

EXHIBIT D

Special Terms and Conditions

1. AGREEMENT MANAGEMENT

- A. Contractor may change Project Manager but the Energy Commission reserves the right to approve any substitution of the Project Manager.
- B. The Energy Commission may change the Energy Commission Agreement Manager (CAM) at any time and will send a written notice to the Contractor signed by the Energy Commission Agreement Officer (CAO).
- C. Energy Commission staff will be permitted to work side by side with Contractor's staff to the extent and under conditions that may be directed by the CAM. In this connection, Energy Commission staff will be given access to all data, working papers, etc., which Contractor may seek to utilize.
- D. Contractor will not be permitted to utilize Energy Commission personnel for the performance of services, which are the responsibility of Contractor unless the CAM previously agrees to such utilization in writing and an appropriate adjustment in price is made. No charge will be made to Contractor for the services of Energy Commission employees while performing, coordinating or monitoring functions.
- E. If the Schedule of Deliverables and Due Dates needs to be revised after the execution of the Agreement, the revised dates cannot extend beyond the term end date of the Agreement. Contractor shall work with the CAM to agree on the new deliverable due dates. The CAM shall issue the revised Schedule of Deliverables and Due Dates to the Contractor and the CAO. Although the dates can be revised, the deliverables cannot be changed through this process.

2. STANDARD OF PERFORMANCE

Contractor shall be responsible in the performance of Contractor's/subcontractor's work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures. Any costs for failure to meet these standards, or otherwise defective services, which require reperformance, as directed by CAM or its designee, shall be borne in total by the Contractor/subcontractor and not the Energy Commission. In the event the Contractor/subcontractor fails to perform in accordance with the above standard the following will apply. Nothing contained in this section is intended to limit any of the rights or remedies which the Energy Commission may have under law.

- A. Contractor/subcontractor will reperform, at its own expense, any task, which was not performed to the reasonable satisfaction of the CAM. Any work reperformed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Contractor/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Energy Commission.
- B. The Energy Commission shall provide a new schedule for the reperformance of any task pursuant to this paragraph in the event that reperformance of a task within the original time limitations is not feasible.

- C. If the Energy Commission directs the Contractor not to reperform a task; the CAM and Contractor shall negotiate a reasonable settlement for satisfactory services rendered. No previous payment shall be considered a waiver of the Energy Commission's right to reimbursement.

3. **SUBCONTRACTS**

Contractor shall enter into subcontracts with the following firms and/or individuals and shall manage the performance of the subcontractors.

(Insert Subcontractor Names)

OR

No Subcontractors are named for this Agreement. If subcontractors are needed to perform any portion of this Agreement, the following criteria must be met and Contractor shall manage the performance of the subcontractors.

AND

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relationship between the State and any subcontractors, and no subcontractors and no subcontract shall relieve Contractor of its responsibilities and obligations hereunder. Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and/or persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Contractor. Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.
- B. Contractor shall be responsible for establishing and maintaining contractual agreements with and the reimbursement of each of the subcontractors for work performed in accordance with the terms of this Agreement. Contractor shall be responsible for scheduling and assigning subcontractors to specific tasks in the manner described in this Agreement; coordinating subcontractor accessibility to Energy Commission staff, and submitting completed products to the CAM.
- C. Contractor shall not allow any subcontractor to assign any portion of a subcontract related to this Agreement to a third party or subsequent tier subcontractor (lower tier subcontractor) without first obtaining the written consent of the CAM and following the procedures below "Process for New Subcontractors".
- D. 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 (3) years after final payment under the Agreement.
- E. Upon request by the CAM or CAO, Contractor shall provide copies of all contractual agreements with subcontractors and lower tier subcontractors.

- F. Contractors who are subcontracting with University of California or California State University may use the terms and conditions negotiated by the Department of General Services with University of California/ California State University for their subcontracts. Contractors who are subcontracting with the Department of Energy's (DOE) Lawrence Livermore National Laboratory, Lawrence Berkeley National Laboratory, and the Sandia National Laboratories may use the terms and conditions negotiated with the Department of General Services. Contractors who are subcontracting with all other DOE laboratories may use the terms and conditions negotiated by the Energy Commission with DOE for their subcontracts.
- G. Upon the termination of any subcontract or lower tier subcontract, Contractor shall notify the CAM and CAO immediately in writing.
- H. In addition to any other flow-down provisions required by this Agreement, all subcontracts shall contain the following: 1) the audit rights and non-discrimination provision stated in the General Terms and Conditions (Exhibit C) and in D above; and 2) further assignments shall not be made to any lower tier subcontractor without written consent of the CAM.

I. Process for New Subcontractors

The Energy Commission reserves the right to replace a subcontractor, request additional subcontractors, and approve additional subcontractors requested by Contractor. A replaced subcontractor and an added subcontractor are both defined as a "new" subcontractor. Such changes shall be subject to the following conditions:

- 1) The new subcontractor shall be selected using either: (a) A competitive bid process with written evaluation criteria by obtaining three or more bids and advertising the work to a suitable pool of subcontractors including without limitation: California Contracts Register; Contractor's mailing lists; mass media; professional papers or journals; posting on websites; and telephone or email solicitations; or (b) Non-competitive bid (sole source) process with a specific subcontractor.
- 2) Contractor may also need to comply with Disabled Veteran Business Enterprise requirements for the proposed subcontractor.
- 3) When a new subcontractor is proposed the CAM shall complete and submit to the CAO a "Subcontractor Addition" form. The proposed subcontract can be executed only after the CAO approves the Subcontractor Addition form. This form identifies the new subcontractor and bidding method used (competitive or non-competitive), the tasks the new subcontractor will be performing and the following shall be attached: resumes and completed Energy Commission budget forms.
- 4) Labor Rates & Classifications: Personnel of new subcontractors must fit within a classification and be equal to or less than a rate already listed in the Agreement budget and the rate cannot exceed the subcontractor's actual rate. Adding classifications and/or higher rates for the new subcontractor other than ones currently listed in the Agreement requires a formal amendment.

- 5) Non-Labor Rates: The non-labor rates (such as fringe, indirect overhead, general and administrative, profit) charged by the new subcontractor shall be equal to or less than the existing non-labor rates already listed in the Agreement budget and cannot exceed subcontractor's actual non-labor rates. Adding higher non-labor rates for the new subcontractor than ones currently listed in the Agreement requires a formal amendment.
- 6) Other Direct Operating Expenses: The new subcontractor may charge other direct operating expenses (such as material or equipment) as already identified in the Agreement budget. No new types of operating expenses are allowed to be charged by the new subcontractor. Adding new types of operating expenses for the new subcontractor requires a formal amendment.

4. **DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) AND SMALL BUSINESS REQUIREMENTS**

A. Certification Report

If Contractor made a commitment to achieve DVBE participation for this Agreement with DVBE subcontractor(s), then upon completion of the work or upon the Agreement end date, whichever is earlier, Contractor shall certify in a DVBE Subcontracting Report to the CAO that DVBE subcontractor participation under this Agreement is in compliance with the goals specified at the time of award of the Agreement or with any subsequent amendment. The report shall include: (1) the total amount the Contractor received under this Agreement; (2) the name and address of the DVBE(s) that participated in the performance of the Agreement and the Agreement number; (3) the amount and percentage of work the Contractor committed to provide to one or more DVBEs under the requirements of the Agreement and the amount each DVBE received from the Contractor; (4) that all payments under the Agreement have been made to the DVBE(s); and (5) the actual percentage of DVBE participation that was achieved. Upon request by the Commission, the Contractor shall provide proof of payment for the work. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. Military & Veterans Code section 999.5(d).

B. Withholding

1) \$10,000 Withholding

If Contractor made a commitment to achieve DVBE participation for this Agreement with DVBE subcontractor(s), then the Commission shall withhold \$10,000 (or full payment if less than \$10,000) from Contractor's final payment, pending receipt of the certification report in A above. This withholding is in addition to retention, if any, in Exhibit B, para 4.

2) Failure to comply with Certification Report

In addition to any other rights and remedies available to the Commission, if Contractor fails to comply with the certification report, Contractor shall, after notice by the Commission, be allowed to cure the defect. Notwithstanding any other law, if, after at least 15 calendar days but not more than 30 calendar days from the date of notice, Contractor refuses to comply with the certification report requirements, the Commission shall permanently deduct \$10,000 from the final payment (or the full payment if less than \$10,000). Military & Veterans Code section 999.7(a) and (c).

For purposes of this paragraph, time is of the essence; Contractor is deemed to have refused to comply with the certification report requirements, if the Commission does not receive the report within 30 calendar days from the date of the notice.

C. Substitution of DVBE

Contractor shall use each DVBE identified in its proposal or listed in this Agreement. Contractor understands and agrees that if DVBE(s) were identified in its proposal or listed in this Agreement, award of this Agreement is based in part on its commitment to use the DVBE subcontractor(s). If Contractor believes an identified DVBE must be replaced or substituted, Contractor shall request a substitution in writing to CAM and CAO, including the reason for the DVBE substitution. Contractor shall complete revised DVBE certification forms (provided by the CAO) identifying the proposed new DVBE. A DVBE subcontractor may only be replaced by another DVBE subcontractor and must be approved by the Commission and the Department of General Services (DGS). Any work by the proposed new subcontractor can be performed only after written approval by the Commission and DGS. The substitution shall maintain, at minimum, the level of DVBE participation stated in the original Proposal. Military and Veterans Code section 999.5(g); 2 California Code of Regulations 1896.73.

D. Amendment

This Agreement shall be amended if a DVBE must be substituted and DGS has given approval. This Agreement shall be amended if there are changes to the scope of work that impact the DVBE subcontractor(s) identified in the proposal or listed in this Agreement. If there are modifications for additional work, the same percentage of DVBE participation is required as in the original Agreement. The Commission shall document the modification and DVBE participation. 2 California Code of Regulations 1896.76.

E. Compliance with Law; Grounds for Termination; Damages; Penalties

Contractor shall comply with all applicable statutory and regulatory DVBE requirements, which include in part, adherence to the DVBE participation level identified in the Proposal or listed in this Agreement, and seeking substitution of a DVBE if necessary. Failure of Contractor to comply with or violation of statutory, regulatory and Agreement requirements may be cause for: termination of this Agreement; recovery of damages and penalties due to the State; loss of certification; bidding suspension; sanctions; imprisonment; penalties; and civil actions. Military and Veterans Code sections 999.5, 999.9 and Public Contract Code section 10115.10.

F. Commercially Useful Function

During the course of the Agreement, Contractor shall ensure that all DVBEs performing work under the Agreement maintain a commercially useful function related to the work scope. Military and Veterans Code section 999; 2 California Code of Regulations section 1896.71.

G. Records Retention

Contractor shall retain all records related to DVBE participation for this Agreement for a minimum of six years following final payment under the Agreement. Military and Veterans Code section 999.55.

H. DVBE Name for this Agreement: [Insert DVBE name](#)

- I. **Small Business Reporting.** If the Agreement includes small business participation, upon completion of the Agreement, Contractor shall report to the Energy Commission the percentage of small business participation achieved.

5. **PROCESS FOR OFFERING WORK**

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

- A. First offer the work to qualified persons already listed in this Agreement (either an employee of Contractor or a subcontractor).
- B. If there is no available qualified person listed in this Agreement who can perform the work, then Contractor shall provide documentation from all the persons who were offered and declined the work to the CAM. Then, Contractor may request to add a new person to the Agreement in accordance with Exhibit B, Rates & Classifications: Changes in Contractor Personnel or Subcontractor Personnel. A person added to the Agreement is thereafter treated as a person listed in this Agreement and can be offered future work without first offering it to originally listed people.
- C. If the person to be replaced or substituted was identified in the Agreement as a Disabled Veteran Business Enterprise (DVBE) firm, refer to the DVBE provision above for changes to DVBEs.
- D. If the person added is a new subcontractor, Contractor shall use the process outlined in the Subcontracts provision, Process for New Subcontractors.

6. **PERFORMANCE EVALUATION**

Consistent with Public Contract Code Sections 10367 through 10371, the Energy Commission shall, upon completion of this Agreement, prepare a performance evaluation of the Contractor. Upon filing an unsatisfactory evaluation with the Department of General Services, Office of Legal Services (DGS) the Energy Commission shall notify and send a copy of the evaluation to the Contractor within 15 days. The Contractor shall have 30 days to prepare and send statements to the Energy Commission and the DGS defending his or her performance. The Contractor's statement shall be filed with the evaluation in the Energy Commission's Contract file and with DGS for a period of 36 months and shall not be a public record.

7. **REPORTS**

- A. **Progress and Final Reports:** Contractor shall prepare progress reports summarizing all activities conducted by Contractor to date on a schedule as provided in Exhibit A. At the conclusion of this Agreement, Contractor shall prepare a comprehensive Final Report, on a schedule as provided in Exhibit A.
- B. **Title:** Contractor's name shall only appear on the cover and title page of reports as follows:

California Energy Commission
Project Title
Contractor Number
By (Contractor)
- C. **Ownership:** Each report shall become the property of the Energy Commission.

- D. **Nondisclosure:** Contractor will not disclose data or disseminate the contents of the final or any progress report without written permission of the CAM, except as provided in E, below. Permission to disclose information on one occasion or at public hearings held by the Energy Commission relating to the same shall not authorize Contractor to further disclose and disseminate the information on any other occasion. Contractor will not comment publicly to the press or any other media regarding its report, or the Energy Commission's actions on the same, except to Energy Commission staff, Contractor's own personnel involved in the performance of this Agreement, or at a public hearing, or in response to questions from a legislative committee. Notwithstanding the foregoing, in the event any public statement is made by the Energy Commission or any other party, based on information received from the Energy Commission as to the role of Contractor or the content of any preliminary or final report, Contractor may, if it believes the statement to be incorrect, state publicly what it believes is correct.
- E. **Disclosure:** Ninety days after any document submitted by the Contractor is deemed by the CAM to be a part of the public records of the State, Contractor may, if it wishes to do so at its own expense, publish or utilize a report or written document but shall include the following legend:

"LEGAL NOTICE"

"This report was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this report; nor does any party represent that the use of this information will not infringe upon privately owned rights."

8. **CONFIDENTIAL CONTRACTOR INFORMATION**

A. **Identification of Confidential Contractor Information**

For the purposes of this Section, "Confidential Contractor Information" refers to information the Contractor has satisfactorily identified as confidential and the Energy Commission has agreed to designate as confidential under Title 20 California Code of Regulations Section 2505. If applicable, all Contractor information considered confidential at the commencement of this Agreement is designated in an Attachment to this Exhibit.

B. **Confidential Deliverables: Labeling and Submitting Confidential Information**

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

C. **Submittal of Unanticipated Confidential Contractor Information as a Deliverable**

The Contractor and the Energy Commission agree that during this Agreement, it is possible that the Contractor may obtain or develop additional data or information not originally identified as a confidential deliverable. In this case, Contractor shall follow the procedures for a request for designation of Confidential Information specified in 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 deliverables in an Attachment to this Exhibit.

D. Disclosure of Confidential Contractor 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 deliverables that are legally disclosed by the Contractor or any other entity become public records and are no longer subject to the above confidentiality designation.

9. RECEIPT OF CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION

A. Application: These special terms and conditions set forth information privacy and security requirements Contractor must follow if Confidential Information or Personal Information as defined herein is disclosed to Contractor, or is collected, created, maintained, stored, transmitted, or otherwise used by Contractor in the performance of this Agreement. Contractor must ensure that all individuals and entities participating in any way with this Agreement, including but not limited to its officers, employees, agents, subcontractors, subawardees, vendors, and other project partners, comply with this Section. Contractor must flow-down this Section to all subcontracts, subawards, vendor agreements, and all other project partner agreements that will be provided access to Confidential Information or Personal Information before the individual or entity has access to any such information. Contractor must also require all individuals and entities to flow-down this Section to any lower tier subcontractors, subawardees, vendors, project partners, and other individual or entity participating in any way with this Agreement that will be provided access to Confidential Information or Personal Information before the individual or entity has access to any such information.

B. Definitions:

- 1) "Confidential Information" means information the Energy Commission has designated as confidential pursuant to Title 20 of the California Code of Regulations, Section 2505 et seq., information the Energy Commission has otherwise deemed or stated to be confidential, and other information exempt from Disclosure under the Public Records Act or any other applicable state or federal laws. Contractor may obtain confidential information from the Energy Commission or third parties on behalf of the Energy Commission for the performance of this Agreement.
- 2) "Disclose" or Disclosure" refers to the release, transfer, provision of, access to, or divulging in any manner of information outside the entity holding the information.
- 3) "Personal Information" means information that meets the definition of "personal information" in California Civil Code Section 1798.3(a) or one of the data elements set forth in California Civil Code Section 1798.29(g)(1) or (g)(2). **Personal information is a type of confidential information and is therefore subject to all requirements for Confidential**

Information provided in this Agreement and applicable law. However, there are additional requirements specific to personal information, pursuant to subsection K.

- 4) “Security Incident” means the theft, loss, damage, unauthorized destruction, unauthorized modification, or any intentional, unintentional, negligent, inappropriate or unauthorized release of any Confidential Information, data classified as confidential, sensitive, or personal, including critical infrastructure information.

C. Labeling. Confidential Information and Personal Information shared by the Energy Commission will be provided as follows:

- 1) List Describing Confidential Information and Personal Information. A description of Confidential Information and Personal Information that the Energy Commission anticipates it will provide to Contractor is attached as an appendix to this Exhibit. If the Energy Commission needs to add items after execution of this Agreement, the Energy Commission will update the list and provide a copy to Contractor; and
- 2) Identification of Confidential Information. Each individual item of Confidential Information and Personal Information will be visibly identifiable, regardless of file type, before the Energy Commission provides access to Contractor. The Confidential Information and Personal Information could be identified as a separate folder, workbook, document, field, electronic tag, etc.

D. Use and Disclosure Restrictions. Notwithstanding any other provision in this Agreement, Contractor and all individuals and entities participating in any way with this Agreement must:

- 1) Protect all Confidential Information and Personal Information from unauthorized Disclosure. This includes but is not limited to implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the privacy, confidentiality, security, integrity, and availability of Confidential Information, including electronic or computerized Confidential Information.
- 2) Promptly transmit to the Energy Commission’s Commission Agreement Manager all requests for Disclosure of any Confidential Information or Personal Information unless prohibited from doing so by applicable state or federal law.
- 3) Not use any Confidential Information or Personal Information for any purpose other than performing Contractor’s work under this Agreement.
- 4) Not Disclose any Confidential Information or Personal Information to anyone other than the Energy Commission without prior written authorization from the Energy Commission’s Commission Agreement Manager, except as otherwise specifically permitted by this Agreement, as provided in 20 California Code of Regulations, Sections 2506 and 2507, or when disclosure is required by State or Federal law.

E. Information Security Program Plan.

- 1) Attestation and Review. Before Contractor is provided access to Confidential Information or Personal Information, Contractor must attest, using a form provided by the Energy Commission, it has in place an Information Security Program Plan (ISPP) that meets or exceeds the minimum requirements as stated in the California State Administrative Manual Chapter 5300, Information Security (<https://www.dgs.ca.gov/Resources/SAM>), and any other applicable law. Further, the Energy Commission may, at its discretion, also request a copy of Contractor's ISPP for review. After the Energy Commission's review, the Energy Commission may choose whether to direct Contractor to perform work that involves Confidential Information or Personal Information.
 - 2) Content. Contractor's ISPP can be represented in a single document or a compilation of documents.
 - 3) Implementation. Contractor must implement and maintain appropriate procedural safeguards to secure Confidential Information and Personal Information from Security Incidents and unauthorized use for the term of this Agreement. Contractor is responsible for the security and confidentiality of the Confidential Information and Personal Information under its control and the control of its employees, agents, subcontractors, and other project partners and follow the requirements of its ISPP.
- F. **Encryption**. All Confidential information and Personal Information accessed by Contractor must be encrypted in transit and at rest.
- G. **Computer Security Updates**. Contractor must use computer, software and network systems that are updated with the latest security patches, upgrades, and virus software at all times Contractor has access to Confidential Information or Personal Information.
- H. **Nondisclosure Agreements**.
- 1) Need to Access Confidential Information or Personal Information. Contractor agrees to release Confidential Information and Personal Information only to the individuals who need to access such information to complete work under the Agreement. Contractor must ensure individuals properly handle and secure Confidential Information and Personal Information from unauthorized use or Disclosure, including signed nondisclosure agreements and security awareness training as described in this Section and Section I, Security Awareness Training, below.
 - 2) Maintain Current List of Individual Employees. Contractor must maintain a current list, and keep past versions of it, of all individuals who have access to Confidential Information or Personal Information and the dates each individual has access. Contractor must remove individuals who are no longer employed or no longer have access to Confidential Information or Personal Information and add individuals who are subsequently granted access.

- 3) Nondisclosure Agreement. Contractor must ensure all individuals who will have access to Confidential Information or Personal Information are provided a copy of, and comply with, these special terms and conditions. Contractor must ensure that individuals sign a nondisclosure agreement provided by the Energy Commission before being provided access to Confidential Information or Personal Information. The nondisclosure agreement includes maintaining the security of Confidential Information and Personal Information; not disclosing Confidential Information or Personal Information to others; using Confidential Information and Personal Information only for the scope of work in support of the Agreement; providing written notification of any unauthorized release of Confidential Information or Personal Information; destruction of Confidential Information and Personal Information; etc.
- 4) Copy of Nondisclosure Agreement. Contractor must provide a copy of each signed nondisclosure agreement to the Energy Commission's Commission Agreement Manager.

J. **Security Awareness Training**. Contractor must ensure that all individuals who will have access to Confidential Information or Personal Information take security awareness training before being given access to Confidential Information or Personal Information and then annually thereafter until this Agreement ends for any reason, including termination, or the individual no longer has access, possession, use, or control of Confidential Information or Personal Information. The training must include, at a minimum, the following topics: password protection; malware, social engineering, phishing, social media, privacy awareness, acceptable use, and data protection (data collection, storage, transmission, use, disclosure and destruction). Before Contractor allows any individual access to Confidential Information or Personal Information, Contractor must provide to the Commission Agreement Manager a copy of that individual's training certificate.

K. **Security Incident.**

- 1) Reporting of Security Incident. If Contractor becomes aware of a potential Security Incident that might affect Confidential Information in this Agreement, Contractor must notify the Commission Agreement Manager in writing immediately, but no later than 48 hours, after the Contractor first learns of the potential Security Incident. Contractor must promptly provide communications to the Commission Agreement Manager in writing as new information becomes available during the Security Incident response process.
- 2) Prompt Action. Contractor must take prompt corrective action to mitigate any risks or damages involved with the Security Incident and to protect the operating environment, and any action pertaining to a Security Incident required by applicable federal and state laws.

- 3) Investigation. Contractor must immediately investigate a Security Incident and provide a written report to the Energy Commission as soon as practicable. The report must describe the extent of the Security Incident and Contractor's corrective action to contain the Security Incident and prevent any recurrence. The Energy Commission has the right to participate in any investigation of a Security Incident. In addition, the Energy Commission has the right to conduct its own independent investigation. Contractor must fully cooperate in all investigations related to the Security Incident. Contractor is responsible for its expenses for conducting its own investigation or participating in the investigation by the Energy Commission or other entity selected by the Energy Commission.
- 4) Notification. If there is a Security Incident that results in the loss of Confidential Information in Contractor's possession, Contractor must comply with any notice requirement under applicable state or federal law. Contractor must, at its sole expense, provide required notices and any other mitigation efforts, with the Energy Commission's written approval. The Energy Commission reserves the right to provide the required notices and any other mitigation efforts.
- 5) Costs. In addition to any other rights and remedies available to the Energy Commission, Contractor is responsible for, and must promptly pay to the Energy Commission, all costs, fees, and any other type of expense incurred by the Energy Commission due to a Security Incident resulting from the failure of Contractor to perform, or the intentional, unintentional, negligent, inappropriate or unauthorized acts of Contractor's personnel, that results in an unauthorized Disclosure, release, access, review, or destruction; or loss, theft or misuse of Confidential Information provided to Contractor. These costs include, but are not limited to, staff time, material costs, postage, media announcements, and other identifiable costs associated with the Security Incident causing loss of Confidential Information. Contractor is also responsible for all costs incurred by the Energy Commission due to a Security Incident resulting from the same failure of a subcontractor, lower tier of subcontractor, project partner, match funder or any other entity or person who received Confidential Information under this Agreement.
- 6) Subcontracts and Others with Access to Confidential Information. In order that all subcontractors, subawardees, vendors, project partners, and others with access to Confidential information are liable to the Energy Commission for costs as detailed in subsection J.5, above, Contractor must include a provision indicating the Energy Commission is a third-party beneficiary to all such agreements.

L. Additional Requirements for Personal Information.

- 1) Possession, Handling, or Use of Personal Information. If Contractor possesses, handles or uses Personal Information during the course of this Agreement, Contractor agrees to comply with the provisions of the Information Practices Act in Civil Code Section 1798 et seq., the California State Administrative Manual chapter 5300 as if Contractor were an "agency" for its work under the Agreement, and any other applicable law. This includes but is not limited to complying with the following:

- a. Maintaining only Personal Information relevant and necessary for the purposes of this Agreement in accordance with Civil Code Section 1798.14.
 - b. Maintaining the source or sources of Personal Information in accordance with Civil Code Section 1798.16.
 - c. Providing notice on or with any form used to collect personal information from individuals in accordance with Civil Code Section 1798.17.
 - d. Establishing appropriate and reasonable administrative, technical, and physical safeguards to ensure compliance with the Information Practices Act, to ensure the security and confidentiality of records, and to protect against anticipated threats or hazards to their security or integrity which could result in any injury in accordance with Civil Code Section 1798.21.
- 2) Notification. If there is a Security Incident that results in the loss of Personal Information in Contractor's possession, Contractor must comply with the notice requirements in Civil Code Section 1798.29 and California State Administrative Manual chapter 5300. Contractor must, at its sole expense, provide required notices and any other mitigation efforts, with the Energy Commission's written approval. The Energy Commission reserves the right to provide the required notices and any other mitigation efforts.
- 3) Rights. Contractor has 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 is not treated like Data, Products, Intellectual Property, or other provisions in the Agreement that may indicate Contractor has ownership, license, or other rights.
- 4) Costs. In addition to any other rights and remedies available to the Energy Commission, Contractor is responsible for, and must promptly pay to the Energy Commission, all costs, fees, and any other type of expense incurred by the Energy Commission due to a Security Incident resulting from the failure of Contractor to perform, or the intentional, unintentional, negligent, inappropriate or unauthorized acts of Contractor's personnel, that results in an unauthorized Disclosure, release, access, review, or destruction; or loss, theft or misuse of Personal Information provided to Contractor. These costs include, but are not limited to, staff time, material costs, postage, media announcements, and other identifiable costs associated with the Security Incident causing loss of Personal Information. Contractor is also responsible for all costs incurred by the Energy Commission due to a Security Incident resulting from the same failure of a subcontractor, lower tier of subcontractor, project partner, match funder or any other entity or person who received Personal Information under this Agreement.
- 5) Subcontracts and Others with Access to Personal Information. In order that subcontractors, subawardees, vendors, project partners, and others with access to Personal information are liable to the Energy Commission for costs as detailed in subsection K.4, above, Contractor must include a provision indicating the Energy Commission is a third-party beneficiary to all such agreements.

- M. **End of the Agreement.** When this Agreement ends for any reason, including termination, or sooner if Contractor's work with the Confidential Information or Personal Information has concluded, Contractor must securely destroy all Confidential Information and Personal Information and ensure that each entity with individuals that received Confidential Information or Personal Information does the same. Contractor must not attempt to reuse or distribute Confidential Information or Personal Information after destruction. Contractor must provide written verification to the Energy Commission that all Confidential Information and Personal Information has been properly destroyed, including the date and method of destruction.
- N. **Audit.** Contractor must maintain books, records, documents, and other evidence, sufficient to reflect that Contractor properly followed all requirements related to these special terms and conditions for a minimum of three years after final payment, unless a longer period of records retention is stipulated. The Energy Commission, other state agencies, and agents designated by the Energy Commission have the right to review, copy and audit Contractor's records related to Confidential Information and Personal Information at all reasonable times, with prior notice by the Energy Commission. Contractor agrees to provide auditors access to such records during normal business hours and to allow interviews of any individual employees who might reasonably have information related to such records.
- O. **Public Records Act Request.** Contractor must work cooperatively with the Energy Commission to respond timely and accurately to Public Records Act requests the Energy Commission receives about Contractor's activities and related Confidential Information or Personal Information under this Agreement.
- P. **Termination.** Contractor understands and agrees that in addition to any other rights and remedies available to the Energy Commission, any unauthorized release of Confidential Information or Personal Information, or disregard for appropriate security protocols that could result in Confidential Information or Personal Information being released may result in the Energy Commission's termination of this Agreement.
- Q. **Amendment.** Contractor and the Energy Commission acknowledge that federal and state laws regarding information security and privacy rapidly evolves and that amendment of these special terms and conditions may be required to provide for procedures to ensure compliance with such laws. Contractor and the Energy Commission specifically agree to take such action as is necessary to implement new standards and requirements imposed by regulations and other applicable laws relating to the security or privacy of Confidential Information and Personal Information.

10. **CONTRACT DATA, OWNERSHIP RIGHTS**

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

- B. "Deliverable data" is that data which, under the terms of this Agreement, is required to be delivered to the Energy Commission and shall belong to the Energy Commission.
- C. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this Agreement, and which Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Agreement is commenced. The title to "proprietary data" shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of the Energy Commission access to and the testimony available regarding, the proprietary data shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.
- D. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Agreement at the Energy Commission's expense, together with complete documentation thereof, shall be treated in the same manner as "generated data." "Generated data" shall be the property of the Energy Commission, unless and only to the extent that it is specifically provided otherwise in this Agreement.
- E. As to "generated data" which is reserved to Contractor by the express terms hereof, and as to any pre-existing or "proprietary data" which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, Contractor shall preserve the same in a form which may be introduced as evidence in a court of law at Contractor's own expense for a period of not less than three years after receipt by the Energy Commission of the Final Report herein.
- F. Before the expiration of the three years and before changing the form of or destroying any data, Contractor shall notify the Energy Commission of any contemplated action and the Energy Commission may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the Energy Commission so elects, the expense of further preserving data shall be paid for by the Energy Commission. Contractor agrees that the Energy Commission may at its own expense, have reasonable access to data throughout the time during which data is preserved. Contractor agrees to use its best efforts to furnish competent witnesses or to identify competent witnesses to testify in any court of law regarding data.
- G. Nothing in this Agreement gives the Contractor any rights to "Confidential Information" and "Personal Information" as defined in Section 9, other than using Confidential Information and Personal Information for the limited purpose of performing Contractor's work under this Agreement in accordance with Section 9.

11. **PUBLIC HEARINGS**

If public hearings on the scope of work are held during the period of the Agreement, Contractor will make available to testify the personnel assigned to this Agreement. The Energy Commission will reimburse Contractor for compensation and travel of the personnel at the Agreement rates for the testimony which the Energy Commission requests.

12. **DISPUTES**

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

A. First Level Dispute Resolution

The Contractor shall first discuss the problem informally with the CAM. If the problem cannot be resolved at this stage, the Contractor must direct the grievance together with any evidence, in writing, to the CAO. The grievance must state the issues in the dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The CAO 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 Contractor. The CAO shall respond in writing to the Contractor, indicating a decision and explanation for the decision. Should the Contractor disagree with the CAO's decision, the Contractor may appeal to the second level.

B. Second Level Dispute Resolution

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

13. **TERMINATION**

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

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

A. With Cause

In the event of any breach by the Contractor of the conditions set forth in this Agreement, the Energy Commission may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Contractor. In such event, the Energy Commission shall pay Contractor only the reasonable value of the services theretofore rendered by Contractor, as may be agreed upon by the parties or determined by a court of law, but not in excess of the Agreement maximum payable. "Cause" includes without limitation:

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

B. Without Cause

The Energy Commission may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Contractor. In such event, the Contractor agrees to use all reasonable efforts to mitigate the Contractor's expenses and obligations hereunder. Also, in such event, the Energy Commission shall pay the Contractor for all satisfactory services rendered and expenses incurred within 30 days after notice of termination which could not by reasonable efforts of the Contractor have been avoided, but not in excess of the maximum payable under this Agreement.

14. **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. The failure of the Energy Commission to enforce at any time any of the provisions of this Agreement, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Agreement or any part of it or the right of the Energy Commission to thereafter enforce each and every such provision.

15. **CAPTIONS**

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

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

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

17. **NOTICE**

Legal notice must be given using any of the following delivery methods: U.S. Mail, overnight mail, or personal delivery, providing evidence of receipt to the person identified in Exhibit F of this Agreement for legal notices. Delivery by fax or e-mail is not considered legal notice for the purpose of this clause. This clause is not intended to apply to normal, daily communication between the parties related to progress of the work. This clause applies to situations where notice is required to be given by this Agreement or the parties are asserting their legal rights and remedies.

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

18. **STOP WORK**

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

- A. **Compliance.** Upon receipt of such stop work order, Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- B. **Equitable Adjustment.** An equitable adjustment shall be made by the Energy Commission based upon a written request by Contractor for an equitable adjustment. Such adjustment request must be made by Contractor within thirty (30) days from the date of receipt of the stop work notice.
- C. **Revoking a Stop Work Order.** Contractor shall resume the stopped work only upon receipt of written instructions from the CAO canceling the stop work order.

19. **INTERPRETATION OF TERMS**

This Agreement shall be conducted in accordance with the terms and conditions of the solicitation, if applicable. The Contractor's proposal is not attached, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the solicitation or proposal, this Agreement shall be considered controlling.

20. **AMENDMENTS**

This Agreement may be amended through a formal amendment process to make changes, including without limitation;

- Increases in total Agreement amount,
- Extending the Agreement end date,
- Modifying tasks,
- Adding or modifying terms and conditions.

Amendments may be made without competitively bidding, so long as the amendment is exempt from competitive bidding pursuant to Public Contract Code section 10335, Government Code section 11010.5 and the State Contract Manual.

21. **SURVIVAL OF TERMS**

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

- General Terms and Conditions (Exhibit C)
- Audits Rights (included in Section 3, "Subcontracts," paragraph D)
- Legal Notice on Products (included in Section 7, "Reports")
- Receipt of Confidential Information and Personal Information (Section 9)
- Contract Data, Ownership Rights (Section 10)
- Termination (Section 13)
- Waiver (Section 14)
- Notice (Section 17)
- Venue (Section 22)
- CEC as Third-Party Beneficiary (Section 23)
- [Other terms added]

22. **VENUE**

The venue for any court action to enforce any part of this Agreement must be Sacramento County.

23. **THE ENERGY COMMISSION AS THIRD-PARTY BENEFICIARY**

Contractor ensure that in all of its agreements with all subcontracts and all lower-tier subcontracts that the Energy Commission is specifically named as a third-party beneficiary to the agreement. In addition, the term shall state the entity agrees that if the Energy Commission brings a court action, the entity agrees to venue in Sacramento County.

24. **DISCRIMINATION AND HARASSMENT TRAINING**

All employees of Contractor and any subcontractor who provide service under this Agreement and maintain work space at the Energy Commission shall take annual training on the prevention of discrimination and harassment. The Energy Commission shall provide the online training course at no charge to Contractor or subcontractors. However, Contractor and subcontractors shall not invoice for the time spent taking the course. Contractor shall ensure that all employees of Contractor and any subcontractor who provide service under this Agreement and represent the Energy Commission in public hearings and workshops, but do not maintain office space at the Energy Commission, receive training on prevention of discrimination and harassment.

25. **EXECUTIVE ORDER N-6-22 – RUSSIA SANCTIONS**

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.

26. **WORK AUTHORIZATIONS**

A. Process

- 1) The Energy Commission Agreement Manager (CAM), with the assistance of the Contractor shall prepare Work Authorizations (WA) directing the work of the Contractor. The CAM will provide the WA format.
- 2) The WA shall be signed by the Contractor’s authorized individual and by the CAM. In addition to the CAM, the WA may also be signed by Energy Commission staff serving as Project Manager for the individual WA. The CAM shall sign after the Contractor.
- 3) The CAM shall submit the signed WA to the Commission Agreement Officer. The WA will be submitted to the Department of General Services (DGS) for review and final approval. No work shall begin until the WA is approved by DGS. The effective date of the WA is the DGS approval date.
- 4) DGS returns the approved WA to the Contracts Office for final distribution.
- 5) The CAM shall file each signed WA with the Energy Commission Agreement Officer (CAO) before payment is approved for the WA.

B. Content of WA

Each WA shall include:

- 1) Agreement Number
- 2) WA Number

- 3) WA Title
- 4) Effective Date (date approved by the Department of General Services)
- 5) End Date
- 6) Objective or goal of the WA
- 7) Detailed scope of work and tasks
- 8) What task the WA falls within the Agreement
- 9) Schedule/Due dates and Deliverables
- 10) Contact Information
- 11) Contractor and Subcontractor personnel who will perform the work
- 12) Identification of DVBE
- 13) Detailed Budget for types of costs that are identified as allowable in Agreement budget

C. Work Authorization Budgets

1) Category Budget.

Each WA shall contain a category budget. CAM shall allocate a total budget to each WA. WA budgets are divided into categories such as:

- Total labor amount, based on unloaded rates of person or job classification
- Fringe benefit rates, indirect overhead rates, general & administrative rates and profit rates
- Subcontracted amount
- Travel and per diem total amount, with details of trip (number of trips, to and from location, number of people).
- Other direct or miscellaneous costs, including rental charges/fees, with details of specific item, quantity, rate and cost.
- Other items as required by CAM, as allowed by the Agreement Budget

NOTE: these categories are examples only. The WA budget shall contain the actual budget categories.

Within each category, specific budget items are estimates and Contractor may spend the category budget up to the maximum amounts allocated for each category in the WA. Contractor shall not exceed the budgeted amount for each category unless the WA is amended. Contractor shall not exceed budgeted rate caps in the Agreement budget. See Exhibit B, Budget Reallocation.

- 2) Non-Labor Direct Costs, such as travel, materials or equipment. The Agreement will include the Contractor's mark-ups, if any, to non-labor direct costs. Work authorization budgets will include non-labor direct cost details that are allowable and reimbursable for that specific work authorization. Non-labor direct costs will only be included in a work authorization budget if considered appropriate to the specific work authorization scope of work by the CAM.

D. Payment

Payment for services is based upon an approved category budget in each WA. Any costs or expenses incurred by the Contractor or any subcontractor that have not been identified in the WA shall be borne by the Contractor.

E. Costs

The actual cost of an approved, completed WA shall not exceed the authorized amount of the WA budget. If, in the performance of the WA, the Contractor or CAM determines that the total cost might exceed the WA budget amount, Contractor or CAM shall immediately notify the other. Upon such notification, the CAM may:

- 1) Amend the WA scope of work to accomplish the work within the budget; or
- 2) Amend the WA to augment the budget; or
- 3) Direct the Contractor to complete the work for the budgeted amount without changes to the scope of work; or
- 4) Terminate the WA.

F. Amendments.

- 1) An amendment of the WA is required for the following changes, including but not limited to:
 - Changes to the scope of work (i.e. new or changed work)
 - Adding Funds
 - Extending the Term
 - Adding new job classifications to the WA budget (job classification must already be included in Agreement budget)
 - WA budget reallocations in accordance with the Budget Reallocation provision in Exhibit B.
- 2) Amendments shall be approved and signed using the same process as the original WA.
- 3) Amendments must be made prior to the termination date of the original WA or as amended.

G. Changes without Amendment

CAM may make the following changes to the WA without an amendment upon prior written notification to Contractor:

- 1) Changes to deliverable due dates, as long as the due dates do not go beyond the end term of the WA.
- 2) Minor scope of work changes that only correct grammatical errors or reference mistakes.
- 3) Adding people within existing job classifications to perform service under the WA
- 4) WA budget reallocations in accordance with the Budget Reallocation provision in Exhibit B.

H. Stop Work

The Energy Commission reserves the right to require the Contractor to stop or suspend work on any WA. The CAM, in consultation with the CAO, shall provide notice in writing to the Contractor of the date work is stopped or suspended. Costs incurred up to that date shall be reimbursed in accordance with the Stop Work clause in Exhibit D.

I. Termination of WA

The CAM, in consultation with the CAO, may terminate the WA without cause with 30 days written notice to Contractor. Costs incurred up to that date shall be reimbursed in accordance with the termination clause in Exhibit D.

J. Incorporated into Agreement

Each WA shall be incorporated into this Agreement. However, it is understood and agreed by both parties that all of the terms and conditions of this Agreement shall remain in force with the inclusion of any such WA. A WA shall in no way constitute an independent Agreement, nor in any way amend or supersede any of the other provisions of this Agreement.

K. Information Technology

Work Authorizations may be reviewed by the Energy Commission's Information Technology Services Branch to determine if any information technology (IT) activities or acquisitions are included in the Work Authorization. If it is determined the Work Authorization includes IT activities or acquisitions the Energy Commission's Chief Information Officer or designee must approve the Work Authorization before it can be executed. Activities under the Agreement that could impact the Energy Commission IT systems include but are not limited to using GIS software to produce maps.

27. **INSOLVENCY, BANKRUPTCY, OR RECEIVERSHIP**

Contractor shall immediately, but no later than five calendar days, notify the CEC if Contractor, Contractor's parent, a subcontractor, or a vendor is planning for any of the following events: (1) the entity's filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act or similar applicable law; (2) the entity's consent to the institution of an involuntary case under the Bankruptcy Act or similar applicable law; (3) the filing, or planning of filing, of any similar proceeding for or against the entity, or the entity's consent to the dissolution, winding-up or readjustment of its debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over the entity, under any other applicable law; or (4) the entity's insolvency due to its inability to pay debts generally as they become due.

Such notification shall be in writing and shall: (1) specifically set out the details of the occurrence of the event; (2) provide the facts surrounding that event; and (3) provide the impact such event will have on the project being funded by this Agreement.

Upon the occurrence of any of the four events described above, the CEC reserves the right to conduct a review of the Agreement to determine Contractor's compliance with the required elements of the Agreement (including such items as match share, progress towards project objectives, and submission of required products). If the CEC review determines that there are significant deficiencies or concerns with the Contractor's continued performance under the Agreement, the CEC reserves the right to take any action available under this Agreement including, but not limited to, issuing a Stop Work Order or terminating the Agreement.

Failure of Contractor to comply with this term may be considered a material breach of this Agreement.

This term shall be flowed-down to all subcontracts.