the Federal Government or receiving Federal assistance.
- 4 Comply with section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962), and implementing regulations of the Environmental Protection Agency, 40 CFR Part 247, which require the purchase of recycled products by States or political subdivision of States.

III. Live Organisms

- 1 **Human research subjects.** You must protect the rights and welfare of individuals that participate as human subjects in research under this award in accordance with the Common Federal Policy for the Protection of Human Subjects (45 CFR part 46), as implemented by DOE at 10 CFR part 745.
- 2 **Animals and plants.**
 - a. You must comply with applicable provisions of Department of Agriculture rules at 9 CFR parts 1-4 that implement the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 21312156) and provide for

humane transportation, handling, care, and treatment of animals used in research, experimentation, or testing under this award.

b. You must follow the guidelines in the National Academy of Sciences(NAS) Publication “Guide for the Care and Use of Laboratory Animals”(1996, which may be found currently at <http://www.nap.edu/readingroom/books/labrats/>) and comply with the Public Health Service Policy and Government principles Regarding the Care and use of animals (included as Appendix D to the NAS Guide).

c. You must immediately identify to us, as the awarding agency, any potential impact that you find this award may have on endangered species, as defined by the Endangered Species Act of 1973, as amended (“the Act,” 16 U.S.C. 1531-1543), and implementing regulations of the Departments of the Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227). You also must provide any help we may need to comply with 16 U.S.C. 1536(a)(2). This is not in lieu of responsibilities you have to comply with provisions of the Act that apply directly to you as a U.S. entity, independent of receiving this award.

IV. Other National Policies

1 **Debarment and suspension.** You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR parts 180 and 901.

2 **Drug-free workplace.** You must comply with drug-free workplace requirements in Subpart B of 10 CFR part 607, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

3 **Lobbying.**

a. You must comply with the restrictions on lobbying in 31 U.S.C.1352, as implemented by DOE at 10 CFR part 601, and submit all disclosures required by that statute and regulation.

b. If you are a nonprofit organization described in section 501(c)(4)of title 26, United States Code (the Internal Revenue Code of 1968),you may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., Chapter 26). If we determine that you have engaged in lobbying activities, we will cease all payments to you under this and other awards and terminate the awards unilaterally for material failure to comply with the award terms and conditions. By submitting an application and accepting funds under this agreement, you assure that you are not an organization described in section 501(c)(4) that has engaged in any lobbying activities described in the Lobbying Disclosure Act of 1995 (2 U.S.C. 1611).

c. You must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official of any government concerning any legislation, law, policy, appropriation, or ratification.

4. **Officials not to benefit.** You must comply with the requirement that no member of Congress shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41U.S.C. 22.
5. **Hatch Act.** If applicable, you must comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7326), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.
6. **Native American graves protection and repatriation.** If you control or possess Native American remains and associated funerary objects, you must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).
7. **Fly America Act.** You must comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the “Fly America Act,” and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require air transport of people or property to, from, between or within a country other than the United States, the cost of which is supported under this award, to be performed by or under a cost-sharing arrangement with a U.S. flag carrier, if service is available.
8. **Use of United States-flag vessels.**
 - a. Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.
 - b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 9.a of this section shall be furnished to both our award administrator (through you in the case of your contractor’s bill-of lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
9. **Research misconduct.** You must comply with the government-wide policy on research misconduct issued by the Office of Science and Technology Policy (available in the Federal Register at 65 FR 76260, December 6,2000, or on the Internet at www.ostp.gov), as implemented by DOE at 10 CFR part 733 and 10 CFR 600.31.
10. **Requirements for an Institution of Higher Education Concerning Military recruiters and Reserve Officers Training Corps (ROTC).**
 - a. As a condition for receiving funds under an award by the National Nuclear Security Administration of the Department of Energy, you agree that you are not an institution of higher education that has a

policy or practice placing any of the restrictions specified in 10 U.S.C.983.as implemented by 32 CFR part 216, on:

i. Maintenance, establishment, or operation of Senior ROTC units, or student participation in those units; or

ii. Military recruiters' access to campuses, students on campuses, or information about students.

b. If you are determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this award, we:

i. Will cease all payments to you of funds under this award and all other awards subject to the requirements in 32 CFR part 216; and

ii. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

11. Historic preservation. You must identify to us any:

a. Any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and provide any help we may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 470f), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, "Identification and Protection of Historic Properties," [3 CFR, 1971-1975 Comp., p. 559].

b. Potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to this award, to comply with the Archaeological and Historic Preservation Act of 1974 (16 U.S.C.469a-1, et seq.).

12 Relocation and real property acquisition. You must comply with applicable provisions of 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970(42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

13 Confidentiality of patient records. You must keep confidential any records that you maintain of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under this award, in accordance with 42 U.S.C. 290dd-2.

14 Constitution Day. You must comply with Public Law 108-447, Div. J, Title I, Sec. 111 (36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in a Federal fiscal year to hold an educational program on the United States Constitution on September 17th during that year for the students served by the educational institution.

V. National Policy Requirements for Subawards.

Recipient responsibility. You must include in any subaward you make under this award the requirements of the national policy requirements in Sections I through IV of this document that apply, based on the type of subawardee organization and situation.

ATTACHMENT E**INTELLECTUAL PROPERTY PROVISIONS (NRD-1003)****Non-research and Development**

Nonprofit organizations are subject to the intellectual property requirements at 10 CFR 600.136(a), (c) and (d). All other organizations are subject to the intellectual property requirements at 10 CFR 600.136 (a) and (c).

600.136 Intangible property.

(a) Recipients may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOE reserves 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.

(b) DOE has the right to:

(1) Obtain, reproduce, publish, or otherwise use the data first produced under an award; and

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

(c) (1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the DOE shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the DOE obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect the costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees that agency may assess under the FOIA (5 U.S.C. 552 (a)(4)(A)).