**ATTACHMENT 10**

**SPECIAL TERMS AND CONDITIONS**

# Priority of these Special Terms

# In the event of a conflict between these Special Terms and other terms in this Agreement, these Special Terms shall govern.

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# Information Practices Act

# Recipient and All Subcontractors, incentive and grant recipients, and project partners shall comply with the Information Practices Act.

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

# Sources of information. Recipient, and All Entities shall maintain a record of the source of an individual’s Personal Information in accordance with § 1798.16. Per IPA § 1798.16, this requirement does not apply if the data subject is the source of the Personal Information.

1. Use of information. Pursuant to IPA § 1798.14, the Recipient, and All Entities shall only use Personal Information for the purposes of this Agreement. Recipient, and All Entities shall not disclose any Personal Information to any person or entity other than the Energy Commission and Energy Commission employees.
2. Security. Pursuant to IPA § 1798.21, Recipient, and All Entities shall employ appropriate and reasonable safeguards to ensure the security and confidentiality of Personal Information and to protect against anticipated threats or hazards to their security or integrity which could result in any injury.
3. Notice. On or with any form used to collect Personal Information from individuals, the Recipient, and All Entities shall provide the notice required in § 1798.17. At the time of executing this agreement, § 1798.17 requires the following:

(a) The name of the agency and the division within the agency that is requesting the information.

(b) The title, business address, and telephone number of the agency official who is responsible for the system of records and who shall, upon request, inform an individual regarding the location of his or her records and the categories of any persons who use the information in those records.

(c) The authority, whether granted by statute, regulation, or executive order which authorizes the maintenance of the information.

(d) With respect to each item of information, whether submission of such information is mandatory or voluntary.

(e) The consequences, if any, of not providing all or any part of the requested information.

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

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

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

# Recipient has no Ownership or other Rights to the Personal Information

The Recipient has, and the Recipient shall ensure that All Entities have, no ownership, license, or other rights in Personal Information or in any form in which it is used (e.g., Products). In this regard, the Personal Information shall NOT be treated like Data, Products, Intellectual Property, or other provisions in the Agreement that may indicate that Recipient has ownership, license, or other rights.

# Rights to Anonymized Information Derived from Personal Information

To the extent that the Recipient uses Personal Information to derive anonymized information that no longer meets the definition of Personal Information, the rights to derived anonymized information follow the rights in Exhibit C or applicable law.

# Retention and Destruction of Personal Information

Upon the request of the Energy Commission, or upon termination of this Agreement, whichever is earlier, the Recipient and all Entities shall promptly deliver to the Energy Commission or destroy all Personal Information, regardless of form (e.g., written or electronic) and all copies, abstracts, media, and backups thereof, however stored in Recipient’s and All Entities’ possession. No Personal Information shall remain with Recipient or All Entities upon request of the Energy Commission or after the termination of this Agreement, whichever occurs first.

# Survival

The terms of this Exhibit D, Section 2 “Information Practices Act” shall remain in full force and effect in perpetuity.

# Contingent Funding

Recipient understands that the Energy Commission currently only has $5,000,000 of the potential $15,000,000 maximum possible funding for administrative costs under this Agreement. Therefore, upon execution of this Agreement, Recipient only has authority to spend up to $5,000,000 in administrative costs. In the future, the Energy Commission may allocate none, some, or the entire remaining contingent amount up to a maximum amount of $15,000,000 in administrative costs. Recipient shall only be authorized to spend more than the existing $5,000,000 in administrative costs upon execution of an amendment to this Agreement that authorizes the Recipient to spend more funds.

# Conflict of Interest

1. Recipient agrees to continuously review new and upcoming projects in which members of the Contractor team may be involved for potential conflicts of interest (e.g., Gov. Code § 81000 et seq., and Gov. Code § 1090 et seq.). Recipient shall inform the Commission Agreement Manager as soon as a question arises about whether a potential conflict may exist or as soon as the Recipient knows a conflict exists. The Commission Agreement Manager and Commission’s Chief Counsel's Office shall determine what constitutes a potential conflict of interest. The Energy Commission reserves the right to redirect work and funding on a project if the Commission’s Chief Counsel’s Office determines that there is a potential conflict of interest.
2. Appearances of Conflicts of Interest

The Recipient acknowledges that in governmental agreements even the appearance of a conflict of interest can be harmful to the interest of the State. Thus, the Recipient shall refrain from any practices, activities, or relationships that appear to conflict with the Recipient’s obligations under this Agreement, unless the Recipient receives prior written approval of the Commission. In the event the Recipient is uncertain whether the appearance of a conflict of interest may exist, the Recipient shall submit to the Commission Agreement Manager a written description of the relevant details.

1. Prohibition on Participating in Energy Commission Funding Opportunities

Under this Agreement, the Recipient and its subcontractors will, with oversight from the Commission, develop and implement financial incentive programs. Accordingly, the Recipient and its subcontractors are prohibited from participating and agree not to participate in any manner (e.g., as an applicant, subcontractor, or match-funding partner) in any financial incentive program implemented under this Agreement.

1. Possible amendment of conflicts of interest provisions

The Recipient acknowledges that, if amendments to this Agreement are made to develop and fund financial incentive programs or otherwise expand the scope of work, the role of employees of the Recipient, subrecipients and project partners may become more defined. As those responsibilities and tasks are defined, the Commission Agreement Manager and Commission’s Chief Counsel’s Office reserve the right to determine if it is appropriate to designate certain individuals who are participating in the making of government decisions as “consultants” under the Political Reform Act and therefore require the disclosure of economic interests pursuant to Government Code section 87300 and the CEC’s Conflict of Interest Code at California Code of Regulations, title 20, sections 2401-2402. Upon such determination, this Agreement shall be amended to include the specific procedural requirements applicable to the Recipient, subrecipients and project partners, and any designated consultants.

# Flow-down

The Recipient shall flow-down the terms 1 through 4 in this Exhibit to its subcontractors, project partners, and any other necessary agreements, and these terms survive the end of this Agreement, even if ended by termination instead of the natural expiration at the Agreement end date.

1. **Advance Funds**

This Agreement is for the Recipient to administer a block grant program. Under Health and Safety Code section 44272(g)(3)(C), the CEC has authority to advance funds to block grant administrators. This can prevent block grant administrators from having to front large sums of funds before seeking reimbursement from the CEC.

Under this Agreement, the Recipient can request but is not guaranteed to receive

advance funds. It is solely within the CEC’s discretion to allow advance funds. Because the CEC earns interest on the funds in its accounts, the CEC can lose interest if it

advances funds long before a recipient actually pays out the funds (i.e., the funds just

sit in the Recipient’s account instead of the CEC’s interest-earning account).

Accordingly, the Recipient, if allowed to receive advance funds, shall take reasonable

efforts to minimize the time from receiving advance funds and paying them out.

The CEC can request at any time that the Recipient repay any funds advanced to

Recipient that the Recipient has not paid out, and the Recipient shall repay the unspent

advanced funds within 10 days of receiving the CEC’s request.

The Recipient shall pay to the CEC any interest it earns on advanced funds that

cumulatively total more than $200. This means over the life of this Agreement, if the

Recipients cumulatively earns more than $200 on advanced funds, any additional

interest amounts after that shall be paid to the CEC. Alternatively, the CEC in its sole

discretion, can instead subtract the interest amount over $200 from the amount paid to

Recipient as requested in Recipient’s future invoices.

In addition to other documentation the Recipient must provide under this Agreement, upon request by the CEC, the Recipient shall provide all documents related to advanced funds received and paid out and any interest earned on the funds.