

SAMPLE FEDERAL CONTRACT TERMS AND CONDITIONS¹

1. Federal funding

This Agreement is subject to financial assistance from the United States Department of Energy (DOE) for the Home Efficiency Rebates (HOMES) Program under Section 50121 of the Inflation Reduction Act. Contractor must comply with all applicable federal laws and regulations. Contractor's failure to comply with applicable federal laws and regulations constitutes a material breach of this Agreement.

2. Documents Incorporated by Reference

The following documents are hereby incorporated by reference:

- a. Public Law 117-169 Inflation Reduction Act (IRA).
- b. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200 as amended by 2 CFR part 910, as applicable to contractors, located at [eCFR :: Home](http://www.eCFR.gov), (<http://www.eCFR.gov>).
- c. National Policy Requirements (November 12, 2020), as applicable to contractors, located at [Research Terms and Conditions](http://www.nsf.gov/awards/managing/rtc.jsp), (<http://www.nsf.gov/awards/managing/rtc.jsp>) and [National Police Assurances to be Incorporated as Award Terms](https://www.energy.gov/management/articles/national-policy-assurances-be-incorporated-award-terms), (<https://www.energy.gov/management/articles/national-policy-assurances-be-incorporated-award-terms>)

3. Compliance with Federal, State, and Municipal Law

- a. Contractor must comply with applicable federal, state, and local laws and regulations for all work performed under this Agreement.
- b. Contractor must obtain all necessary federal, state, and local permits, authorizations, and approvals for all work performed under this Agreement.
- c. Any apparent inconsistency between federal and state laws and regulations and the terms and conditions of this Agreement must be referred to CEC for guidance.

4. No Obligation by Federal Government

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the Contractor, or any other party pertaining to any matter resulting from this Agreement.

5. Stewardship

CEC and the Office of State and Community Energy Programs (SCEP) within DOE will exercise normal stewardship in overseeing the project activities performed under this Agreement.

¹ This document is provided as a sample of federal contract terms and conditions. Prior to an agreement, terms must be updated to reflect updates to federal award terms, regulations, guidance, or other.

Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to address deficiencies that develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the project objectives have been accomplished. Contractor may be required to participate in, or provide information, documents, or other assistance requested by CEC or SCEP for the purpose of SCEP's federal stewardship or substantial involvement.

6. National Environmental Policy Act Requirements

DOE must comply with the National Environmental Policy Act prior to authorizing the use of Federal funds. Contractor may be asked to complete, or asked to provide information to CEC to complete, an environmental questionnaire for the purposes of a National Environmental Policy Act review. Contractor must wait to receive notification from DOE or CEC that the NEPA review has been completed and approved prior to initiating the subject project or activities.

7. Historic Preservation

DOE must comply with the requirements of Section 106 of the National Historic Preservation Act prior to authorizing the use of Federal funds. Contractor may be asked to provide information for the purposes of the National Historic Preservation Act.

8. Intellectual Property

Intellectual property rights are subject to 2 CFR 200.315 (e.g., institution of higher education or nonprofit organizations) or 2 CFR 910.362 (e.g., for-profit).

9. Performance of Work in United States

- a. All work performed under this Agreement must be performed in the United States unless DOE provides a waiver. This requirement does not apply to the purchase of supplies and equipment; however, Contractor should make every effort to purchase supplies and equipment within the United States. Contractor shall include this provision in all subcontracts and lower tier subcontracts.

If Contractor fails to comply with the Performance of Work in the United States requirement, CEC may deny reimbursement for the work conducted outside the United States.

- b. DOE may approve the performance of a portion of the work outside the United States under limited circumstances. Contractor must obtain a waiver via CEC prior to conducting any work outside the U.S.
- c. To request a waiver, the Contractor must submit a written request to CEC that includes the rationale for performing the work outside the U.S., a description of the work proposed to be performed outside the U.S., the proposed budget of work to be performed; and the countries in which the work is proposed to be performed. The rationale must demonstrate to the satisfaction of DOE that the performance of work outside the United States would further the purposes of the Federal Program and is in the economic interests of the United States.

10. Foreign National Involvement and Participation

If the Contractor anticipates involving foreign nationals in the performance of this Agreement, the Contractor must notify CEC. The Contractor may then be required to provide CEC and DOE with specific information about each foreign national to satisfy requirements for foreign national participation and access approval. A foreign national is defined as any person who is not a U.S. citizen by birth or naturalization. The volume and type of information collected may depend on various factors associated with the federal award. DOE may elect to deny a foreign national's participation. Likewise, DOE may elect to deny a foreign national's access to DOE sites, information, technologies, equipment, programs, or personnel. DOE's determination to deny participation or access is not appealable.

11. Reporting Requirements

- a. CEC has numerous reporting requirements for this federal award. CEC's noncompliance with reporting requirements may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. Contractor must provide all information requested by CEC within the timeframes requested by CEC so that CEC may meet all reporting requirements. Failure to by Contractor to comply is a material breach of this Agreement.
- b. Scientific and Technical Information (STI) generated under this DOE Award will be submitted to DOE via the Office of Scientific and Technical Information's Energy Link ([E-Link](https://www.osti.gov/elink/)) system available at (<https://www.osti.gov/elink/>), and will be disseminated via DOE's [OSTI.gov](https://www.osti.gov/) website (<https://www.osti.gov/>) subject to approved access limitations. Citations for journal articles produced under the DOE Award will appear on the [DOE PAGES](https://www.osti.gov/pages/) website available at (<https://www.osti.gov/pages/>). Scientific and Technical Information submitted to E-Link must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

12. Lobbying

Contractor agrees that none of the funds under this Agreement will 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.

13. Publications

Contractor is required to include the following acknowledgement in publications arising out of, or relating to, work performed under this Agreement, whether copyrighted or not:

- a. Acknowledgment: "This material is based upon work supported by the U.S. Department of Energy's Office of State and Community Energy Programs (SCEP) under the IRA Home Energy Rebates Award Number DE-SE000024."

- b. Full Legal Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their 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 United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."
- c. Abridged Legal Disclaimer: "The views expressed herein do not necessarily represent the views of the U.S. Department of Energy or the United States Government."

Contractor should make every effort to include the full Legal Disclaimer. However, in the event Contractor is constrained by formatting and/or page limitations set by the publisher, the abridged Legal Disclaimer is an acceptable alternative.

14. Copyright

Contractor may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal awarding agency 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.

15. Property Standards

Property Standards, including but not limited to requirements for real property, equipment, and supplies acquired under a Federal award, can be found at 2 CFR 200.310 through 200.316. Also see 2 CFR 910.360 for additional requirements for real property and equipment for For-Profit recipients.

16. Insurance coverage

See 2 CFR 200.310 for insurance requirements for real property and equipment acquired or improved with Federal funds. Also see 2 CFR 910.360(e) for additional requirements for real property and equipment for For-Profit recipients.

17. Construction

Contractor must obtain written authorization from CEC and DOE before incurring any major construction costs.

18. Record Retention

Contractor is required to retain records relating to this Award consistent with 2 CFR 200.334

through 200.338.

19. Audits, Site Visits and Administrative Organizational Reviews

Contractor must provide any information, documents, site access, or other assistance requested by CEC, SCEP, DOE or Federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the Contractor's records relating to this Agreement. Upon completion of the audit, Contractor is required to refund any payments for costs that were determined to be unallowable. If the audit has not been performed or completed prior to closeout of the award, CEC or DOE may recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

SCEP's authorized representatives have the right to make site visits and conduct Administrative Organizational Reviews to review the project and management control systems and to provide technical assistance, as appropriate. Contractor must provide, and must require its subcontractors to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. SCEP will make reasonable efforts to ensure these site visits do not interfere with or unduly delay project work.

Contractor shall ensure that the procurement, receipt and payment for goods and services with funds from this Agreement, such as subcontracts at any tier, comply with Federal statutes, regulations, and the terms and conditions of DOE awards to the Energy Commission. DOE, the Energy Commission, or their designees, may review Contractor's records to audit and determine program compliance. 2 CFR 200.501(g) and 2 CFR 910.501(g).

20. Refund Obligation

Contractor must refund any excess payments (including any interest) received from CEC, including any costs determined unallowable by CEC.

21. Allowable Costs

- a. All costs under this Agreement must be allowable, allocable, and reasonable in accordance with applicable federal costs principles.
- b. Contractor must obtain the prior written approval of CEC for any foreign travel costs.

22. Nondisclosure and Confidentiality Agreements Assurances

- a. By entering into this agreement, Contractor attests that it does not and will not require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

- b. Contractor further attests that it does not and will not use any Federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:
 - i. *"These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."*
 - ii. The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.
 - iii. Notwithstanding provision listed in paragraph (i.), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

23. Conference Spending

Contractor must not expend any funds on a conference not directly and programmatically related to the purpose for which the DOE grant or cooperative agreement was awarded that would defray the cost to the United States Government of a conference held by any Executive branch department, agency, board, commission, or office for which the cost to the United States Government would otherwise exceed \$20,000, thereby circumventing the required notification by the head of any such Executive Branch department, agency, board, commission, or office to the Inspector General (or senior ethics official for any entity without an Inspector General), of the date, location, and number of employees attending such conference.

24. Export Controls

- a. The United States government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the U.S. to protect national security, foreign policy, and economic interests without imposing undue regulatory burdens on legitimate international trade. There is a network of Federal agencies and regulations that govern exports that are collectively referred to as "Export Controls."
- b. Contractor must comply with all applicable United States Export Control laws and regulations relating to any work performed under this Agreement and immediately report to CEC any export control violations related to any work performed under this Agreement.

25. Fraud, Waste, and Abuse

Contractor must disclose, in a timely manner, in writing to the Federal awarding agency or CEC all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

26. Interim Conflict of Interest Policy for Financial Assistance

The [DOE interim Conflict of Interest Policy for Financial Assistance \(COI Policy\)](https://www.energy.gov/management/pf-2022-17-department-energy-interim-conflict-interest-policy-requirements-financial) can be found at (<https://www.energy.gov/management/pf-2022-17-department-energy-interim-conflict-interest-policy-requirements-financial>). This policy is applicable to all non-Federal entities applying for, or that receive, DOE funding by means of a financial assistance award (e.g., a grant, cooperative agreement, or technology investment agreement) and, through the implementation of this policy by the entity, to each senior/key personnel who is planning to participate in, or is participating in, the project funded wholly or in part under the DOE financial assistance award. The term "senior/key personnel" means the Program/Project Manager and any other person, regardless of title or position, who is responsible for the purpose, design, conduct, or reporting of a project funded by DOE or proposed for funding by DOE.

27. Equal Employment Opportunity.

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

28. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).

Where applicable, all contracts in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

29. Rights to Inventions Made Under a Contract or Agreement.

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or Contractor wishes to enter into a contract with a small business firm or nonprofit

organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or Contractor must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

30. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.

Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

31. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

If this Agreement exceeds \$100,000, Contractor must complete and submit SF-LLL, "[Disclosure of Lobbying Activities](https://grants.gov/forms/forms-repository/sf-424-individual-family)", found at (<https://grants.gov/forms/forms-repository/sf-424-individual-family>) to ensure that non-federal funds have not been paid and will not be paid to any person for influencing or attempting to influence any of the following in connection with the application for this Program. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. Contractor shall require that the language of this certification be included in all subcontracts at all tiers and that all subcontractors shall certify and disclose accordingly.

32. Debarment and Suspension (Executive Orders 12549 and 12689).

A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. This Agreement is a covered transaction for purposes of 2 CFR Part 180 and 2 CFR Part 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 CFR 180.995) or its affiliates (defined at 2 CFR 180.905) are excluded (defined at 2 CFR 180.940) or disqualified (defined at 2 CFR 180.935). The Contractor must comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by the Energy Commission when entering into this Agreement. If it is later determined that the Contractor did not comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C, in addition to remedies available to the Energy Commission, the federal government may pursue available remedies, including but not

limited to suspension and/or debarment.

33. Contracting with small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms

- a. When possible, Contractor should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered as set forth below.
- b. Such consideration means:
 - (1) These business types are included on solicitation lists;
 - (2) These business types are solicited whenever they are deemed eligible as potential sources;
 - (3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
 - (4) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;
 - (5) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (6) Requiring a contractor under a Federal award to apply this section to subcontracts.

34. Domestic preferences for procurements

- a. As appropriate and to the extent consistent with law, Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This requirement must be included in all subcontracts for work or products under this Agreement.
- b. For purposes of this section: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

35. Procurement of recovered materials

- a. Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- b. Contractor should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

36. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

As set forth in 2 CFR 200.216, Contractor is prohibited from obligating or expending federal funds to:

- a. Procure or obtain covered telecommunications equipment or services;
- b. Extend or renew a contract to procure or obtain covered telecommunications equipment or services; or
- c. Enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services.

As described in section 889 of Public Law 115-232, "covered telecommunications equipment or services" means any of the following:

- 1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- 2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- 3) Telecommunications or video surveillance services provided by such entities or using such equipment.
- 4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
 - d. For the purposes of this section, "covered telecommunications equipment or services" also include systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

See Public Law 115-232, section 889 for additional information.

37. Nondiscrimination

By signing this Agreement, Contractor assures that it will comply with applicable provisions of the following, national policies prohibiting discrimination:

- a. 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.
- b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 [3 CFR, 1964-1965 Comp., p. 339], as implemented by Department of Labor regulations at 41 CFR part 60.
- c. 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.
- d. 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 at 10 CFR part 1040.
- e. On the basis of handicap, in (1) 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 and (2) The Architectural Barriers Act of 1968 (42 U.S.C. 4151, et seq.)

38. Americans with Disabilities Act of 1990.

Contractor shall comply with: (i) section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of disability in federally assisted programs; (ii) the Americans with Disabilities Act of 1990 (ADA) which prohibits discrimination on the basis of disability irrespective of funding; and (iii) all applicable regulations and guidelines issued pursuant to both the Rehabilitation Act and the ADA.

39. Flow Down Requirements

Contractor must flow down to its subcontractor agreements, and further require inclusion in all lower tier subcontractor agreements, all requirements as applicable in this Exhibit or elsewhere in the Agreement.

40. Cancellation and Availability of Federal Funds

- a. The Energy Commission has the option to cancel this Agreement within 30 days after the Agreement is fully executed.
- b. It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.
- c. This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal year in which the Agreement is executed, for the purpose of the Agreement services to support federal programs. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement in any manner.
- d. The parties mutually agree that if the Congress does not appropriate sufficient funds for the federal programs, this Agreement shall be amended to reflect any reduction in funds.

- e. The Energy Commission has the option to invalidate this Agreement under the 30-day cancellation clause or to amend the Agreement to reflect any reduction in funds.

41. Notice Regarding the Purchase of American-Made Equipment and Products – Sense of Congress

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Agreement should be American-made.