



ZESBI Summary of Award
and
Incentive Recipient Agreement



Summary of Award (Exhibit A)

Please note this is the final point in the application process where you will be able to indicate the quantity and type of charger(s) and vehicle(s) you will be purchasing with your Maximum ZESBI Award. The ZESBI Award cannot be increased after this point. Please reach out to schoolbusteam@calstart.org if you have any questions or concerns.

***Effective date:**

*The effective date will appear once the agreement is countersigned.

Local Educational Agency Name: (Must match all documentation provided to ZESBI Staff)	Redwood City Elementary School District
CD Code:	4169005
Headquarter Address:	601 James Ave.
Headquarter City:	Redwood City
Headquarter State:	California
Headquarter Zip Code:	94062

Maximum ZESBI Incentives Summary	
Award Type	Award Amount
Maximum Zero Emission School Bus Incentives	\$360,000.00
Maximum Infrastructure Incentives:	\$0.00
Maximum School Transportation Program Incentives:	\$40,000.00
Total ZESBI Award:	\$400,000.00

Number of scrappage vehicles to be replaced: 1				
LEA Bus #	Make	Model Year	VIN	GVWR
10	bluebird	2000	1BAANBMA3Y F087576	37400

Number of Zero Emission School Buses: 1		
Type	Quantity	Maximum Award
Wheelchair Lifts (\$15,000 per school bus equipped with a wheelchair lift)	0	\$0.00
Type A School Bus (\$280,000 per vehicle)		\$0.00
Type C School Bus (\$340,000 per vehicle)		\$0.00
Type D School Bus (\$360,000 per vehicle)	1	\$360,000.00
Maximum ZE School Bus Award		\$360,000.00

Number of Chargers: 0		
Charger Type	Charger Quantity	Maximum Award
Level 2 Charger (\$20,000 per Level 2 charger)		\$0.00
Direct Current Fast Charger (DCFC) (\$75,000 per DCFC)		\$0.00
First DCFC Bidirectional (\$95,000 for the first bidirectional DCFC requested)*	0	\$0.00
Remaining DCFC Bidirectional (\$75,000 for all remaining bidirectional DCFC)		\$0.00
Maximum Infrastructure Award:		\$0.00

**Only the first requested Bidirectional DCFC, per LEA, is eligible for \$95,000. All bidirectional DCFCs after the first will be eligible for up to \$75,000 each.*

Maximum School Transportation Program Incentives	
Award Type	Maximum Award
School Transportation Program Incentives	\$40,000.00

PROJECT ADDRESSES					
ADDRESS TYPE	ADDRESS	MAIN OFFICE FUNCTIONS AS PROJECT SITE	MAIN OFFICE FUNCTIONS AS PRIMARY DOMICILE	MAIN OFFICE FUNCTIONS AS MAILING ADDRESS	PRIMARY DOMICILE
Main Office/Headquarters	601 James Ave. Redwood City California 94062		True	True	True

Application Owner Contact	
Application Owner Name:	Vidal Duran
Application Owner Email:	vduran@rcsdk8.net
Application Primary Contact	
Primary Contact First Name:	Vidal
Primary Contact Last Name:	Duran
Primary Contact Title:	Transportation Manager
Primary Contact Phone Number:	6506780310
Primary Contact Phone Extension:	
Primary Contact Email:	vduran@rcsdk8.net
Application Secondary Contact Information	
Secondary Contact First Name:	Bella
Secondary Contact Last Name:	Ma
Secondary Contact Title:	Account Manager
Secondary Contact Phone Number:	2135953048
Secondary Contact Extension:	
Secondary Contact Email:	bella.ma@ride.co

APPLICANT/INCENTIVE RECIPIENT SIGNATURE

Under the laws of the State of California, I declare under penalty of perjury that all information provided, above, is true and correct.

Local Education Agency Name ("Applicant/Incentive Recipient"):	Redwood City Elementary School District
Printed Name of Applicant/Incentive Recipient's Authorized Representative (first and last):	Martin Cervantes

Title of Applicant/Incentive Recipient's Authorized Representative:	Director of Facilities
Signature:	
Date:	

CALSTART INC. COUNTERSIGNATURE	
CALSTART Authorized Officer:	Chief Legal Counsel
Printed Name (first and last):	Marc Gottschalk
Title:	Chief Legal Counsel
Counter Signature:	
Date:	

Incentive Recipient Agreement

between CALSTART, Inc.

and

Redwood City Elementary School District

APP-000252

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EXHIBITS

- A. Summary of Award
- B. CARB ZESBI Terms and Conditions
- C. Specified Incorporation by Reference of CARB ZESBI Terms and Conditions
- D. [CARB Implementation Manual Appendix G: Zero Emission School Bus and Infrastructure Incentives](#)
- E. CEC ZESBI Terms and Conditions
- F. Specified Incorporation by Reference of CEC ZESBI Terms and Conditions
- G. [CEC ZESBI Implementation Manual](#)
- H. Drug-Free Workplace
- I. [Standard HVIP Implementation Manual](#)
- J. [Cancellation and Extension Policy](#)

Incentive Recipient Agreement IRA-0181

This Incentive Recipient Agreement, including all documents incorporated by reference herein and Schedules and Exhibits included hereto (the "Agreement") is made and entered into by and between CALSTART, Inc., a California non-profit public benefit corporation, with its headquarters at 48 S. Chester Ave., Pasadena, CA 91106 ("CALSTART"), and **Redwood City Elementary School District**, with its headquarters at **601 James Ave.**, ("Incentive Recipient"). Collectively, CALSTART and Incentive Recipient will be referred to as "Parties" and each, a "Party".

RECITALS

WHEREAS, CALSTART is a non-profit corporation seeking to create jobs, clean the air, and improve America's global competitiveness through the establishment of an advanced transportation industry; AND

WHEREAS, CALSTART's goal is to facilitate adoption efforts in advanced transportation, in order to (1) encourage clean, efficient transportation to improve environmental quality; (2) create jobs and otherwise stimulate the regional and national economy; (3) develop and refine technology which will permit the widespread use of clean fuel vehicles and other advanced transportation technologies; and (4) facilitate the conversion of highly technical aerospace and defense labor force to advanced transportation efforts; AND

WHEREAS, the Incentive Recipient is willing and able to participate in the Project (as defined in Section 1) with CALSTART in accordance with the terms and conditions set forth herein; AND

WHEREAS, the Parties desire to set forth the terms and conditions under which the Incentive Recipient will participate in the Project; AND

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein, the Parties agree as follows:

1. DEFINITIONS

- (i) "Agencies" means CARB and CEC.
- (ii) "CARB" means California Air Resources Board.
- (iii) "CARB IM" means the Implementation Manual that specifically applies to the Zero Emission School Bus Incentive program (also known as "HVIP Implementation Manual Appendix G: Zero Emission School Bus & Infrastructure Incentives") included as Exhibit D.
- (iv) "CARB Project" means the ZESBI program applying to Incentive Recipient under this Agreement.
- (v) "CARB Standard IM" means the Implementation Manual applying generally to CARB's HVIP program of which ZESBI is a part included as Exhibit I.
- (vi) "CARB ZESBI Terms" means the terms applicable to Incentive Recipient under this Agreement including Exhibit B included hereto.
- (vii) "CEC" means California Energy Commission.
- (viii) "CEC IM" means the Implementation Manual applying to the Fueling Infrastructure Block Grant program under this Agreement included as Exhibit G.
- (ix) "CEC Project" means the CEC Fueling and Infrastructure Block Grant program applying to Incentive Recipient under this Agreement.
- (x) "CEC ZESBI Terms" means the terms applicable to the Incentive Recipient under this Agreement including Exhibit E attached.
- (xi) "HVIP" means CARB's Clean Truck and Bus Voucher Incentive Project.
- (xii) "IR Project" means the project to be undertaken by Incentive Recipient reflected in Exhibit A – Summary of Award, as may be amended from time to time under the terms of this Agreement including all work required to complete such project and including the data collection requirements identified in Section 30.
- (xiii) "Project" means the CARB Project and the CEC Project.
- (xiv) "ZE" means zero emission.
- (xv) "ZESBI" means CARB's and CEC's Zero Emission School Bus Incentive Program.

2. TERM

The Term of this Agreement begins the date it is fully executed by all Parties (the "Effective Date") and shall remain in effect for 36-months thereafter (the "Term").

3. DESCRIPTION OF IR PROJECT AND FUNDING

Incentive Recipient (IR) shall complete the IR Project as set forth in the Summary of Award, attached hereto as Exhibit A, and made a part hereof. The Incentive Recipient is awarded an amount not to exceed \$400,000.00 under this Agreement for the completion of the IR Project.

The Project provides awards to Incentive Recipients to replace eligible and approved internal combustion engine ("ICE") school buses with new eligible ZE school buses including associated charging infrastructure. For the purposes of the Project, the Incentive Recipient shall not purchase more chargers with its infrastructure incentives than awarded ZE school buses under the Project and it should be noted that the Incentive Recipient may apply for ZE school buses without applying for and/or being eligible for infrastructure incentives but may not apply for infrastructure incentives without applying for and being awarded incentives for ZE school buses.

NOTE: Incentive Recipient acknowledges and agrees that if it is applying for ZE school buses only (and not associated infrastructure) it is executing this Agreement with the understanding that it is committing to the purchase of zero-emission school bus(es) and will be separately responsible for required infrastructure. See the CARB IM and the CEC IM for more detail.

Incentive Recipient Waiver Acknowledgement:

No less than 90 percent of the Incentive Recipient's total ZESBI award shall be expended for the purchase of eligible ZE school buses, as well as eligible supporting charging infrastructure needed to operate the ZE school buses and related activities, including, but not limited to, eligible charging equipment, site design, construction, and related infrastructure upgrades.

Any old school bus that is not compliant with California Truck and Bus Regulation will reduce the maximum incentive award for replacement by \$20,000 per bus. Up to 10 percent of the Incentive Recipient's total ZESBI award may incorporate Incentive Recipient's School Transportation Program (STP) as defined and set forth in section [6.2 School Transportation Program Incentives Cost Eligibility] of the CEC IM. STP incentive awards may be used to cover eligible infrastructure costs incurred as set forth in Section 6 Eligible Costs of the CEC IM.

4. DOCUMENTS INCORPORATED BY REFERENCE/FORMS REQUIRED

This Agreement incorporates by reference the CARB ZESBI Terms and the CEC ZESBI Terms (collectively "Project Terms") as if included verbatim, provided that for ease of reference, and recognizing that not all of the foregoing Project Terms will apply to Incentive Recipient, Exhibit C and Exhibit F, appended hereto (Specified Incorporation by Reference) lists by Section the specific terms applicable to the Incentive Recipient. Unless otherwise specified, all requirements imposed on CALSTART by the flow-down clauses shall also apply to the Incentive Recipient as it applies to the project.

Other documents incorporated include:

- 1) 2 Code of Federal Regulations (CFR) Part 200, Subpart E (Sections 200.400 et seq.) solely with respect to Projects funded with DERA (Diesel Emission Reduction Act) awards
- 2) 2 California Code of Regulations, Section 11099 et seq.: Contractor Nondiscrimination and Compliance
- 3) Any federal, state, or local laws or regulations applicable to the Project that are not expressly listed in this Agreement

In addition, Incentive Recipients shall complete Exhibit H (Drug-Free Workplace) with its application and hereby agree to update such forms in the event that information provided by the Incentive Recipient is no longer accurate.

5. ORDER OF PRECEDENCE

In case of conflict between or among the terms of this Agreement and the document(s) incorporated by reference, the provisions of the following documents shall take precedence in the following order: 1) this Agreement; 2) the Project Terms and any amendments thereto including Exhibit C and Exhibit F; 3) [ZESBI CARB IM](#) and [ZESBI CEC IM](#) (see Exhibits D and G); 4) [HVIP Implementation Manual](#); and 5) other documents incorporated by reference.; and 5) other documents incorporated by reference.

6. EXHIBITS

The Schedule and Exhibits to this Agreement shall be construed with, and as an integral part of, this Agreement. Note that the Exhibits outlined herein shall be amended as CALSTART and the Agencies deem necessary.

7. PERMITS/COMPLIANCE

a. Permits and Clearances/Use of Licensed Professionals

Incentive Recipient shall ensure all necessary permits and environmental documents are prepared and clearances obtained from the appropriate agencies to perform the work required by Incentive Recipient and its subrecipients or subcontractors under this Agreement. Incentive Recipient agrees that only licensed professionals will be used to perform services or conduct work under this Agreement where such services are called for and where licensed professionals are required for those services under California law.

b. Federal, State and Municipal Requirements

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

8. STANDARD OF PERFORMANCE

In the performance of work under this Agreement, Incentive Recipient, its employees, and subcontractors shall exercise the degree of skill and care required by customarily accepted good professional practices and procedures used in Incentive Recipient's

field.

Any costs arising from Incentive Recipient's failure to meet the foregoing standards of performance or incurred to correct otherwise defective work requiring Incentive Recipient's re-performance of the work, as directed by CALSTART, shall be borne in total by Incentive Recipient and not CALSTART.

It is the Incentive Recipient's duty to ensure that funds provided through this Agreement are not misspent by Incentive Recipient or its subcontractors. Incentive Recipient must ensure funds are used to reimburse or otherwise pay for actual incurred eligible costs approved by CALSTART. This includes that it is the Incentive Recipient's duty to develop internal controls to detect fraud, waste, and abuse.

If Incentive Recipient fails to perform in accordance with the above standard:

- a. Incentive Recipient shall re-perform, at its own expense, any task that was not performed to the reasonable satisfaction of CALSTART and the Agencies under the terms of this Agreement. The re-performance of any work will not automatically extend the time period set for completion at the outset of the applicable Term.
- b. In the event Incentive Recipient is unable to complete re-performance within the original time frame, CALSTART shall provide a new schedule (informed by the cancellation and extension policies of the Agencies then applicable) for the re-performance of any task pursuant to this paragraph, provided the Incentive Recipient has applied for, and CALSTART has approved an extension request; and
- c. CALSTART may direct Incentive Recipient not to re-perform any task that was not performed to the reasonable satisfaction of CALSTART and the Agencies pursuant to application of (a) and (b), above. If CALSTART directs Incentive Recipient not to re-perform a task, CALSTART and Incentive Recipient shall negotiate a fair and reasonable settlement for satisfactory work performed. CALSTART's obligation, if any, to pay Incentive Recipient for this work re-performed, shall be dependent on CALSTART's receipt of monies from the Agencies, as applicable, for the additional work performed. No previous payment shall constitute a waiver of CALSTART's right to reimbursement.

With respect to the installation of charging infrastructure under the CEC Project, the Incentive Recipient specifically agrees and acknowledges: (i) that the standards of performance relating to uptime, operation and maintenance requirements in Section 9 below, and the data related requirements in Sections 30 and 31 and Exhibit A to this Agreement and other CEC Terms shall apply to the Incentive Recipient; and (ii) that the CEC shall have the right to directly enforce such requirements upon the Incentive Recipient.

With respect to replacement of ICE school buses with ZE school buses, the school bus title holder shall use the old ICE school bus as needed, but it must be scrapped with supporting documentation within twenty-four (24) months after the new ZE school bus delivery date, as described in the CARB IM. Failure to scrap the old school bus(es) constitutes a material breach of this Agreement such that CARB, or CALSTART may recapture funds.

Nothing contained in this section is intended to limit any of the rights or remedies which the Agencies may otherwise have under law.

9. UPTIME, OPERATION, AND MAINTENANCE REQUIREMENTS

This Agreement contains certain uptime requirements for EV charging stations and charging ports installed under this Agreement. By signing this Agreement, and as a material term of this Agreement, the Incentive Recipient agrees to be fully responsible for complying with the operations requirements. Incentive Recipient also agrees that CEC as a third-party beneficiary under this Agreement, is a real party in interest to this Agreement. Accordingly, if Incentive Recipient fails to meet the uptime requirements, Incentive Recipient agrees that CEC is entitled to repayment of incentive funds provided by CEC hereunder. The amount repaid shall be an amount CEC, in its sole discretion, deems reasonable to compensate for the harm done.

10. ZESBI DECALS

Incentive Recipient shall affix decals provided by ZESBI to the ZE school bus(es) ("ZESBI Decals"). The ZESBI Decals shall be delivered to Incentive Recipient on or about the time of delivery of the applicable ZE school bus(es) and shall be affixed according to the instructions provided with the ZESBI Decals.

11. INCENTIVE RECIPIENT'S STAFF

During the term of this Agreement, Incentive Recipient shall provide and maintain sufficiently qualified employees, agents, and personnel to perform its duties and obligations hereunder. Incentive Recipient and its employees, agents, and personnel shall obtain and maintain all applicable licenses, permits, credentials and certificates as required by local, state and federal laws, rules, regulations, guidelines and directives applicable for the operation of its facilities and for the provision of services hereunder. Incentive Recipient shall notify CALSTART within five (5) business days any time they become aware the Project lead (or leads) will no longer serve as project lead.

12. AGREEMENT ADMINISTRATION

Notwithstanding any other provisions of this Agreement or any document referenced herein, CALSTART's Chief Executive Officer/President, Chief Financial Officer or Chief Legal Counsel are the only persons authorized to make changes in, or to redirect, the IR Project, subject to approval by CARB and or CEC. Where CALSTART's approval is required under the terms of this Agreement, such requirement shall mean the approval of the Chief Executive Officer/President, Chief Legal Counsel or the Chief Financial Officer. If the Incentive Recipient effects any change at the direction of any other person, the change will be considered as having been made without CALSTART authority and no adjustment will be made in the Agreement cost or schedule as a result thereof. No agreement or understanding will be binding on either party unless made in writing and signed by authorized representatives of both Parties

CALSTART may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Agreement in any one or more of the following:

- 1) Drawings, designs, or specifications per the instructions of either of the Agencies.
- 2) IR Projects funded.
- 3) Method of shipment for IR Project deliverable.
- 4) Place of delivery of IR Project deliverables.
- 5) Terms and conditions of this Agreement.

If any changes to above cause an increase in the estimated cost or time for performance, CALSTART shall consider making an equitable adjustment to the funding or schedule necessary for performance, subject to the availability of incentive funding under CALSTART's agreements with the Agencies. Incentive Recipient shall notify CALSTART of any change to which it believes it is entitled to an equitable adjustment within 30 business days. Failure to provide such notice shall constitute a waiver of the Incentive Recipient's rights to an equitable adjustment. Failure of the Parties to agree on an equitable adjustment to the estimated cost or schedule will be considered a dispute under Section 43, Disputes and Arbitration.

No amendment or variation of this Agreement shall be valid unless made in writing and signed by the parties' duly authorized representatives, except for CALSTART's right to make changes pursuant to this Section or its termination rights in Section 18 of these terms.

13. PAYMENT REQUESTS

Payment requests must be submitted through the [ZESBI Application Portal](#). If the Incentive Recipient encounters any technical difficulties in the ZESBI Application Portal, please reach out to CALSTART at: schoolbusteam@calstart.org

If the Incentive Recipient does not submit reimbursement requests in accordance with the instructions and terms herein, payments will be delayed.

ZE School Bus Payment Requests:

For the purpose of the CARB Project, a payment agreement for each eligible ZE school bus shall take the form of a binding purchase order that has been approved by CALSTART. The binding purchase order shall be an agreement between the Incentive Recipient and the applicable new ZE school bus dealership for a qualifying ZE school bus and shall meet the requirements and terms as described in the CARB IM ("Purchase Order"). The Purchase Order must be entered into either:

- (i) on or after August 21, 2025 (in order to potentially qualify for federal incentives or other supporting incentive programs or as otherwise approved by CARB), or
- (ii) within ten (10) calendar days following the execution of this Agreement.

Any new ZE school bus purchased under the CARB Project must be inspected by the California Highway Patrol no later than thirty (30) calendar days after Incentive Recipient's receipt of the ZE school bus. Upon delivery and inspection of the approved, new ZE school bus, the Incentive Recipient shall submit supporting documentation as described in the CARB IM along with a payment request via the [ZESBI Application Portal](#) for each new ZE school bus, referencing the relevant Application Number APP-000252. Incentive Recipient must then pay the dealer or OEM for that ZE school bus within sixty (60) calendar days following passing inspection.

Infrastructure Payment/Reimbursement Requests:

For the purpose of the CEC Project, this is a reimbursement agreement for eligible costs incurred, meaning amounts billed will be based upon actual costs incurred. The Incentive Recipient shall submit itemized project costs using the payment request feature through the ZESBI Application Portal, referencing the relevant Application Number [APP-000252](#).

Reimbursement Eligibility Period:

Binding commitments between the Applicant to purchase ZE school bus(es) must be made before eligible infrastructure cost reimbursement requests are allowable. Infrastructure costs incurred prior to the Effective Date of this Agreement and incurred after the Term ends, will be borne by the Applicant/Incentive Recipient. Any costs incurred outside of the parameters set forth above shall not be eligible for reimbursement.

Once all applicable Project and payment request requirements outlined under the CEC IM and CARB IM have been successfully completed and CALSTART has determined that all requirements and terms have been satisfied, the Incentive Recipient shall (i) For the purpose of infrastructure and STP payments, request reimbursement at a frequency of no less than quarterly through the ZESBI Application Portal. (ii) for the purpose of ZE school buses, request payment through the ZESBI Application Portal, see ZE School Bus Payment Requests section above for timing of ZE school bus payment. NOTE: CALSTART will retain ten (10) percent of all infrastructure and STP payment requests submitted until all Incentive Recipient requirements are satisfied.

Once CALSTART determines all requirements outlined under the CEC IM and CARB IM have been successfully completed, CALSTART shall notify the Agencies of its decision. The Agencies will have 5 business days to confirm or object to CALSTART's determination. If the Agencies confirm that all requirements have been met, the Incentive Recipient, at the end of the Infrastructure Term, for the purpose of infrastructure payments, shall submit a payment request through the ZESBI Application Portal.

Project billings shall clearly summarize actual costs billed and incurred in accordance with categories as defined in the ZESBI Application Portal ("Costs"). Infrastructure costs not included in the site equipment manifest will be disallowed. All costs billed must be supported by sufficient relevant documentation.

All direct costs incurred, including subcontractor costs, shall be itemized on the invoice and supported by sufficient relevant documentation such as a vendor invoice, receipt or other pertinent third-party provided documentation verifying amounts incurred. Copies of cancelled checks must be provided upon request.

The following costs are not allowable under any circumstances:

- 1) Alcoholic beverages
- 2) Bonding costs
- 3) Fines and penalties
- 4) Litigation or other legal costs
- 5) Lobbying or other costs for the purpose of influencing election outcomes, referendums or legislation.

The Incentive Recipient shall bear all costs and expenses incurred that are not in accordance with the terms and conditions of this Agreement, unless CALSTART, in consultation with the Agencies, determines otherwise. Incentive Recipient shall not present ineligible costs (Costs that are not in accordance with the terms of this Agreement) on an invoice.

NOTE: Incentive Recipient must identify all incentive and grant sources for costs related to this IR Project in the ZESBI Application Portal and refer to the CARB IM and CEC IM to determine which may be combined with the incentives provided under the Project (collectively "Approved Incentives") and which are to be deducted from the incentives provided under this IR Project. Under no circumstances may Approved Incentives exceed total IR Project costs.

For the purposes of the IR Project, the period during which IR Project expenses may be reimbursed ("Expenditure Period") shall begin upon a successful payment request has been paid by CALSTART and shall end three (3) fiscal years thereafter. Any funds that are not expended by the end date shall be returned to the state.

Payment disbursement for binding purchase orders and reimbursement for expenditures under this Agreement are contingent upon the receipt of continuing funding from the Agencies.

CALSTART's obligations under this Incentive Recipient Agreement are contingent upon the availability of funds received from the Agencies. In the event funds are not available, CALSTART shall have no liability to pay any funds whatsoever to the Incentive Recipient or to furnish any other consideration under this Agreement.

14. BUDGET CONTINGENCY CLAUSE

If state funding for any fiscal year is reduced or deleted for this program, CALSTART, CARB and the CEC shall have the option to either: 1) cancel this Agreement with no liability occurring to CARB, the CEC or CALSTART; or 2) offer an Agreement Amendment to the Incentive Recipient to reflect the reduced amount.

15. AUDITS/EXAMINATION OF ACCOUNTS, RECORDS, AND INSPECTION

Accounting System

Incentive Recipient shall establish and maintain an accounting system to include a separate ledger or fund for recording receipts and disbursements of grant funds that shall be reasonably satisfactory to CALSTART and in accordance with generally accepted accounting principles and best business practices, consistently applied, with all disbursements of grant funds recorded in the accounting system supported by sufficient relevant documentation and/or other evidence to include supporting calculations. Documentation shall also be maintained showing the receipt, use, and disposition of government or CALSTART property coming into the possession of the Incentive Recipient under this Agreement.

Retention of Records

Incentive Recipient shall retain all IR Project records (including financial records, and payment requests) for a minimum of five (5) years after the final payment has been received by the Incentive Recipient, unless otherwise specified in the funding Agreement.

Audits

Upon written request from CALSTART or either or both Agencies, Incentive Recipient shall provide detailed documentation of all expenses at any time throughout the IR Project. In addition, Incentive Recipient agrees to allow CALSTART or the Agencies or any other agency of the State, or their designated representative, upon written request, to have reasonable access to and the right of inspection of all records that pertain to the IR Project during the term of this Agreement and for a period of five (5) years thereafter, unless CALSTART or one of the relevant Agencies notifies Incentive Recipient, prior to the expiration of such five-year period, that a longer period of record retention is necessary. Further, Incentive Recipient agrees to incorporate an audit of this IR Project within any scheduled audits, when specifically requested by CALSTART or the Agencies. Incentive Recipient agrees to include a similar right to audit in any subaward or subcontract.

Incentive Recipients are strongly encouraged to conduct annual audits in accordance with the single audit concept. Incentive Recipient should provide two copies of the independent audit report and any resulting comments and correspondence to CALSTART within 15 days of the completion of such audits.

Right to Audit

Incentive Recipient agrees that CALSTART, CARB, CEC, the California Department of General Services, California Department of Finance, the California State Auditor, the California Bureau of State Audits, and any of their respective designated representatives ("Audit Parties") shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Agreement and all grant funds received or expended. Incentive Recipient agrees to maintain such records for a possible audit for a minimum of five (5) years from the date of termination, cancellation, or expiration of this Agreement or for 5 years after a funded incentive activity has concluded, whichever is later. The Parties may stipulate a longer records retention period. Incentive Recipient agrees to allow any and all of the Audit Parties access to such records during normal business hours, and to allow interviews of any and all employees, representatives, agents, officers, consultants, contractors and subcontractors of Incentive Recipient who might reasonably have information related to such records. Furthermore, Incentive Recipient agrees to include in all agreements, contracts and subcontracts, language identical to or similar to this paragraph to ensure any and all of the Audit Parties have the ability and right to audit records and conduct interviews of any and all contractors, consultants and subcontractors in relation to performance or use of the grant funds under this Agreement.

If applicable, Incentive Recipient will provide a copy of independent audit reports and any resulting comments and correspondence to the CALSTART accounting within 30 days of issuance of audit report.

16. SITE VISITS

CALSTART, CEC and CARB authorized representatives have the right to make site visits at reasonable times during normal business hours and with reasonable prior notice to review IR Project accomplishments and management control systems and to provide technical assistance, if required. Incentive Recipient must provide and must require its subcontractors to provide reasonable facilities and assistance for the safety and convenience of the visitors in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the IR Project or Incentive Recipient's operations.

17. SUSPENSION OF WORK

CALSTART, in consultation with CEC and CARB, may suspend any or all activities under this Agreement (unless otherwise directed by either of the Agencies) if CALSTART determines that an Incentive Recipient is not acting in conformity with the Agreement. CALSTART will provide Incentive Recipient with written notice outlining the specific reasons for the suspension. Upon receipt of notice of suspension, Incentive Recipient shall immediately cease performance of all activities under this Agreement and must take all steps necessary to correct the non-compliance. The Incentive Recipient shall have 15 business days to correct the noncompliance, provided that CALSTART determines Incentive Recipient reasonably needs longer to complete the correction, Incentive Recipient shall have such time as is reasonably needed to correct, but in no event longer than ninety (90) calendar days. Incentive Recipient shall take reasonable steps to avoid incurring additional costs and submitting costs for reimbursement upon receipt of a notice suspending work. Incentive Recipient shall resume performance of the work under this Agreement only upon receipt of written instructions from CALSTART.

18. TERMINATION AND REMEDIES

- a. **Termination With Cause.** CALSTART, in consultation with CEC and CARB, may terminate performance under this Agreement for cause upon providing Incentive Recipient with five (5) calendar days advance notice. Upon receipt of termination notice, the Incentive Recipient will use reasonable efforts to mitigate its expenses and obligations relative to the activities set forth in Exhibit A Summary of Award.

Justifications for Termination with Cause may include, but are not limited to:

- Reorganization by Incentive Recipient to a business entity unsatisfactory to CALSTART or either of the Agencies.
- Incentive Recipient's retention or hiring of subcontractors, or replacement or addition of personnel, who fail to perform to the standards and requirements of this Agreement; or
- Incentive Recipient's inability to pay its debts as they become due or its default on any obligation impacting adversely its ability to perform successfully under this Agreement

- b. **Termination Without Cause:** CALSTART may, in consultation with CARB and CEC, terminate this Agreement without cause upon providing Incentive Recipient with thirty (30) calendar days advance notice. Upon receipt of such notice, Incentive Recipient will use all reasonable efforts to mitigate its expenses and obligations

relative to its termination of the activities stated herein.

Justifications for Termination Without Cause may include, but are not limited to:

- Partial or complete loss of funds from either or both Agencies.
- Significant change in the state or a policy of either of the Agencies so that the work or product being funded would not be supported by such agency; or
- Termination, in whole or in part, of the grant agreements between either of the Agencies and CALSTART that is the source of funding for this Agreement, with or without cause.

- c. **Termination as a Result of 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 or CALSTART determine Incentive Recipient is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that should be grounds for termination of this Agreement. CALSTART shall provide Incentive Recipient advance written notice of such termination, allowing Incentive Recipient at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State of California or CALSTART.
- d. **Termination Procedures:** In the event of Termination with Cause or Without Cause, Incentive Recipient shall immediately proceed with the following obligations:
- Stop work as specified in the notice.
 - Place no further subawards, subcontracts, or orders, except as necessary to complete the continued portion of the Agreement.
 - Terminate all subaward, subcontracts or orders to the extent they relate to the work terminated.
 - With approval or ratification to the extent required by CALSTART, settle all outstanding liabilities and termination settlement proposals arising from the termination of subaward, subcontracts or orders, the cost of which would be reimbursable in whole or in part, under this Agreement; approval or ratification will be final for purposes of this clause.
 - Complete performance of the work not terminated.
 - Submit a final termination settlement proposal to CALSTART in the form and with the certification prescribed by CALSTART within 90 calendar days. At a minimum, the termination settlement proposal shall schedule out the costs reimbursable under this Agreement, not previously paid, for performance of the IR Project before the effective date of the termination, and those costs that may continue for a reasonable time after termination, provided that such costs shall be discontinued as rapidly as practicable.

In the event of a breach of this Agreement by Incentive Recipient, CALSTART (and as third-party beneficiaries hereunder, the Agencies) shall have all administrative, contractual and legal remedies available at law or in equity, including such sanctions

and penalties as may be appropriate.

Without limiting any of its other remedies, CALSTART and each of the Agencies may, for Incentive Recipient's noncompliance of any Agreement requirement, withhold future payments, demand and be entitled to repayment of past payments, or suspend or terminate this Agreement. Further, if any penalty, fine, or other assessment is issued against CALSTART, CARB, the CEC or other parties as a result of the actions or omissions of the Incentive Recipient or its subcontractors, the Incentive Recipient shall pay all assessment amounts with its own, non-grant funds. Finally, if a CEC Project and/or CARB Project is withdrawn, the Incentive Recipient may be required to repay any payments received from participation in the applicable IR Project.

19. INDEMNIFICATION

Incentive Recipient shall indemnify, defend, and hold harmless (i) the State of California, the Agencies, their respective officers, agents, and employees; and (ii) CALSTART and its Board of Directors, agents, other subcontractors; and employees, in each case against any and all liability, claims, demands, injuries, damages, losses, and costs (collectively "Liabilities"), including reasonable attorneys' fees, arising out of, resulting from or relating to the Incentive Recipient, its subcontractors, materialmen, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement ("Incentive Recipient Parties"), as well as arising out of the breach of any provisions of this Agreement by any Incentive Recipient Parties (including all terms and conditions incorporated herein), including but not limited to actions or inactions relating to, arising out of or resulting from the operation, design or manufacture of any equipment, vessels, vehicles or engines purchased, acquired, developed, modified, or used with grant funds, in whole or in part.

Excluded from this paragraph are only those injuries to (or deaths of) persons and damage to or destruction or loss of property arising from the gross negligence or willful misconduct of CALSTART, its employees or representatives. In addition, Incentive Recipient shall not use any funds provided under the IR Project in any manner that will infringe upon the intellectual property rights of any other party and shall defend, indemnify and hold harmless CALSTART and the Agencies from and against any and all Liabilities arising therefrom.

20. INSURANCE

Without in any way limiting Incentive Recipient's obligations, indemnities, or liabilities under Indemnification, Incentive Recipient shall always maintain during the term of this Agreement the following minimum insurance at Incentive Recipient's expense:

Active Worker's Compensation Insurance for all its employees who will be engaged in the performance of this Agreement and agrees to furnish to CALSTART satisfactory evidence of this insurance at any time CALSTART may request.

Appropriate other active insurance coverage for all activities under this Agreement, including, without limitation, the minimum insurance required by law for purchased zero emission vehicles, which it shall maintain in effect through the term of this Agreement.

If Incentive Recipient is self-insured for worker's compensation, Incentive Recipient hereby warrants such self-insurance is permissible under the laws of the State of California and agrees to furnish to CALSTART satisfactory evidence of this active insurance at any time CALSTART may request.

Incentive Recipient acknowledges the sufficiency of the types and amounts of insurance coverage maintained and the appropriateness of those coverages for the duration of the term. Upon execution of this Agreement, Incentive Recipient shall furnish third-party provided evidence reasonably satisfactory to show CALSTART that insurance coverages are in effect. Thereafter, Incentive Recipient shall provide CALSTART evidence of coverage upon policy renewals, changes, and CALSTART request.

21. SUBCONTRACTS

Incentive Recipient shall include applicable provisions of this Agreement, applicable federal, state and local laws and regulations, and documents incorporated by reference, in all subawards or subcontracts arising under and relating to this Agreement, ensuring that sub-awardees and subcontractors adhere to the same standards and obligations as the Incentive Recipient under this Agreement. Inter-company orders under this Agreement with subsidiaries of Incentive Recipient are not considered subawards or subcontracts hereunder.

22. CONTRACTING AND PROCUREMENT PROCEDURES

All Incentive Recipient subcontracts resulting from work under this Agreement must incorporate all the following as applicable based on the underlying circumstances:

- A clear and accurate description of the material, products, and services to be procured, a detailed budget, and timeline.
- Provisions that allow for administrative, contractual, and legal remedies in instances where subcontractors violate or breach contract terms and provide for such sanctions as may be appropriate.
- Provisions for termination by the Incentive Recipient, including termination procedures and the basis for settlement, and language conforming to the "Termination" provision relating to Executive Order N-6-22 – Russia Sanctions.
- Language conforming to the "Nondiscrimination" provision in this Agreement.
- The Standard of Performance provisions specified in this Agreement.
- Retention of Records provisions specified in this Agreement.
- Audits provisions specified in this Agreement.
- "Publications" – Legal Statements on Reports provisions specified in this Agreement.
- Language conforming to the "Equipment" provision in this Agreement.
- Language conforming to the "Indemnification" provision in this Agreement.
- Language conforming to the "Change in Business" provision in this Agreement.
- Language conforming to the "Receipt of Confidential Information and Personal Information" provision in this Agreement.
- Public Work – Payment of Prevailing Wages Generally Required by Law provisions in this Agreement.
- Assembly Bill 841 (2020) requirements for the use of EVITP certified electricians specified in this Agreement.

- Conflicts of Interest provision specified in this Agreement.
- Survival of the following provisions:
 - Retention of Records provisions specified in this Agreement.
 - Audits provisions specified in this Agreement.
 - Language conforming to the "Equipment" provision in this Agreement.
 - Language conforming to the "Indemnification" provision in this Agreement.
 - Language conforming to the "Receipt of Confidential Information and Personal Information" provision in this Agreement.

23. COVENANT AGAINST HIRING

During the term of this Agreement, including any extension or renewal thereof, and for a period of one (1) year thereafter, neither party will knowingly solicit for hire any technical or professional employee of the other assigned to the IR Project without the prior written consent of the other party.

Notwithstanding the foregoing, this covenant shall not apply in the event this Agreement is terminated by default by either party in accordance with the default or termination provision contained in this Agreement. In addition, this clause is not intended to restrict employees of either party from responding to employment advertisements and voluntarily applying for available employment in either party's company.

24. CONFLICTS OF INTEREST

No member of, or delegate to, any federal or state office, or resident commissioner shall be admitted to any share or part of this Agreement or to any benefit arising from it and in this respect, Incentive Recipient acknowledges the provisions of California Government Code Section 87104. This clause, however, does not apply to this Agreement to the extent this Agreement is made with a corporation for the corporation's general benefit.

Incentive Recipient acknowledges that in governmental agreements, even the appearance of a conflict of interest can be harmful to the interest of the State of California. Thus, Incentive Recipient, its subcontractors, and projected partners shall refrain from any practices, activities, or relationship that appear to conflict with their obligations under this Agreement, unless Incentive Recipient receives prior written approval of the Agencies or CALSTART. If Incentive Recipient is uncertain whether the appearance of a conflict of interest may exist, Incentive Recipient shall submit to CALSTART, for forwarding to the Agencies, as applicable, a written description of the relevant details.

25. OFFICIALS NOT TO BENEFIT

No member of, or delegate to, any federal or state office, or resident commissioner shall be admitted to any share or part of this Agreement or to any benefit arising from it. However, this clause does not apply to this Agreement to the extent that this Agreement is made with a corporation for the corporation's general benefit.

26. RELEASE OF NEWS INFORMATION

No news release, including photographs, films, public statements, confirmations or denials related to this Agreement, or any aspect of the associated program shall be made without CALSTART's prior written approval. Neither party, however, shall be precluded from revealing the contents of this Agreement to any governmental entity or pursuant to any operation of law. This clause shall apply to the Incentive Recipient's employees and lower tier subcontractors and suppliers. The Incentive Recipient further agrees to insert in any agreement hereunder, provisions which shall conform substantially to the language of this clause.

27. CONFIDENTIALITY OF INFORMATION

- a. All data or information provided by Incentive Recipient to CALSTART in connection with this Agreement, including any application materials, may be used by CALSTART consistent with the terms of this Agreement. CALSTART may make all data or information provided by Incentive Recipient to CALSTART in connection with this Agreement, including any application materials, available to the Agencies. Such information may be made public by the Agencies pursuant to applicable state laws and regulations. Incentive Recipient acknowledges that all information associated with payment requests, including business name and address, contact information, and sales transactions are public information and subject to release.

- b. Identification of Confidential Incentive Recipient Information

For the purposes of this Section, "Confidential Incentive Recipient Information" refers to information belonging to the Incentive Recipient that the Incentive Recipient has satisfactorily identified as confidential and each of the Agencies has agreed to designate as confidential under 20 CCR 2501, et seq., or other applicable state or federal laws and regulations.

CALSTART shall treat data or information designated as Confidential Incentive Recipient Information by Incentive Recipient as confidential, subject to the limitations set forth in this Section. CALSTART shall treat Confidential Incentive Recipient Information by Incentive Recipient as confidential pending review by each of the Agencies. CALSTART shall have no obligation to treat data or information designated by Incentive Recipient as Confidential Incentive Recipient Information as confidential if such data or information:

- 1) Is in the public domain at the time of receipt by CALSTART.
- 2) Is published after receipt thereof by Incentive Recipient (or another) or that otherwise becomes part of the public domain through no fault of CALSTART.
- 3) Was already in CALSTART's possession at the time of receipt thereof and was not acquired directly or indirectly from the Incentive Recipient; or
- 4) CALSTART can demonstrate it received the data or information from a third party that did not require CALSTART to hold it in confidence.

- c. Confidential Deliverables: Labeling and Submitting Confidential Incentive Recipient Information.

Prior to the commencement of this Agreement, if applicable, the Parties have identified in the Attachment to this Agreement, specific Confidential Incentive Recipient Information to be provided as a deliverable. All such confidential

deliverables shall be marked by the Incentive Recipient as "Confidential" on each page of the document containing the Confidential Incentive Recipient Information and, when communicated electronically, presented in a zip file with "Confidential" in the subject line. (Non-confidential deliverables are submitted via the Incentive Processing Center.) All Confidential Incentive Recipient Information will be contained in the "confidential" volume; no Confidential Incentive Recipient Information will be in the "public" volume.

- d. Submittal of Unanticipated Confidential Incentive Recipient Information as a Deliverable.

During this Agreement, Incentive Recipient may obtain or develop additional data or information not originally identified as a confidential deliverable. In this case, Incentive Recipient shall follow the procedures for a request for designation of Confidential Information specified in 20 CCR 2505 or other applicable law or regulation for determination by the relevant Agencies.

- e. Disclosure of Confidential Incentive Recipient Information

Disclosure of Confidential Incentive Recipient Information by the Agencies may only be made pursuant to 20 CCR 2506 and 2507 or other application state or federal laws or regulations. All confidential data, records, or deliverables that are legally disclosed by Incentive Recipient or any other entity may become public records and are no longer subject to the above confidentiality designation.

- f. Access to Confidential Information and Personal Information

- 1) If Incentive Recipient will receive confidential information or personal information from either of the Agencies, CALSTART, or a third-party for the performance of this Agreement, Incentive Recipient must first agree to and comply with the Agencies' special terms for confidential information.
- 2) For the purposes of this Section, "confidential information" refers to information the CEC has designated as confidential pursuant to Title 20 CCR Section 2505 et seq., information the CEC or CARB has otherwise deemed or stated to be confidential, and other information exempt from public disclosure under the provisions of the California Public Records Act or other applicable state or federal laws.
- 3) For the purposes of this Section, "personal information" refers to 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.
- 4) If any other individual or entity participating in anyway with this Agreement, including but not limited to subcontractors, vendors, and other project partners, will receive confidential information or personal information from either of the Agencies, CALSTART or a third-party for the performance of this Agreement,

that individual or entity must first agree to and comply with the Agencies' special terms for confidential information as well as any confidentiality, disclosure and privacy policies of the Agencies.

- 5) The Incentive Recipient must flow-down the Agencies' special terms for confidential information into each subcontract, vendor agreement, or other project partner agreement that will be provided access to confidential information or personal information before the individual or entity has access to any such information. Incentive Recipient must also require all individuals and entities to flow-down this Section to any lower tier subcontractors, incentive recipients, 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.
- 6) If this Agreement does not include the CEC's special terms for confidential information and the CEC determines CALSTART, Incentive Recipient, or any other individual or entity participating with this Agreement will receive confidential information or personal information from the CEC or a third-party for the performance of this Agreement, the CEC and CALSTART reserve the option to amend this Agreement to add its special terms for confidential information.
- 7) Except as provided in Title 20 CCR Sections 2506, 2507, and 2508, and the CEC's special terms for confidential information, neither Incentive Recipient nor any other individual or entity participating in anyway with this Agreement may not disclose any information provided to it by the CEC, CALSTART, CARB or a third party for the performance of this Agreement if the information has been designated as confidential or is the subject of a pending application for confidential designation.

Incentive Recipient shall include the substance of this Section in all subcontracts, vendor agreements, or other agreements awarded under this Agreement.

28. TITLE TO PROPERTY

a. Equipment Defined

The term "Equipment" is defined as having a useful life of at least one year from the date of purchase, having an acquisition unit cost of at least \$5,000, and purchased in whole or in part with grant funds. Electric vehicle supply equipment ("EVSE") purchased in whole or in part with grant funds shall be considered Equipment for purposes of this Agreement regardless of whether it has an acquisition cost of at least \$5,000. Equipment means any products, objects, machinery, apparatus, implements or tools purchased, used or constructed within the IR Project, including those products, objects, vehicles, machinery, apparatus, implements or tools from which over thirty percent (30%) of the equipment is composed of materials purchased for the IR Project. For purposes of determining depreciated value of equipment used in the Agreement, the IR Project shall terminate at the end of the normal useful life of the equipment purchased, funded and/or developed with grant funds. The CEC, CARB and/or CALSTART may determine the normal useful life of such equipment.

For the purposes of eligibility, items described as "equipment", "vehicle", or "EVSE" in the CARB IM or CEC IM that do not meet this definition of Equipment would be considered miscellaneous costs and may still be considered eligible if they otherwise comply with the descriptions for eligible costs.

b. Title to Equipment

Title to Equipment acquired by Incentive Recipient in whole or in part with grant funds shall vest in the Incentive Recipient. The Incentive Recipient shall not encumber the property without CALSTART approval. CALSTART shall follow criteria approved by the Agencies when determining whether to approve Incentive Recipient's Equipment encumbrance request.

c. Equipment Disposition

The Equipment title holder shall use the Equipment in the IR Project as long as needed, whether or not the IR Project continues to be supported by grant funds. When no longer needed for the original IR Project, the title holder shall contact CALSTART for disposition instructions.

d. Vehicle Ownership

All ZE school buses purchased under the CARB Project shall be owned by the Incentive Recipient for a period of no less than three (3) years following the receipt of the relevant ZE school bus. Nothing shall limit the ability of Incentive Recipient to encumber the ZE school bus for the purposes of financing the purchase of such vehicle.

29. DATA COLLECTION

Incentive Recipient shall be required to provide to the Agencies all data described in Section 7.6 Data Collection Responsibilities of the CARB IM and Section 9.3 Data Collection Requirements of the CEC IM.

30. RIGHTS IN CONTRACT DATA

All data collected or produced under this Agreement shall be the property of CALSTART, CARB and the CEC. Except as otherwise approved by CEC or CARB, as applicable, Incentive Recipient shall not use the data for any purpose other than to perform its obligations under this Agreement and shall handle proprietary data in accordance with the provisions of this clause, Section 27 of this Agreement and Section 13 of the CARB Terms incorporated into this Agreement in Exhibit C. The Agencies shall have unlimited rights to use and reproduce all reports and data produced and delivered pursuant to this Agreement (including, without limitation the right to disclose, prepare derivative works, distribute copies to the public, and publicly perform and display), and reserves the right to authorize others to use or reproduce such materials. Each report becomes the property of the Agencies upon receipt.

Incentive Recipient agrees to obtain for CALSTART rights in data or information obtained from subcontractors or vendors as may be necessary to ensure that Incentive Recipient complies with the terms of this Section and lawfully is able to deliver to CALSTART deliverables with unlimited rights.

Incentive Recipient agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from the CEC, CARB or a CEC or CARB contractor or other incentive recipient, the Incentive Recipient shall treat such data in accordance with any restrictive legend contained thereon and in conformance with Section 27, unless another use is specifically authorized by prior written approval of CALSTART and the applicable representative of the Agencies identified by CALSTART. Incentive Recipient acknowledges that in the performance of the IR Project under this Agreement, Incentive Recipient agrees not to disclose any such information without the prior written consent of the CEC, CARB and CALSTART.

31. CHANGE IN BUSINESS

- a. Incentive Recipient shall promptly notify CALSTART of the occurrence of each of the following:
 1. A change of primary contacts and/or authorized representatives.
 2. A change of address.
 3. A change in the business name or ownership.
 4. The existence of any litigation or other legal proceedings affecting the project.
 5. The occurrence of any casualty or other loss to project personnel, equipment or third parties of a type commonly covered by insurance.
 6. Receipt of notice of any claim or potential claim against Incentive Recipient for patent, copyright, trademark, service mark and/or trade secret infringement that could affect CALSTART, CARB or the CEC's rights.
- b. Incentive Recipient shall not change or reorganize the type of business entity under which it does business except upon prior written notification to CALSTART. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. If CALSTART, CARB or the CEC is not satisfied that the new entity can perform as the original Incentive Recipient, CALSTART may terminate this Agreement as provided in the termination paragraph.

32. SURVIVAL OF TERMS

Certain terms in this Agreement and the Schedules and Exhibits included hereto, including the CEC Terms, CARB Terms, and the CARB IM and CEC IM which by their nature should survive termination, cancellation, or expiration of this Agreement, shall survive the completion or termination date of this Agreement for any reason. Sections of the Agreement include, but are not limited to:

- Data Collection
- Insurance
- Audits/Examination of Accounts, Records, and Inspection
- Confidentiality and Data Security (See Exhibit C)
- Payment Requests

- Title to Property
- Change in Business
- Termination and Remedies
- Audit/Examination of Accounts, Records, and Inspection
- Indemnification
- Confidentiality of Information

33. FORCE MAJEURE

Neither CALSTART nor the Incentive Recipient are liable for or deemed to be in default for any delay or failure in performance under this Agreement or interruption of services resulting, directly or indirectly, from acts of God, civil unrest, war, fire, flood, earthquakes, or other physical natural disasters. If either Party intends to invoke this clause to excuse or delay performance, the Party invoking the clause must provide written notice to the other Party immediately of the intent to invoke the clause and the reasons why the force majeure event is preventing that Party from, or delaying that Party in, performing its obligations under this Agreement. CALSTART may terminate this Agreement immediately, in writing and without penalty, in the event Incentive Recipient invokes this clause, in which case Incentive Recipient shall immediately return all remaining grant funds to CALSTART or a CALSTART designee, cease all expenditure of grant funds, and turn over all documents, records, deliverables, intellectual property and other information in relation to this Agreement.

If the Agreement is not terminated by CALSTART pursuant to this clause, upon completion of the force majeure event, the Incentive Recipient must immediately recommence the performance of its obligations under this Agreement and must also provide CALSTART a written proposal to revise the IR Project schedule, while minimizing the effects of the delay caused by the force majeure event.

An event of force majeure does not relieve a Party from any of its obligations which arose before the occurrence of the force majeure event nor is any Party relieved from those obligations which survive termination or cancellation of this Agreement.

34. PUBLICATIONS – LEGAL STATEMENT ON REPORT

The Incentive Recipient is encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

No report produced as a result of work funded by this program shall be represented to be endorsed by the CEC or CARB, and all such reports shall include the following statement:

LEGAL NOTICE

This document was prepared as a result of work sponsored by the California Energy Commission (CEC) and the California Air Resources Board (CARB). It does not necessarily represent the views of the CEC, CARB or their respective employees, or the State of California. The CEC, CARB 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 document; nor does any party represent that the use of this information will not infringe upon privately owned rights. audiovisuals, or other types of promotional material.

It shall also note "This Project is part of California Climate Investments, a statewide program that puts billions of Cap-and-Invest (formerly known as Cap-and-Invest) dollars to work reducing greenhouse gas emissions, strengthening the economy, and improving public health and the environment particularly in disadvantaged communities." Guidelines for the usage of the CCI logo are incorporated by reference and may be changed at CARB's discretion at any time. A copy of the Guidelines can be found at <http://www.caclimateinvestments.ca.gov/logo-graphics-request>.

35. ASSEMBLY BILL 841 (2020)

By signing this Agreement, Incentive Recipient as a material term of this Agreement shall be fully responsible for complying with section AB 841 (Ting, 2020) added Public Utilities Code (PUC) section 740.20, which requires Electric Vehicle Infrastructure Training Program (EVITP) certification to install electric vehicle charging infrastructure and equipment for work performed on or after January 1, 2022, subject to certain exceptions.

Applying PUC 740.20 EVITP requirements to this Agreement means that all electric vehicle charging infrastructure and equipment located on the customer side of the electrical meter shall be installed by a contractor with the appropriate license classification, as determined by the Contractors' State License Board, and at least one electrician on each crew, at any given time, who holds an EVITP certification. Projects that include installation of a charging port supplying 25 kilowatts or more to a vehicle must have at least 25 percent of the total electricians working on the crew for the project, at any given time, who hold EVITP certification. One member of each crew may be both the contractor and an EVITP certified electrician. The requirements stated in this paragraph do not apply to any of the following:

- 1) Electric vehicle charging infrastructure installed by employees of an electrical corporation or local publicly owned electric utility; and
- 2) Electric vehicle charging infrastructure funded by moneys derived from credits generated from the Low Carbon Fuel Standard Program (Subarticle 7 (commencing with Section 95480) of Article 4 of Subchapter 10 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations).

36. PUBLIC WORKS

Generally Required by Law

Projects that receive an award of public funds and that involve construction, alteration, demolition, installation, repair, or maintenance work over one thousand dollars (\$1,000.00) may be considered a public works subject to the payment of prevailing wages as determined by the California Department of Industrial Relations.

Prevailing Wage and Labor Compliance. Where applicable, the Incentive Recipient agrees to be bound by and comply with all the provisions of California Labor Code Section 1771 et seq. regarding prevailing wages. Incentive Recipient also agrees to monitor all agreements subject to reimbursement from this Agreement to ensure that the provisions of California Labor Code Sections 1720-1861 are being met.

See California Labor Code. See Chapter 1 of Part 7 of Division 2 of the California Labor Code, commencing with Section 1720 and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000.

NOTE: Prevailing wage rates can be significantly higher than non-prevailing wage rates.

By accepting this Agreement, Incentive Recipient, as a material term of this Agreement, shall be fully responsible for complying with all California public works requirements, including but not limited to payment of prevailing wages. Therefore, as a material term of this Agreement, Incentive Recipient must either:

- 1) Proceed with the assumption that the project is a public work and ensure that:
 - a) prevailing wages are paid;
 - b) the project budget for labor reflects these prevailing wage requirements; and
 - c) the project complies with all other requirements of prevailing wage law, including but not limited to keeping accurate payroll records and complying with all working hour requirements and apprenticeship obligations.

Or:

- 2) Timely obtain a legally binding determination from the California Department of Industrial Relations (DIR) or a court of competent jurisdiction before work begins on the project that the proposed project is not a public work.

NOTE: Only the California Department of Industrial Relations (DIR) and courts of competent jurisdiction have jurisdiction to issue legally binding determinations that a particular project is or is not a public work.

NOTE: California Prevailing Wage law provides for substantial damages and financial penalties for failure to pay prevailing wages when payment of prevailing wages is required.

Subcontractors and Flow-down Requirements. Incentive Recipient shall ensure that its subcontractors, if any, also comply with the above requirements with respect to the payment of public works/prevailing wage. Incentive Recipient shall ensure all agreements with its contractors/subcontractors to perform work relating to this IR Project contain the above terms regarding payment of prevailing wages on public works

projects. Incentive Recipient shall be responsible for any failure of Incentive Recipient's subcontractors to comply with California prevailing wage and public works laws.

Indemnification and Breach. Any failure of Incentive Recipient or its subcontractors to comply with the above requirements shall constitute a breach of this Agreement that excuses – at CALSTART or either of CEC or CARB's option – CALSTART, CARB and the CEC's performance of its requirements under this Agreement. In such a case, CALSTART, CARB or the CEC may refuse payment to Incentive Recipient of any amount under this Agreement and CALSTART, CARB and the CEC shall be released, at its option, from any further performance of this award or any portion thereof. By accepting this Agreement, and as a material term of this Agreement, Incentive Recipient agrees to indemnify CALSTART, CARB and the CEC and hold CALSTART, CARB and the CEC harmless for any and all financial consequences arising out of or resulting from the failure of Incentive Recipient or any of Incentive Recipient's subcontractors to pay prevailing wages or otherwise to comply with the requirements of prevailing wage law.

Self-Certification. Incentive Recipient must provide a self-certified statement indicating all covered trades met prevailing wage requirements. For detailed information about prevailing wage and the process to determine if the proposed project is a public work, Incentive Recipient may wish to contact the California Department of Industrial Relations (DIR) or a qualified labor attorney of their choice for guidance.

Covered Trades. For public works projects, Incentive Recipient may contact DIR for a list of covered trades and the applicable prevailing wage(s).

Questions. If Incentive Recipient has any questions about this contractual requirement or the wage, record keeping, apprenticeship or other significant requirements of California prevailing wage law, CALSTART recommends Incentive Recipient consult DIR or a qualified labor attorney of its choice before accepting this Agreement.

Certification. Incentive Recipient shall certify on each payment request, either that (1) prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and that the Incentive Recipient and all subcontractors otherwise complied with all California prevailing wage laws, or (2) that the project is not a public work requiring the payment of prevailing wages. In case of the latter, Incentive Recipient shall provide competent proof of a DIR or court determination that the project is not a public work requiring the payment of prevailing wages.

Prior to the release of any retained funds under this Agreement, Incentive Recipient shall submit to CALSTART the above-described certificate signed by Incentive Recipient and all subcontractors performing public works activities on the project. Absent such certificate, Incentive Recipient shall have no right to receive any funds under this Agreement, and CALSTART and the CEC shall be relieved of any obligation to pay said funds.

37. NONDISCRIMINATION

During the performance of this Agreement, Incentive Recipient and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment on the basis of sex, sexual orientation, race, color, ancestry, religious creed, ancestry, ethnic group identification, national origin, mental or physical

disability (including HIV and AIDS), medical condition (including cancer), genetic information, age, marital status, veteran or military status, or any other characteristic protected by law, or unlawfully deny family-care leave, medical-care leave, pregnancy-disability leave, or other legally-protected leave.

Incentive Recipient and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Incentive Recipient shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part of it as if set forth in full. Incentive Recipient and its subcontractors shall give written notice of their obligations under this clause to labor organizations with whom they have a collective bargaining or other Agreement.

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

38. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this Agreement, the Incentive Recipient shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or sexual orientation or any other protected classes. Such Incentive Recipient shall take affirmative actions to ensure that applicants are employed, and that employees are treated equally during their employment, without regard to their race, religion, color, sex, sexual orientation, national origin, age, or other protected class. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

39. DISADVANTAGED BUSINESS ENTERPRISES

In connection with the performance of this Agreement, the Incentive Recipient shall attempt to utilize Disadvantaged Business Enterprises (DBEs) and will use its best efforts to ensure that DBEs will have the opportunity to compete for subcontract work under this Agreement.

40. NOTICES

All legal notices, requests, demands and other communications required or permitted hereunder (i.e. not including ordinary course communications regarding the IR Project with CALSTART or the Agencies) shall be in writing and shall be deemed to have been duly given if delivered or mailed by certified mail, postage prepaid, to the address set forth below:

CALSTART

For legal and contract matters:	For program matters:
Marc Gottschalk, Chief Legal Counsel	Michelle Hanson, Deputy Director, Electric School Bus Programs
CALSTART, Inc.	CALSTART, Inc.
48 S. Chester Avenue	48 S. Chester Avenue
Pasadena, CA 91106	Pasadena, CA 91106
Phone: 626-744-5600	Phone: 626-744-5600
Email: mgottschalk@calstart.org	Email: schoolbusteam@calstart.org

Redwood City Elementary School District

	For legal and contract matters:	For program matters:
Name of Awardee's Authorized Official:		Vidal Duran
Authorized Official, Title:		Transportation Manager
Name of Organization/ LEA:		Redwood City Elementary School District
Main Address:		601 James Ave.
City, State, and Zip Code:		Redwood City, California, 94062
Phone Number:		6506780310
Email Address:		vduran@rcsdk8.net

41. APPLICABLE LAW AND VENUE

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California, without reference to its conflict with laws principles. Subject to the requirements of the Disputes and Arbitration provision, below, Incentive Recipient agrees that any court action to enforce any part of this Agreement shall be venued in Los Angeles County other than court actions involving CEC and/or CARB. Court actions involving CEC and/or CARB shall be venued in the Superior Court in and for the County of Sacramento, or in the United States District Court in and for the Eastern District of California. Incentive Recipient hereby waives its sovereign immunity, if any, for the purposes of this Agreement.

42. DISPUTES AND ARBITRATION

The Parties will make a good faith attempt to resolve any Dispute involving this Agreement through negotiations. Disputes that cannot be resolved by the Parties with good faith effort within sixty (60) calendar days, including the breach or alleged breach thereof, may be submitted to binding arbitration (except where statutorily required) by written request of either Party (an "Arbitration Demand Notice"). Any arbitration will not in any way restrict the authority of the agencies, CARB and or CEC, from engaging in

enforcement action.

Any arbitration hereunder will be conducted in accordance with the American Arbitration Association Commercial Arbitration Rules for Administered Arbitration then in effect (the "AAA Rules"); provided, however, that to the extent that the provisions of the Agreement and the AAA Rules conflict, the provisions of the Agreement (including this Section) will govern. Unless the Parties otherwise agree, any such arbitration will be conducted by and before a single arbitrator. Any arbitrator selected pursuant to this Section will be neutral and disinterested with respect to each of the Parties and the subject matter of the Dispute.

The arbitrator will have full power and authority to determine issues of arbitrability but will otherwise be limited to interpreting or construing the applicable provisions of the Agreement and will have no authority or power to limit, expand, alter, amend, modify, revoke or suspend any condition or provision of the Agreement; it being understood that the arbitrator will have full authority to implement the provisions of the Agreement, and to fashion appropriate remedies for breaches of the Agreement (including interim or permanent injunctive relief); provided, however, that the arbitrator will not have (1) any authority in excess of the authority a court having jurisdiction over the Parties and the dispute would have absent these arbitration provisions or (2) any right or power to award special, indirect, punitive, exemplary, consequential, remote, speculative or similar damages in excess of compensatory damages, except to the extent such damages are expressly permitted by the terms of the Agreement. It is the intention of the Parties that in rendering a decision the arbitrator will give effect to the applicable provisions of the Agreement and follow applicable Law.

If a Party fails or refuses to appear at and participate in an arbitration hearing after due notice, the arbitrator may hear and determine the controversy upon evidence produced by the appearing Party. Any decision rendered under such circumstances will be as valid and enforceable as if the Parties had appeared and participated fully at all stages.

Notwithstanding anything to the contrary herein, the fees of the arbitrator and all other arbitration costs will be borne equally by each Party, except that each Party will be responsible for its own attorney's fees and other costs and expenses, including the costs of witnesses selected by such Party.

The arbitrator shall render a written reasoned award, and the decision of the arbitrator shall be final, conclusive and binding on the parties to the arbitration. Judgment upon any arbitration award hereunder may be entered in any court having jurisdiction thereof.

Any arbitration proceedings hereunder will be held in Los Angeles County, California and conducted remotely or such other place as the Parties may mutually agree.

The arbitration, including the interpretation of the provisions of this Section only to the extent they relate to the agreement to arbitrate set forth herein and any procedures pursuant thereto, will be governed by the Federal Arbitration Act.

Each party expressly agrees to have all disputes, claims or controversies arising out of or relating to this Agreement decided by neutral arbitration and gives up (i) any rights the party might possess to have those matters litigated in a court or jury trial, and (ii)

judicial rights to discovery and appeal except to the extent that they are specifically provided for under this Agreement. If any party refuses to submit to arbitration after agreeing to this provision, the party may be compelled to arbitrate under federal or state law.

Notwithstanding anything to the contrary in this Section 42, in the event either of the Agencies undertake to enforce this Agreement pursuant to their rights under Section 45, the enforcing agency shall not be required to undertake arbitration, will not be bound by the results of any arbitration between the Parties, and retain the authority to pursue any action or remedy available at law or in equity at its discretion.

43. AMENDMENT WAIVER, DISCHARGE

- a. No amendment or modification of any provision of this Agreement shall be effective unless such amendment or modification is mutually agreed upon in writing by the parties' duly authorized representatives, except for CALSTART's right to make unilateral changes pursuant to this Section 43, and the provisions of Section 17 - Termination and Remedies.
- b. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. The rights and remedies of the Parties to this Agreement, whether pursuant to this Agreement or in accordance with law, shall be construed as cumulative, and the exercise of any single right or remedy shall constitute neither a bar to the exercise of nor the waiver of any other available right or remedy.
- c. The failure of either party hereto to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part thereof or the right of either party thereafter to enforce each such provision.

44. TIME IS OF THE ESSENCE

It is understood that for Incentive Recipient's performance under this Agreement, time is of the essence and Incentive Recipient shall proceed with and complete all of its obligations under this Agreement in a timely and expeditious manner.

45. THIRD PARTY BENEFICIARY

The Agencies and the State of California shall be considered third party beneficiaries under this Agreement for the purpose of carrying out, and enforcing, any or all of the terms or conditions of this Agreement.

46. INDEPENDENT CONTRACTOR

Incentive Recipient's relationship to CALSTART in the performance of this Agreement is that of an independent entity and not as CALSTART's agent, employee, or representative. Incentive Recipient acknowledges it has no authority to act for or bind CALSTART without CALSTART's prior written consent. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties or to impose any liability attributable to such a relationship upon

CALSTART. Incentive Recipient is responsible for the payment of all applicable federal, state, and local income taxes relating to its receipt of money as an incentive award for the IR Project.

47. ASSIGNMENT

Incentive Recipient shall not assign any of its rights, duties, or interest in whole or in part, in this Agreement without the express prior written consent of CALSTART, which may be granted or withheld at the sole discretion of CALSTART. Any unauthorized attempt by the Incentive Recipient to assign or delegate any rights or obligations under this Agreement without such consent shall be deemed null and void and constitute a breach of this Agreement.

48. AUTHORITY

The Incentive Recipient signatories hereto represent and warrant that they are authorized and empowered, and have the legal capacity, to execute this Agreement and to legally bind the Incentive Recipient both in an operational and financial capacity, and that the requirements and obligations under this Contract are legally enforceable and binding on the Incentive Recipient.

49. SEVERABILITY

If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such provision shall be deemed severed from this Agreement to the extent of such invalidity or unenforceability, and the remainder hereof will not be affected thereby, each of the provisions hereof being severable in any such instance.

50. ENTIRE AGREEMENT/CONTRACT CONSTRUCTION

This Agreement, including all documents incorporated by reference, represents the entire Agreement of the Parties pertaining to the subject matter herein, and shall supersede all prior oral and/or written agreements, communications, negotiations, and discussions between the Parties. This Agreement shall not be construed more strongly against either party regardless of who is more responsible for its preparation.

The existence of this Agreement does not create, and nothing stated in this Agreement creates rights in or grants remedies to, any third party or third parties as a beneficiary or beneficiaries of this Agreement, or of any duty, covenant, obligation, or undertaking established herein, except to the extent set forth in Section 45 above.

Any waiver of rights with respect to a default or other matter arising under the Agreement at any time by either Party shall not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of CALSTART provided for in this Agreement are in addition to any other rights and remedies provided by law.

The headings and captions of the various paragraphs, subparagraphs and sections hereof are for convenience only, and they shall not limit, expand, or otherwise affect the construction or interpretation of this Agreement.

When referred to herein, Incentive Recipient includes their heirs, successors, assigns, designees, predecessor-in-interest, successor-in-interest, shareholders, members, partners, officers, directors, managers, employees, employers, principals, and agents whether or not named as a party to this Agreement.

51. EXECUTION IN COUNTERPARTS

This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same Agreement and shall become a binding agreement when one or more counterparts have been signed by each party and delivered to the other parties. Facsimile and electronic signatures shall be deemed sufficient and legally binding as if an original signature was applied to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute this Agreement as of the dates listed below, but to take effect as of the Effective Date.

CALSTART, Inc. By: _____ (Signature) Name: <u>Marc Gottschalk</u> (Print Name) Title: <u>Chief Legal Counsel</u> (Print Title) Date: _____	[Incentive Recipient]: By: _____ (Signature) Name: <u>Martin Cervantes</u> (Print Name) Title: <u>Director of Facilities</u> (Print Title) Date: _____
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Exhibit B - CARB ZESBI Terms and Conditions

13. CONFIDENTIALITY AND DATA SECURITY

- a. Except as required by applicable law, or as otherwise expressly authorized by this Grant Agreement, the Grantee shall not disclose to any third party any record, data, or information which CARB has designated as confidential. It is expressly understood and agreed that information the Grantee collects, generates, or acquires in performing its obligations under this Grant may be deemed confidential by CARB. Therefore:
 - i. Rights to Data: Grantee acknowledges, accepts, and agrees that as between Grantee and Grantor, all rights, including all intellectual property rights, in and to personally identifiable information (PII), data, information, documentation and materials shall remain the exclusive property of the Grantor, and Grantee has a limited, non-exclusive license to access, and use said information solely for performing its obligations under the Grant Agreement. Nothing herein shall be construed to confer any license or right to said PII, data, documentation, materials, or information, including user tracking and exception data, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of said information by Grantee or third parties is prohibited. For the purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored, or transmitted by Grantee or any third-party service, for unrelated or commercial purposes, advertising, or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized by Grantor.
 - ii. The Grantee certifies that it has appropriate systems and controls in place to ensure that the Project and Grant Funds (including Administrative Fees) will

not be used for the acquisition, operation, or maintenance of computer software in violation of copyright or other intellectual property laws.

- iii. Project information or data, including but not limited to personally identifiable information (PII) and all records and supporting documentation that personally identifies or describes an individual or individuals, is confidential in accordance with California Civil Code sections 1798, et seq. and other relevant state or federal statutes and regulations. During the Term, in the performance of any of the terms or conditions of this Grant, the Grantee shall safeguard all such information, records, applications, PII and data which comes into its possession or control in perpetuity, and shall not release or publish any such information, records, data, or application records without first obtaining in each instance the advance written approval of an authorized representative of CARB.
- iv. The Grantee must ensure that the Grantee employees, officer, agents, representatives, affiliates, contractors, subcontractors, consultants and Grant Recipients are informed of the confidential nature of any shared information or data; and, ensure by written agreement that such individuals and entities are prohibited from copying, revealing, or utilizing such information or data (or any parts thereof) for any purpose other than in compliance with applicable laws and in fulfillment of this Grant, and are precluded from taking any action otherwise prohibited under any provision of this Grant or applicable laws.
- v. The Grantee, its employees, agents, representatives, affiliates, directors, officers, contractors, subcontractors, consultants, and Grant Recipients must adhere to all CARB confidentiality, disclosure, and privacy policies.
- vi. If the Grantee suspects loss or theft of PII or other confidential information, the Grantee must report any lost or stolen PII, including all information, data, or equipment developed or collected pursuant to this Grant, to CARB immediately and report to state or federal officials where required by applicable laws.
- vii. The Grantee must sign all non-disclosure and confidentiality agreements provided by CARB, and shall require its employees, officers, directors, affiliates, representatives, agents, Grant Recipients, consultants, contractors, and subcontractors to do the same when requested by CARB.
- viii. Grantee agrees to notify CARB immediately of any security incident involving suspected or actual release or breach of any information system, servers, data, or any other information developed or collected pursuant to this Grant. The Grantee agrees that CARB has the right to participate in the investigation of a security incident involving such suspected or actual release or breach, or to conduct its own independent investigation, and that the Grantee shall cooperate fully in such investigations.

- ix. The Grantee agrees that it shall be responsible for all costs incurred by it and by CARB due to a security incident resulting from any act or omission of Grantee or any of its employees, agents, officers, directors, affiliates, representatives, consultants, contractors, subcontractors or Grant Recipients, including any acts or omissions resulting in an unauthorized disclosure, release, access, review, or destruction of data or information; or loss, theft or misuse of information or data developed or gathered pursuant to this Grant. If the Grantee experiences a loss or breach of data, the Grantee shall immediately report the loss or breach to CARB and, where required by applicable law, to state or federal officials. If applicable law requires, or if CARB determines, that notice to the individuals whose data has been lost or breached is needed, then the Grantee shall provide all such notification and will bear any, and all costs associated with the notice, or any mitigation selected by CARB. These costs include, but are not limited to, staff time, material costs, postage, media announcements, credit monitoring for impacted individuals, and other identifiable costs associated with the breach or loss of data.
- x. If the Grantee believes disclosure of a confidential record or information may be required under the California Public Records Act, the Grantee shall first give CARB at least ten (10) calendar days advance written notice prior to any planned disclosure so that CARB can evaluate all responsive documents for privilege, and process the request according to applicable laws and regulations, which may entail making required notifications, or seeking, solely at CARB's discretion, an order preventing disclosure from a court of competent jurisdiction. The Grantee agrees that it shall immediately notify and work cooperatively with CARB to respond timely and correctly to any and all public records requests. The Grantee agrees that it will not challenge or authorize or endorse any challenge to any action or request by CARB to obtain a protective order or court order to prevent the release of any information.
- xi. Grantee assumes all responsibility and liability for the security and confidentiality of PII, sensitive and confidential information and data under its jurisdiction or control.
- xii. Grantee certifies, represents, and warrants that:
 - 1) Its data and information security standards, tools, technologies and procedures are sufficient to protect confidential, sensitive and PII data and information;
 - 2) Grantee is in compliance and shall remain in compliance at all times during the Grant Term with the following requirements and obligations:
 - a) The California Information Practices Act (Civil Code Sections 1798 et seq.);

- b) California State Administrative Manual 5350.1 and California Statewide Information Management Manual 5305-A pertaining to encryption of confidential, sensitive and/or PII information or data;
- c) Current NIST special publications 800-171 Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations. Third party audit results and Grantee's plan to correct any negative findings shall be made available to CARB upon request;
- d) Undergo an annual Statement on Standards for Attestation Engagements (SSAE) No. 16 Service Organization Control (SOC) 2 Type II audit. Third party audit results and Grantee's plan to correct any negative findings and implementation progress reports shall be made available to CARB upon request; and
- e) Privacy provisions of the Federal Privacy Act of 1974; Compliance with industry standards and guidelines applicable to the work performed under the Grant. Relevant security provisions may include but are not limited to: Health Insurance Portability and Accountability Act of 1996, IRS 1075, Health Information Technology for Economic and Clinical (HITECH) Act, Criminal Justice Information Services (CJIS) Security Policy, Social Security Administration (SSA) Electronic Information Exchange Security Requirements, and the Payment Card Industry (PCI) Data Security Standard (DSS) as well as their associated Cloud Computing Guidelines.

14. INSURANCE REQUIREMENTS

The Grantee, including its contractors and subcontractors who are performing work under this Grant, must comply with all requirements outlined in the (1) General Provisions and (2) Insurance Requirements outlined below. No payments will be made under the Grant until the Grantee fully complies with all insurance requirements.

- a. General Provisions Applying to All Policies:
 - i. Coverage Term - Coverage needs to be in force for the complete term of the **Grant**. If insurance is set to expire during the term of the **Grant**, a new certificate must be received by the State at least ten **(10)** days prior to the expiration of this insurance. Any new insurance must comply with the original Grant terms.
 - ii. Policy Cancellation or Termination & Notice of Non-Renewal - The Grantee is responsible to notify the State within five **(5)** business days of any cancellation, non-renewal, or material change that affects required insurance coverage. New certificates of insurance are subject to the approval of the Department of General Services and the Grantee agrees no work or services will be performed prior to obtaining such approval. In the event that the Grantee fails to keep in effect at all times the specified insurance coverage,

the State may, in addition to any other remedies it may have, terminate the Grant upon the occurrence of such event, subject to the provisions of the Grant.

- iii. Premiums, Assessments, and Deductibles – The Grantee is responsible for any premiums, policy assessments, deductibles, or self-insured retentions contained within their insurance program.
- iv. Primary Clause – Any required insurance contained in the Grant shall be primary, and not excess or contributory, to any other insurance carried by the State.
- v. Insurance Carrier Required Rating – All insurance companies must carry an AM Best rating of at least "A-" with a financial category rating of no lower than VI. If the Grantee is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required.
- vi. Endorsements – Any required endorsements requested by the State must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
- vii. Inadequate Insurance – Inadequate or lack of insurance does not negate the Grantee's obligations under the Grant.
- viii. Satisfying a Self-Insured Retention (SIR) –All policies with an SIR shall be endorsed to allow the State to satisfy the SIR or Deductible at the State's discretion. The State may deduct from any amounts otherwise due to Grantee to fund the SIR/deductible. Policies shall not contain any provision that limits the satisfaction of the SIR / deductible to the Named Insured. The Grantee's insurer may also eliminate the SIR / deductible in favor of the State's interests.
- ix. Available Coverages/Limits – All coverage and limits available to the Grantee shall also be available and applicable to the State.
- x. Use of Contractor or Subcontractor – In the case of the Grantee's utilization of contractors or subcontractors to complete the Grant scope of work, the Grantee shall include all subcontractors as insureds under the Grantee's insurance or supply evidence of the contractor's and subcontractor's insurance to the State subject to all the insurance requirements below.
- xi. If Grantee is self-insured in whole or in part as to any of the above-described types and levels of coverage, Grantee shall provide CARB with written acknowledgement of this fact at the time of the execution of this Grant Agreement. CARB may require financial information to justify Grantee's self-insured status. If, at any time after the execution of this Grant Agreement, Grantee abandons its self-insured status, Grantee shall immediately notify CARB of this fact and shall comply with all of the terms and conditions of this Section pertaining to insurance requirements.

- b. **Grant Insurance Requirements** – The Grantee (and its contractors and subcontractors) shall display evidence of the following on a certificate of insurance. Failure to provide the certificate upon request will result in the termination of the Grant. The following coverages must be evidenced on the certificate of insurance and all endorsements required must be attached:
- i. **Commercial General Liability:** The Grantee, its contractors, and subcontractors, shall each obtain and maintain, during the Grant Term, commercial general liability insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal and advertising injury liability, premises, independent contractor, on-going operations, products-completed operations hazard, products, completed operations, and contractual liability coverage for the indemnity provided under this Grant. Coverage shall be written on an occurrence basis in an amount not less than \$2,000,000 per occurrence. Annual aggregate limit shall not be less than \$5,000,000. The State of California, the California Air Resources Board and its/their officers, agents, and employees are to be covered as additional insureds with respect to liability arising out of work or operations performed or carried out (including but not limited to products-completed operations hazards) in relation to or under the Grant. A "per project aggregate" endorsement is required. This insurance shall apply separately to each insured against whom claim is made or suit is brought. Upon request, Grantee shall provide CARB with proof of insurance coverage.
 - ii. **Automobile Liability:** If the Grantee, or its contractors or subcontractors, will be using vehicles to complete the project or driving a vehicle onto State property, then motor vehicle liability insurance is required. Grantee, and its contractors and subcontractors, shall have motor vehicle liability insurance that complies with these provisions upon procurement of the vehicle. Grantee, and its contractors and subcontractors, shall each obtain and maintain motor vehicle liability insurance with limits of not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle, including owned, hired, and non-owned motor vehicles. At the request CARB, the Grantee must show proof of motor vehicle liability insurance. Failure to provide proof upon request will result in termination of the Grant. The policy must name "The State of California, the California Air Resources Board, and its/their officers, agents, and employees as additional insureds, but only with respect to work or operations performed or carried out in relation to or under the Grant."
 - iii. **Workers Compensation and Employers Liability:** The Grantee shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Grant. In addition, employer's liability limits of \$1,000,000 are required. A Waiver of

Subrogation or Right to Recover endorsement in favor of the State of California must be attached to certificate. By signing this Grant Agreement, Grantee acknowledges compliance with the State of California Workers Compensation regulations.

- iv. Non-Profit Organization with Volunteers Only (if applicable): A Volunteer Accident Insurance Policy with a limit not less than \$1,000,000. The policy shall contain a waiver of subrogation in favor of the State of California, if such endorsement is available in the open market. Said policy shall be issued by an insurance company with a rating which is acceptable to the Department of General Services, Office of Risk and Insurance Management. CARB in consultation with DGS reserves the right to review and adjust insurance requirements as necessary during the Grant Term.
- v. Cyber Liability coverage, with limits not less than \$2,000,000 per occurrence or claim: Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Grantee in the Grant Agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs, regulatory fines, and penalties, as well as credit monitoring expenses. The Policy shall include or be endorsed to include *property damage liability coverage* for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the state of California in the care, custody, or control of the Grantee.
- vi. Crime Insurance: Crime insurance requirements are negotiable at CARB's sole discretion. At a minimum, the maximum amount of funding that the Grantee will have on hand at any time should be covered. Coverage shall include but not be limited to employee dishonesty, theft, forgery or alteration, and inside/outside money and securities coverages including first- and third-party theft for state-owned or leased property in the care, custody, and/or control of the Grantee. The policy shall include as loss payee, the State of California, California Air Resources Board.
- vii. Professional Liability (Errors and Omissions): Insurance appropriate to the Grantee's profession, with limit no less than \$2,000,000 per occurrence or claim, \$5,000,000 aggregate.

15. GENERAL PROVISIONS

- a. **Alternative Enforcement.** The remedies set out in this Grant Agreement are contractual in nature. Nothing stated in this Grant Agreement in any way limits,

prevents or precludes the State of California from taking any enforcement action, exercising any police power, or prosecuting any violation of law.

- b. **Americans with Disabilities Act (ADA) Language.** Grantee must ensure that all products and services submitted to, uploaded, or otherwise provided to or funded by CARB or made available to the public by the Grantee and/or its contractors, subcontractors or Grant Recipients, including but not limited to data, software, plans, drawings, specifications, reports, operating manuals, notes and other written or graphic work prepared in the course of performance of this Grant Agreement, including Status Reports (collectively, the "Work"), comply with Web Content Accessibility Guidelines 2.0, levels A and AA, and otherwise meet the accessibility requirements set forth in California Government Code Sections 7405 and 11135, Section 202 of the federal Americans with Disabilities Act (42 U.S.C. § 12132), and Section 508 of the federal Rehabilitation Act (29 U.S.C. § 794, subd. (d)) and the regulations promulgated thereunder (36 C.F.R. Parts 1193 and 1194) (collectively, the "Accessibility Requirements"). For any Work provided to CARB or the public in PDF format, Grantee, along with its contractors, subcontractors, and Grant Recipients, shall also provide an electronic version in the original electronic format (for example, Microsoft Word or Adobe InDesign). CARB may request from the Grantee documentation of compliance with the requirements described above and may perform testing to verify compliance. Grantee agrees to respond to and resolve any complaint brought to its attention regarding accessibility of materials provided under this Grant Agreement.
 - i. Grantee must bring into compliance, at no cost to CARB, any Work by Grantee, or its contractors, subcontractors, subgrantees and/or Grant Recipients, not meeting the Accessibility Requirements. If Grantee fails to bring the Work into compliance with the Accessibility Requirements within five (5) business days of issuance of written notice from CARB, or within the time frame specified by CARB in its written notice, then Grantee will be responsible for all costs incurred by CARB in bringing the Work into compliance with the Accessibility Requirements. Grantee agrees to respond to and resolve any complaint brought to its attention regarding accessibility of deliverables provided under this Grant Agreement for a period of one year following delivery of the final deliverable under this Grant Agreement.
 - ii. Deviations from the Accessibility Requirements are permitted only by advance written consent by CARB in each instance.
- c. **Assurances.** CARB reserves the right, but not the obligation, to seek further written assurances from the Grantee and any of Grantee's contractors, subcontractors, employees, agents, officers, Grant Recipients, or affiliates, that the work performed under this Grant Agreement will be performed consistent with the terms and conditions of this Grant Agreement.

- d. **Audit.** Grantee agrees that CARB, the California Department of General Services, California Department of Finance, the California State Auditor, the California Bureau of State Audits, and any of their respective designated representatives shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Grant Agreement and all Grant Funds received or expended. Grantee agrees to maintain such records for a possible audit for a minimum of five (5) years from the date of termination, cancellation, or expiration of this Grant Agreement or for 5 years after a funded incentive activity has concluded, whichever is later. The Parties may stipulate to a longer records retention period. Grantee agrees to allow such CARB and other state designated representatives (including auditors) access to such records during normal business hours, and to allow interviews of any and all employees, representatives, agents, officers, consultants, Grant Recipients, contractors and subcontractors of Grantee who might reasonably have information related to such records. Furthermore, Grantee agrees to include in all agreements, contracts and subcontracts, language identical to or similar to this paragraph to ensure CARB has the ability and right to audit records and conduct interviews of any and all Grant Recipients, contractors, consultants and subcontractors in relation to performance or use of the Grant Funds under this Grant Agreement.
- e. **Authority.** Each person executing this Grant Agreement on behalf of a Party represents that he or she is duly authorized to execute and deliver this Grant Agreement on that Party's behalf.
- f. **Availability of funds.** Grantee acknowledges, agrees, and understands that Grantor's obligations under this Grant Agreement are contingent upon the availability of funds. In the event funds are not available, Grantor shall have no obligation and no liability to pay any funds whatsoever to the Grantee or to furnish any other consideration under this Grant Agreement or for any other reason.
- g. **CARB as Third-Party Beneficiary.** Grantee represents, warrants, and agrees that Grantee shall name CARB and the State of California as third-party beneficiaries in all contracts, subcontracts, grants, subgrants and other agreements entered into using Grant Funds, or for the purpose of carrying out any of the terms or conditions of this Grant Agreement during the Term.
- h. **Compliance with AB794.** Grantee shall ensure that all Grant Recipients, contractors, subcontractors, consultants, affiliates, or representatives who receive or use any Grant Funds to support the purchase of new drayage or short-haul trucks (the "fleet purchaser") comply at all times with the requirements of AB794 (2021) as a condition of Grant Fund receipt or use and as a condition of participation in the Program.
 - i. Grantee shall ensure that beginning with the 2022-23 fiscal year, and each fiscal year thereafter, each fleet purchaser of a new drayage or short-haul truck shall only be allowed to participate in this Grant Program or receive or use Grant Funds if it can demonstrate that it does not have any applicable law

violation at the time of applying for Grant Funds, it is not on the list maintained by the California Division of Labor Standards Enforcement under Section 2810.4 of the Labor Code, and it attests it will retain direct control over the manner and means for performance of any individual using or driving the vehicle. Grantee shall ensure that each fleet purchaser attests in writing to all of the following as a condition of eligibility and before receipt of any Grant Funds:

- 1) That it does not have any applicable law violations at the time of applying for the Grant Funds.
 - 2) That it will maintain compliance with applicable laws for at least three years from the date of application for Grant Funds or the duration of the Grant Recipient agreement, whichever is longer.
 - 3) That it will retain direct control over the manner and means for performance of any individual using or driving the vehicle for at least three years from the date of application for Grant Funds or the duration of the Grant Recipient agreement, whichever is longer.
- ii. Grantee shall also ensure that each fleet purchaser shall, on a yearly basis, for the life of the Grant Recipient agreement, disclose or provide to CARB all of the following:
- 1) An attestation in writing that it has done both of the following:
 - a) Maintained compliance with applicable laws and does not have any applicable law violations.
 - b) Maintained direct control of the individuals operating the vehicle and maintained full ownership and operational control of the vehicle.
 - 2) A copy of any judgments, rulings, citations, decisions, orders, or awards finding that the fleet purchaser or any parent company or subsidiary or other commonly controlled entity has applicable law violations as of the date of the disclosure made pursuant to this Section 15.kk.
 - 3) A list of all operating authorities under which the vehicle purchased will be or was operated.
 - 4) A certification that the fleet purchaser has completed all required maintenance and upkeep on the vehicle purchased with the Grant Funds.
- iii. A failure of a fleet purchaser to comply fully at all times with all of the provisions set out in this Section 15.kk, and all applicable provisions of Sections 39680 through 39693 of the California Health and Safety Code, is a breach of this Grant Agreement, a breach of the Grant Recipient Agreement,

and is cause for immediate termination of this Grant Agreement and the Grant Recipient Agreement without advance notice.

- iv. A "fleet purchaser" excludes a rental or leasing entity. A rental or leasing entity that purchases vehicles for use in fleet operations using an incentive program subject to Sections 39680 through 39693 of the California Health and Safety Code shall notify lessees of these vehicles with lease terms of greater than one year that the lessee is required to comply with the requirements applicable to fleet purchasers pursuant to Section 39690 of the California Health and Safety Code. A lessee of a vehicle that was purchased using an incentive subject to Sections 39680 through 39693 of the California Health and Safety Code shall, for the life of the lease, comply with requirements applicable to a fleet purchaser pursuant to subdivision (c) of Section 39690 and shall provide to CARB all information and disclosures required by that section.
- i. **Compliance with Law.** The Grantee agrees that it will, at all times, comply with, and require its employees, agents, representatives, officers, consultants, contractors, subcontractors and Grant Recipients to comply with, all applicable federal, state, and local laws, rules, guidelines, regulations, and requirements during the Term.
- j. **Conflict of Interest.** Government Code Section 87104 prohibits public officials of CARB, which includes any member, officer, employee, or consultant of a CARB advisory body, from making a formal or informal appearance before, or oral or written communication to CARB for the purpose of influencing a decision by CARB on a grant or other entitlement for use, such as a contract, loan, license, or permit. Prohibited communications include grant applications, letters, emails, phone calls, meetings, or any other form of oral or written communication within or outside of a public committee meeting with CARB, or CARB staff, for the purpose of influencing a CARB decision on an application for funding submitted to CARB. A knowing or willful violation of this section may result in a member being guilty of a misdemeanor and fined up to the greater of \$10,000 or three times the amount of an amount unlawfully received. If a court determines a violation occurred and that the official action might not otherwise have been taken or approved if not for the prohibited communication, the grant may be voided. (See Gov. Code §§ 91000, 91003.)
 - i. For this reason, CARB officials, including but not limited to advisory body members, also may not be a signatory, or administrator on a grant application, or on any resulting grant agreement. Such individuals should not be listed on the grant application except as necessary to show their role in the organization.
 - ii. Note that an advisory body member's organization may continue to be eligible for a grant. However, the grant must not follow any communications for purposes of influence by the advisory body member on CARB's decision on

that grant agreement. Additionally, that organization would need to identify a different member of the organization to sign or be the administrator for any applications and awarded grants.

- iii. Please also note that applications from organizations affiliated with CARB Board members may require additional review and Board approval or ratification. (Gov. Code § 1090 et seq.) Although CARB will make every effort to obtain required review and approval in a timely manner, this may delay grant execution and/or distribution of funds.
- iv. The Grantee certifies that it is, and shall remain, in compliance with all applicable State and federal conflict of interest laws during the entire Term of this Grant Agreement. The Grantee will have no interest, and shall not acquire any interest, direct or indirect, which will conflict with its ability to impartially perform under, or complete the tasks described in, this Grant. The Grantee must disclose any direct or indirect financial interest or situation which may pose an actual, apparent, or potential conflict of interest with its duties throughout the Grant Term. CARB may consider the nature and extent of any actual, apparent, or potential conflict of interest in the Grantee's ability to perform the Grant. The Grantee must immediately advise CARB in writing of any potential new conflicts of interest throughout the Grant Term.
- k. **Construction.** This Grant Agreement shall not be construed more strongly against either Party regardless of who is more responsible for its preparation.
- l. **Cumulative Remedies.** The rights and remedies of the Parties to this Grant Agreement, whether pursuant to this Grant Agreement or in accordance with law, shall be construed as cumulative, and the exercise of any single right or remedy shall constitute neither a bar to the exercise of nor the waiver of any other available right or remedy.
- m. **Disadvantaged Communities.** The Grantee, for the purposes of this Program, the Project, and all Grant Recipient projects, will designate disadvantaged communities, as identified by CalEnviroScreen 4.0, or subsequent updates. The identified disadvantaged community census tracts are available at: <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>.
- n. **Disputes.** The Grantee shall continue with the responsibilities under this Grant Agreement during any dispute between Grantee and CARB, unless otherwise directed by CARB. Grantee staff or management will work in good faith with CARB staff and management to resolve any disagreements or conflicts arising from implementation of this Grant Agreement. However, any disagreements that cannot be resolved at the management level within ~~thirty~~ (30) days of when the issue is first raised with CARB staff shall be subject to final resolution by the CARB Executive Officer, or the Executive Officer's designated representative, in the Executive Officer's sole discretion. Nothing contained in this paragraph is

intended to limit any of the rights or remedies that the Parties may have under law.

- o. **Electric Vehicle Charging Infrastructure and Equipment.** Prior to executing sub-grant agreements, Grantee must ensure the following requirements are included in all subcontractor agreements and or other agreements pursuant to this Grant:
 - i. In order to obtain authorization to start work from Grantee, a subcontractor that is awarded funds to install electrical charging equipment for use by on-road transportation vehicles must provide both of the following:
 - 1) An AB 841 Certification that certifies the project will comply with all AB 841 (2020) requirements or describes why the AB 841 requirements do not apply to the project. The certification shall be signed by the sub-grantee's authorized representative; and,
 - 2) EVITP Certification Numbers of each Electric Vehicle Infrastructure Training Program-certified electrician that will install electric vehicle charging infrastructure or equipment.
 - ii. Evidence, such as Certification Numbers, is not required to be obtained by Grantee if AB 841 requirements do not apply to a project.
 - iii. Prior to remitting payment to a subcontractor, Grantee is responsible for collecting all AB 841 Certifications, to ensure the project did comply with all AB 841 (2020) requirements and shall retain Certification Numbers in accordance with the Grantee's records retention schedule.
 - iv. These electric vehicle requirements do not apply to any of the following:
 - 1) Electric vehicle charging infrastructure installed by employees of an electrical corporation or local publicly owned electric utility,
 - 2) Electric vehicle charging infrastructure funded by moneys derived from credits generated from the Low Carbon Fuel Standard Program (Sub article 7 (commencing with Section 95480) of Article 4 of Subchapter 10 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations), and
 - 3) Single-family home residential electric vehicle chargers that can use an existing 208/240-volt outlet.
- p. **Entitlements and Regulatory Compliance.** The Grantee agrees to comply with all applicable laws, ordinances, regulations, and standards in its performance under this Grant Agreement, including obtaining, where needed or required by law, any permits, or approvals necessary to undertake the activities funded by the Grant Funds, and complying with all environmental review requirements associated with such activities.

- q. **Environmental Justice.** In the performance of this Grant Agreement, the Grantee shall conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures the fair treatment of people of all races, genders, cultures, and income levels, including minority populations and low-income populations, of the State of California. Equal access includes, but is not limited to, ensuring language barriers are fully addressed to the satisfaction of CARB and as otherwise required by local, state, and federal law.
- r. **Equipment/Vehicle Ownership.** Equipment, acquired by Grantee or any of Grantee's employees, agents, affiliates, officers, contractors, subcontractors, or representatives, is defined as having a useful life of at least one year from the date of purchase, having an acquisition unit cost of at least \$5,000, and purchased with CARB funds. Equipment means any products, objects, vehicles, computers, software, hardware, licenses, vessels, engines, machinery, apparatus, implements, or tools purchased, used, or constructed within the Term. CARB, within its discretion, may elect to determine the normal useful life of such Equipment. All such Equipment is, upon acquisition, the exclusive property of CARB, and shall be used solely for the purposes of carrying out the obligations of this Grant Agreement during the Term. If requested by CARB, the Equipment shall be returned to CARB upon cancellation, termination, or expiration of this Grant Agreement, whichever occurs first, and CARB shall solely determine the future use of all Equipment.
- s. **Executive Order N-6-22 - Russia Sanctions.** On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 ("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 of California ("State") agencies to terminate contracts and grants with, and to refrain from entering any new contracts and grants with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Contractor or Grantee 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 or Grantee advance written notice of such termination, allowing Contractor or Grantee at least ~~thirty~~ **(30)** calendar days to provide a written response. Termination shall be at the sole discretion of the State.
- t. **Force Majeure.** Neither CARB nor the Grantee are liable for or deemed to be in default for any delay or failure in performance under this Grant Agreement or interruption of services resulting, directly or indirectly, from acts of God, civil unrest, war, fire, flood, earthquakes, or other physical natural disasters. If either Party intends to invoke this clause to excuse or delay performance, the Party invoking the clause must provide written notice to the other Party immediately of the intent to invoke the clause and the reasons why the force majeure event is

preventing that Party from, or delaying that Party in, performing its obligations under this Grant Agreement. CARB may terminate this Grant Agreement immediately, in writing and without penalty, in the event Grantee invokes this clause, in which case Grantee shall immediately return all remaining Grant Funds to CARB or a CARB designee, cease all expenditure of Grant Funds, and turn over all documents, records, deliverables, intellectual property and other information in relation to this Grant Agreement.

- i. If the Grant Agreement is not terminated by CARB pursuant to this clause, upon completion of the force majeure event, the Grantee must immediately recommence the performance of its obligations under this Grant Agreement. The Grantee must also provide to CARB a written proposal to revise the Project Schedule, inclusive of anticipated major milestones and timeframes for expending remaining Grant Funds, while minimizing the effects of the delay caused by the force majeure event.
 - ii. An event of force majeure does not relieve a Party from any of its obligations which arose before the occurrence of the force majeure event nor is any Party relieved from those obligations which survive termination or cancellation of the Grant Agreement.
- u. **Funding Prohibitions for Sectarian Purposes and Non-Public Schools.** Grant recipients may use or authorize the use of CARB-provided funds only in a manner that is consistent with applicable laws, including California Constitution, article XVI, section 5, article IX, section 8, and federal law. CARB reserves the right to obtain additional information from Grantee and others to determine compliance with California Constitution, article XVI, section 5 and article IX, section 8. Failure to provide any requested information may result in denial of future Administrative Fees or Grant Funds or termination of this Grant Agreement or any other agreements.
- v. **Grantee's Responsibility for Work.** The Grantee shall be responsible for all work performed pursuant to this Grant Agreement, including but not limited to work performed by any of Grantee's agents, employees, representatives, affiliates, suppliers, contractors, subcontractors, and Grant Recipients. The Grantee shall be responsible for any and all disputes arising out of its contract for work performed in relation to, as a result of, or as a consequence of this Grant Agreement, including, but not limited to, payment disputes with contractors, subcontractors, employees, agents, affiliates, suppliers, Grant Recipients and providers of services. CARB will not mediate disputes between the Grantee and any other entity concerning responsibility for performance of work performed pursuant to this Grant Agreement.
 - i. All subcontracts must be submitted to CARB upon request for review prior to execution. CARB may also request them during or after the Grant term and Grantee agrees to provide them within five (5) calendar days. For subcontracts

that are listed as "to be determined" in the Budget, the Schedule or elsewhere in any attachment to this Grant Agreement, the Grantee must submit a revised Budget to CARB, identifying the subcontractor and specific items of cost expected to be incurred by that subcontractor, which in each instance shall be subject to advance approval by CARB. In addition, Grantee must have a fully executed subcontract before the subcontractor can incur any costs for which the Grantee will seek reimbursement.

- ii. The Grantee is required, where feasible, to employ best contracting and procurement practices that promote open competition for all goods and services. Grantee shall obtain price quotes from an adequate number of sources for all subcontracts.
- iii. Upon request, Grantee will provide CARB a copy of all solicitations for services or products used or needed to carry out the terms of this Grant Agreement, including copies of the proposals or bids received.
- iv. Grantee is responsible for handling all contractual and administrative issues arising out of or related to any subcontracts it enters into under this Grant Agreement. Nothing contained in this Grant Agreement or otherwise creates any contractual relation between CARB and any subcontractors, and no subcontract may relieve Grantee of its responsibilities under this Grant Agreement. Grantee is solely liable and responsible for the acts and omissions of its subcontractors or persons directly or indirectly employed by any of them.
- v. The Grantee's obligation to pay the Grant Recipients and its contractors, consultants, employees, agents, representatives, and subcontractors is an independent obligation from CARB's obligation to make payments to the Grantee. As a result, CARB has no obligation to pay or enforce the payment of any funds to any such third parties. The Grantee is responsible for establishing and maintaining contractual agreements with and reimbursing each such third parties for work performed in accordance with the terms of this Grant Agreement and the terms of any such third-party agreements.
- vi. All Grant Recipient and third-party agreements must, at a minimum, incorporate all of the following:
 - 1) A clear and accurate description of the material, products, or services to be procured.
 - 2) A detailed budget and timeline.
 - 3) Provisions that allow for administrative, contractual, or legal remedies in instances where the Grant Recipient or third party violates or breaches contract terms and provides for such sanctions and penalties as may be appropriate.

- 4) Provisions for termination by the Grantee, including termination procedures and the basis for settlement.
 - 5) A statement that further assignments will not be made to any third or subsequent tier subcontractor without additional advance written consent of CARB.
 - 6) Language conforming to all of General Provisions of this Grant Agreement.
- vii. Without limiting any of CARB's other remedies, failure to comply with the above requirements is a material breach of this Grant Agreement and grounds for immediate termination.
- w. **Governing Law and Venue.** This Grant Agreement is governed by, and shall be interpreted in accordance with, the laws of the State of California. CARB and the Grantee hereby agree that any action arising out of this Grant Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California. The Grantee hereby waives any existing sovereign immunity for the purposes of this Grant Agreement.
 - x. **Indemnification.** The Grantee agrees to indemnify, defend, and hold harmless the State of California, CARB, and CARB officers, Board members, employees, agents, representatives, and successors-in-interest against, for and from any and all liabilities, losses, damages, claims and expenses, including reasonable attorneys' fees, arising out of, resulting from or related to any actions or inactions of the Grantee or any of its contractors, subcontractors, affiliates, employees, officers, agents, Grant Recipients and/or assigns, including but not limited to actions or inactions relating to, arising out of or resulting from the operation, design or manufacture of any equipment, vessels, vehicles or engines purchased, acquired, developed, modified, or used with Grant Funds, in whole or in part.
 - y. **Independent Actor.** The Grantee, its agents, employees, affiliates, contractors, subcontractors, suppliers, officers, Grant Recipients, and assigns, if any, in their, its, his or her performance of this Grant Agreement, shall act in an independent capacity and not as officers, employees or agents of the State of California or CARB.
 - z. **No Assignment.** This Grant Agreement is not assignable, in whole or in part, by the Grantee without the advance written consent of CARB in the form of a formal written amendment signed by authorized representatives of both Parties.
 - aa. **No Third-Party Rights.** The existence of this Grant Agreement does not create, and nothing stated in this Grant Agreement creates rights in or grants remedies to, any third party or third parties as a beneficiary or beneficiaries of this Grant Agreement, or of any duty, covenant, obligation, or undertaking established herein.

- bb. **Nondiscrimination.** During the performance of this Grant Agreement, the Grantee and its contractors, subcontractors, consultants and agents shall ensure that no person is, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age (40 or over), mental disability, physical disability, medical condition, genetic information, marital status, veteran or military status, or sexual orientation, unlawfully denied full and equal access to the benefits of, or unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered under this Grant Agreement or funded with Grant Funds. In addition:
- i. During the performance of this Grant Agreement, the Grantee and its contractors, subcontractors, consultants, and agents shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment, because of race, religious creed, color, national origin, ethnic group identification, ancestry, physical disability, mental disability, reproductive health decision-making (e.g. family-care leave, medical-care leave, or pregnancy-disability leave), medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age (40 or over), sexual orientation, or veteran or military status, nor shall Grantee or any of its contractors, subcontractors, consultants or agents refuse to hire or employ any person or to refuse to select any person for a training program leading to employment, or bar or discharge any person from employment or from a training program leading to employment, or discriminate against any person in compensation or in terms, conditions, or privileges of employment because of race, religious creed, color, national origin, ethnic group identification, ancestry, physical disability, mental disability, reproductive health decision-making (e.g. family-care leave, medical-care leave, or pregnancy-disability leave), medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age (40 or over), sexual orientation, or veteran or military status.
 - ii. The Grantee and its contractors, subcontractors, consultants, and agents shall ensure that the evaluation and treatment of all persons receiving or applying for Grant Funds or participating in any Grant programs, projects, or activities, along with all respective employees and applicants for employment, are free of such discrimination and harassment.
 - iii. The Grantee and its contractors, subcontractors, consultants, and agents shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, title 2, section 10000 et seq.). The applicable regulations of the Civil Rights Council (California Code of Regulations, title 2, section 11000 et seq.) are incorporated into this Grant Agreement by reference and made a part hereof as if set forth in full.

- iv. The Grantee and its contractors, subcontractors, agents, and consultants shall give written notice of their respective obligations under this clause to labor organizations with which any may have a collective bargaining or other agreement. The Grantee shall include the nondiscrimination and compliance provisions of this clause in all contracts, subcontracts, and agreements where work is performed to fulfill any term or condition of this Grant Agreement.
- cc. **Office of Foreign Asset Control.** The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy, or economy of the United States. OFAC publishes lists of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country specific. These lists can be found at <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>. Grantee represents, warrants and agrees that neither Grantee nor any of its contractors, subcontractors, Grant Recipients, affiliates, agents, employees, officers, representatives or assigns are in violation of any federal law or laws pertaining to any entity or individual listed on any of the OFAC lists. Unless otherwise authorized or exempt, transactions by U.S. persons or in the United States may be or are prohibited if they involve transferring, paying, exporting, withdrawing, or otherwise dealing in the property or interests in property of an entity or individual listed on the Office of Foreign Asset Control's (OFAC) Specially Designated Nationals ("SDN") or other Lists. The property and interests in property of an entity that is 50% or more owned, whether individually or in the aggregate, directly or indirectly, by one or more persons whose property and interests in property are blocked pursuant to any part of 31 C.F.R. chapter V are also blocked, regardless of whether the entity itself is listed. Refer also to the U.S. Department of the Treasury website: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>.
- dd. **Order of Precedence.** In the event of any inconsistency between the exhibits, attachments, specifications, or provisions which constitute this Grant Agreement, the following order of precedence shall apply:
 - i. Grant Agreement Cover Sheet
 - ii. Exhibit A – Grant Agreement Terms and Conditions
 - iii. Exhibit B – Statement of Work
 - iv. All other Exhibits incorporated into the Grant Agreement or as otherwise listed on the Grant Agreement Cover Sheet.

- ee. **Paragraph Headings.** The headings and captions of the various paragraphs, subparagraphs and sections hereof are for convenience only, and they shall not limit, expand, or otherwise affect the construction or interpretation of this Grant Agreement.
- ff. **Parties.** When referred to herein, Grantee includes their heirs, successors, assigns, designees, predecessor-in-interest, successor-in-interest, shareholders, members, partners, officers, directors, managers, employees, employers, principals, and agents whether or not named as a party to this Agreement.
- gg. **Prevailing Wage and Labor Compliance.** Where applicable, the Grantee agrees to be bound by and comply with all the provisions of California Labor Code Section 1771 et seq. regarding prevailing wages. Grantee agrees to monitor all agreements subject to reimbursement from this Grant Agreement to ensure that the provisions of California Labor Code Sections 1720-1861 are being met by Grantee and all Grant Recipients.
- hh. **Professionals.** Grantee agrees that only licensed professionals will be used to perform services or conduct work under this Grant Agreement where such services are called for and where licensed professionals are required for those services under California law.
- ii. **Severability.** If a court of competent jurisdiction holds any provision of this Grant Agreement to be illegal, unenforceable, or invalid, in whole or in part, for any reason, the validity and enforceability of the remaining provisions, or portions of those provisions, will not be affected, and will remain in full force and effect.
- jj. **Survival.** Those terms, conditions, provisions, and exhibits which by their nature should survive termination, cancellation, or expiration of this Grant Agreement, shall so survive, including but not limited to those sections pertaining to indemnity, insurance, recordkeeping, audit, return of funds, data security, confidentiality, transition, ownership, and the general provisions.
- kk. **Third Party Agreements, Required Terms.** All grants, subgrants, technical grants, contracts, vouchers, agreements, and subcontracts entered into by and between Grantee and any third party using or applying Grant Funds (in whole or in part) shall contain the following language (or similar language with the same meaning and intent):
 - i. **Conflict of interest.** By entering into this grant, award, voucher, contract, subcontract or agreement, said party is or may be a direct or indirect recipient ("Recipient") of funds received from or provided by the California Air Resources Board ("CARB"), and as such certifies, represents and warrants that he, she, it is in compliance with all applicable state and federal conflict of interest laws on the date said grant, award, contract, subcontract, agreement or voucher (as applicable) is signed and shall remain in compliance with all such laws for a period of five (5) consecutive years following receipt of any

and all funding amounts on a rolling, continuous basis. Recipient further certifies, represents, and warrants that he, she, it has no interest, and shall not acquire any interest, direct or indirect, which will conflict with Recipient's ability to impartially perform under, or to complete the tasks described in, any and all agreements, grants, awards, contracts, subcontracts, vouchers or programs. The Recipient acknowledges, understands, and accepts that Recipient must disclose any direct or indirect financial interest or situation which may pose an actual, apparent, or potential conflict of interest. The Recipient acknowledges, understands, and accepts that the nature and extent of any actual, apparent, or potential conflict of interest may be a basis for disqualification from receiving any funds. The Recipient certifies, represents, and warrants that Recipient will immediately advise the Grantee in writing of any potential new conflicts of interest as they arise.

- ii. Cooperation with Audits. Recipient warrants, represents, and agrees to cooperate fully, without delay, in all audits, inquiries and investigations initiated by or on behalf of the Grantee and/or the State of California concerning or relating to compliance with local, state, or federal air quality laws, or this agreement, including but not limited to timely submission of any and all records requested and full cooperation with any on-site inspections.
- iii. Payment on Demand. Recipient represents, warrants, and agrees that upon notification by the Grantee or its authorized representative of an overpayment, a wrongful payment, or a violation of or failure to comply with any of the grant, agreement, contract, voucher or program requirements or obligations, Recipient will, without challenge or delay, remit to the Grantee or its authorized representative the requested amount within sixty (60) days from the date of issuance of said notice.
- iv. Separate Accounts. If Recipient has received any funds as a grant or subgrant pursuant to a grant or subgrant agreement, then Recipient shall not commingle said funds with any other accounts, revenues, grants, donations, or resources except where expressly authorized in the fully executed written agreement between Recipient and the Grantee. Recipient will maintain all such grant or subgrant funds in a separate bank account designated specifically for the purposes of carrying out the intent and purpose for which said funds were provided. The bank account must be held in the name of the Recipient (the official legal entity's name, and not a dba), and under no other name, person, or entity. Funds received are NOT the assets of the Recipient. Grant and subgrant funds shall not be used as collateral for or an obligation to any debt, loan or other commitments of Recipient, its officers, agents, assigns, contractors, subcontractors, subgrantees or affiliates. Recipient shall ensure that the Grantee is designated in writing as a third-party beneficiary of and to all such bank accounts in which said funds are maintained or held.

- v. Third-Party Beneficiary. The Recipient acknowledges, accepts, and agrees that the state of California, acting by and through the California Air Resources Board ("CARB"), is an intended third-party beneficiary to any and all Recipient agreements, vouchers, contracts, subcontracts, awards and grants with the Grantee where any funds provided by CARB are used or applied.
- vi. Authorized Signature. The Recipient agrees and acknowledges that it has signed or has authorized the signing of the grant, award, contract, subcontract and/or agreement with the Grantee, and by doing so hereby declares under penalty of perjury, under the laws of the State of California, that all statements and responses made in said grant, award, contract, subcontract and/or agreement are true and correct, with full knowledge that all statements and responses are subject to investigation and that any incomplete, unclear, false, or dishonest response may be grounds for disqualification from receiving any existing or further funding, or participating in any programs or projects using the CARB-provided or Grantee-provided funds, or from doing business with the State of California or the Grantee. The Recipient acknowledges, understands, and accepts that by providing or making any false statements or providing false information, the Recipient may be in a violation of the California False Claims Act (Government Code Section 12650 et seq.). Recipient certifies, represents, and warrants that the individual signing on its, his or her behalf herein below is an authorized representative of Recipient with full power and legal authority to sign below, and by said signature Recipient is bound to and will comply with all terms, conditions and obligations set forth in this agreement, grant, voucher, application and/or contract, as applicable.
- vii. Compliance with Air Quality Laws. Recipient understands, acknowledges, and agrees that compliance with all applicable federal, state, and local air quality rules, regulations and statutes is a precondition to the receipt or use of any state funds provided by or through the California Air Resources Board (CARB), and is a continuing obligation for the consecutive five (5) years following receipt of any state funds on a rolling continuous basis. Recipient understands, acknowledges and agrees that a failure to comply in whole or in part with any local, state or federal air quality rules, regulations or statutes, or a failure to comply, in whole or in part, with any of the requirements or obligations under the project or program, agreement, contract, subcontract, award, voucher, or grant (as applicable) is, in each instance, a material breach of the conditions under which state funds were provided or made available, and such breach will result in undue hardship and damages to the Grantee and the State of California some or all of which may be impossible to easily calculate.
- viii. Liquidated Damages. If the Grantee or the state of California determines, within its or their sole and absolute discretion, that Recipient is in breach or

has breached any obligation to remain in compliance with any applicable federal, state or local air quality rules, regulations and statutes or any other term of this agreement, then Recipient, immediately upon demand, will pay the Grantee (or to CARB, as requested), as liquidated damages, the full amount of all state funds received to date. The Recipient agrees that quantifying the losses arising from any breach is inherently difficult insofar as breach may cause the state of California or the Grantee irreparable, serious, or substantial harm or damage, including to taxpayers or to the environment. Recipient further stipulates that the agreed upon amount of liquidated damages is not a penalty, but rather a reasonable measure of damages based upon experience and given the nature of the losses that may result from said breach. The Recipient agrees that the liquidated damages have been computed, estimated, and agreed upon by all parties and represents an attempt to make a reasonable forecast of probable actual loss because of the difficulty of estimating with exactness the damages which will result. This obligation shall apply even if there is a concurrent noncompliance or violation of air quality rules, regulations or laws caused by a third party. The remedies set out in this paragraph are contractual in nature.

Nothing stated herein above in any way limits, prevents, or precludes the State of California or the Grantee from taking any enforcement action, exercising any police power, or prosecuting any violation of law against Recipient, its employees, officers, agents, assigns, representatives, contractors, subcontractors, affiliates, grantees, subgrantees, or any third parties.

- ix. **Survival.** Recipient acknowledges, agrees and accepts that those terms, conditions, provisions and exhibits which by their nature should survive termination, cancellation or expiration of the grant, award, contract, voucher, subcontract or agreement, shall so survive, including but not limited to those sections and provisions pertaining to indemnity, recordkeeping, audit, third party beneficiary status, return of funds, data security, insurance, confidentiality, and the general provisions.
- ll. **Timeliness.** Time is of the essence in the performance of this Grant Agreement. Grantee shall proceed with and complete all of its obligations under this Grant Agreement in a timely and expeditious manner.
- mm. **Total Agreement; Entirety.** This Grant Agreement constitutes the entire agreement and understanding between the Parties and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning this Grant Agreement.
- nn. **Waiver of Rights.** Any waiver of rights with respect to a default or other matter arising under the Grant Agreement at any time by either Party shall not be considered a waiver of rights with respect to any other default or matter. Any

rights and remedies of CARB provided for in this Grant Agreement are in addition to any other rights and remedies provided by law.

EXHIBIT C – Specified Incorporation by Reference of CARB ZESBI Terms and Conditions

The following sections of the CARB Terms are hereby incorporated by reference as though fully set forth in the Agreement and as though Incentive Recipient were in the position of CALSTART under such terms and conditions unless otherwise noted.

CARB – EXHIBIT A - Grant Agreement Terms and Conditions

Subject	Section	Note
Confidentiality and Data Security	13.a.v. and vii	Incentive Recipient to comply with these provisions as "Grant Recipient"
Alternative Enforcement	15.a	
Americans with Disabilities Act	15.b.	Incentive Recipient to comply with these provisions as "Grant Recipient"
Assurances	15.c.	Incentive Recipient as "Grant Recipient" shall provide the required assurances.
Compliance with AB 794	15.h.	Incentive Recipient to comply with AB794 to the extent Incentive Recipient is covered by its terms and conditions and must provide all documentation requested under AB794 and by CALSTART or any of the Agencies in connection with such required compliance.
Conflict of Interest	15.j.	Incentive Recipient to comply to the same extent as "Grantee".
Disadvantaged Communities	15.m.	Incentive Recipient to comply with these

		provisions as if Incentive Recipient is "Grantee" thereunder.
Environmental Justice	15.q.	Incentive Recipient to comply with these provisions as if Incentive Recipient is "Grantee" thereunder.
Russia Sanctions	15.s.	Incentive Recipient to comply with these provisions as if Incentive Recipient is "Recipient" thereunder.
Funding Provisions for Sectarian Purposes and Non-Public Schools	15.u.	This section provides that private schools, or any school not under the exclusive control of the officers of the public schools" are not an eligible entity. Per article 9, Section 8 of the California Constitution, no public money shall ever be appropriated to support private schools.
Responsibility for the Work	15.v.	All provisions except subsection vi. are incorporated herein as though Incentive Recipient is "Grantee" thereunder and CALSTART is "CARB" thereunder.
Office of Foreign Asset Control	15.cc.	Incentive Recipient to comply with these provisions as if Incentive Recipient is "Grantee" thereunder.
Third Party Agreements, Required Terms	15.kk.	Incentive to comply with all terms and conditions of this Section and specifically acknowledges that Section 15.kk(i) is fully incorporated herein.

EXHIBIT E – CEC ZESBI Terms and Conditions

EXHIBIT C ZERO-EMISSION VEHICLE (ZVI) INFRASTRUCTURE BLOCK GRANT TERMS AND CONDITIONS

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TERMS AND CONDITIONS

1. Grant Agreement

This project is being funded with a grant from the California Energy Commission's (Energy Commission) Zero-emission Vehicle Infrastructure (ZVI) Program.

Under this grant Agreement ("Agreement"), the Recipient shall develop and implement the Zero Emission School Bus Charging and Fueling Infrastructure Block Grant Program. Recipient understands that the Energy Commission currently only has \$5,000,000 of the potential \$15,000,000 maximum possible funding for administrative costs under this Agreement and \$125,000,000 of the potential \$375,000,000 for incentives awarded under this Agreement. Therefore, upon execution of this Agreement, Recipient only has authority to spend up to \$5,000,000, within the parameters described below, in administrative costs and up to \$125,000,000 for incentives. In the future, the Energy Commission reserves the right to allocate any portion of the remaining funds, up to a maximum of \$15,000,000 for administrative costs and \$375,000,000 for incentives. The Recipient will only be permitted to exceed the current limits of \$5,000,000 in administrative costs and \$125,000,000 in incentives after an amendment to this Agreement is executed, granting authorization to use additional funds.

The Recipient, as implementer of the Zero Emission School Bus Charging and Fueling Infrastructure Block Grant Program, is a conduit of the grant-funded incentives that will be awarded to provide assistance to incentive recipients, and the incentives do not result in the performance of services by the incentive recipients to the Energy Commission, but the Energy Commission is a real party in interest to the agreements between the Recipient and incentive recipients. The Energy Commission will not take title to equipment, copyrights, or patents acquired by the incentive recipients; and the performance under the incentive projects is not controlled by the Energy Commission. The incentive recipients are being provided assistance to carry out their own projects and are not providing services to the Energy Commission or Recipient. The incentives directly benefit each incentive recipient's project. The products produced by the incentive recipients are a by-product of the main purpose of the incentives. The products are used to monitor the use of incentive funds and do not result in a service to the Energy Commission or Recipient.

This Agreement is comprised of the grant funding award, the Terms and Conditions, and all attachments. These Terms and Conditions are standard requirements for block grant awards. The Energy Commission may impose additional special terms and conditions in this Agreement that address the unique circumstances of this project. In cases where these special terms and conditions conflict with the standard provisions, the special terms and conditions will take precedence.

The Recipient's authorized representative shall sign all copies of this Agreement and return all signed packages to the Energy Commission's Contracts, Grants and Loans Office within 30 days. Failure to meet this requirement may result in the forfeiture of this award. Once all required signatures are obtained, an executed copy shall be returned to the Recipient.

The term of this Agreement or the Agreement Period is the length of this Agreement between the Energy Commission and the Recipient. Project means Recipient's specific project that is funded in whole or in part by this Agreement. The Recipient's project may coincide with or extend outside the Agreement Period.

All reimbursable work and/or the expenditure of funds must occur within the approved term of this Agreement. No payment is authorized by the Energy Commission until this Agreement has been signed by all involved parties.

2. Documents Incorporated by Reference

The documents listed below are incorporated by reference into this Agreement. These terms and conditions will govern in the event of a conflict with the documents below, with the exception of the documents in subsection (f). Where this Agreement or California laws and regulations are silent or do not apply, the Energy Commission will use the federal cost principles and acquisition regulations listed below as guidance in determining whether reimbursement of claimed costs is allowable. Documents incorporated by reference include:

Solicitation Documents (if award is made through a competitive solicitation)

- a. The funding solicitation under which this Agreement was awarded
- b. The Recipient's proposal submitted in response to the solicitation

Federal Cost Principles (applicable to state and local governments, Indian tribes, institutions of higher education, and nonprofit organizations)

- c. 2 Code of Federal Regulations (CFR) Part 200, Subpart E (Sections 200.400 et seq.)

Federal Acquisition Regulations (applicable to commercial organizations)

- d. 48 CFR, Ch.1, Subchapter E, Part 31, Subpart 31.2: Contracts with Commercial Organizations (supplemented by 48 CFR, Ch. 9, Subchapter E, Part 931, Subpart 931.2 for Department of Energy grants)

Nondiscrimination

- e. 2 California Code of Regulations, Section 11099 et seq.: Contractor Nondiscrimination and Compliance

General Laws

- f. Any federal, state, or local laws or regulations applicable to the project that are not expressly listed in this Agreement

3. Funding Limitations

Any federal, State, and local laws and regulations applicable to the project not expressly listed in this Agreement are incorporated herein as part of this Agreement.

4. Due Diligence

The Recipient is required to take timely actions which, taken collectively, move this project to completion. The Energy Commission Agreement Manager (CAM) will periodically evaluate the Schedule of Products and Due Dates for completion of the Scope of Work tasks. If the CAM determines (1) the Recipient is not being diligent in completing the tasks in the Scope of Work or (2) the time remaining in this Agreement is insufficient to complete all project work tasks by the approved Agreement end term date, the CAM may recommend that this Agreement be terminated, and the Agreement may, without prejudice to any of the Energy Commission's remedies, be terminated.

5. Products

Products are defined as any tangible item specified in the Scope of Work. Unless otherwise directed, draft copies of all products identified in the Scope of Work shall be submitted to the CAM for review and comment. The Recipient will submit an original and two copies of the final version of all products to the CAM.

6. Reports

- a. Progress Reports

The Recipient shall submit progress reports to the CAM as indicated in the Special Terms and Conditions or Scope of Work. At a minimum, each progress report shall include the following:

Scope of Work: This section shall include a brief restatement of the approved tasks in the Scope of Work and a report on the status of each, including a discussion of any products due and whether or not the project is progressing according to schedule. This section also shall include a discussion of any problems encountered, proposed changes to the tasks in the Scope of Work, and anticipated accomplishments in the upcoming quarter.

Financial Status: This section shall include a narrative report comparing costs incurred to date with the approved Budget. The report shall state whether or not the project is progressing within the approved Budget and discuss any proposed changes.

Additional Information: Additional information may be required in the progress reports as specified in the Scope of Work or Special Terms and Conditions.

b. Final Reports (only if required in Exhibit A Scope of Work)

A draft final report shall be submitted to the CAM in accordance with the currently approved Scope of Work and Schedule of Products and Due Dates. At a minimum, the report shall include:

- Table of Contents.
- Abstract.
- A brief summary of the objectives of the project and how these objectives were accomplished.
- Any findings, conclusions, or recommendations for follow-up or ongoing activities that might result from the successful completion of the project.
- A statement of future intent of the Recipient to maintain or further develop the project.
- A consolidated list of subcontractors funded in whole or in part by the Recipient. Include the name, address, concise scope of work done, period, and value of each.
- Additional information as specified in this Agreement or as directed by the CAM.

The CAM will review the draft report. The Recipient will incorporate applicable comments and submit the final report to the CAM.

c. Rights in Reports

The Energy Commission reserves the right to use and reproduce all reports and data produced and delivered pursuant to this Agreement, and reserves the right to authorize others to use or reproduce such materials. Each report becomes the property of the Energy Commission.

d. Failure to Comply with Reporting Requirements

Failure to submit a product required in the Scope of Work may be considered material noncompliance with the Agreement terms. Without prejudice to any other remedies, noncompliance may result in actions such as the withholding of future payments or awards, or the suspension or termination of the Agreement.

7. Publications - Legal Statement on Reports

The Recipient is encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

No report produced as a result of work funded by this program shall be represented to be endorsed by the Energy Commission, and all such reports shall include the following statement:

LEGAL NOTICE

This document 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 document; nor does any party represent that the use of this information will not infringe upon privately owned rights.

Program websites developed as a result of work funded by this program shall include the following statement:

LEGAL NOTICE

This website 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 provided on, or available through, this website.

8. Changes to the Agreement

a. Procedure for Requesting Changes

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

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

b. Approval of Changes

No amendment or variation of this Agreement shall be valid unless made in writing and signed by both of the parties except for the Commission's termination rights in Section 13 of these terms. No oral understanding or agreement is binding on any of the parties. Changes to the Agreement must be approved at a Commission business meeting or by the Executive Director (or his/her designee).

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

c. **Personnel or Subcontractor Changes**

All changes below require advance written approval by the CAM, in addition to the appropriate level of Commission approval as described in subsection (b).

1) **Replacement of Key Personnel, Subcontractors, and Vendors**

The CAM must provide advance written approval of the replacement of personnel, subcontractors, and vendors who are identified in the Agreement and are critical to the outcome of the project, such as the Project Manager.

2) **Assignment of New Personnel to an Existing Job Classification**

If the Recipient or a subcontractor seeks to assign new personnel to a job classification identified in Exhibit B, the Recipient or subcontractor must submit the individual's resume and proposed job classification and rate to the CAM for approval. The proposed rate may not exceed the maximum rate identified for the job classification. Neither the Recipient nor any subcontractor may use the job classifications or rates of their subcontractors for personnel.

If the individual performs any work prior to the effective date of the amendment documenting the change, the Recipient will bear the expense of the work.

3) **Promotion of Existing Personnel (Applies to Recipients and major subcontractors)**

Promotion of existing Recipient and major subcontractor personnel to rates higher than those listed for their current classification in Exhibit B will not be approved. If the actual rates (e.g., direct labor rates, fringe benefit rates, and indirect rates) exceed the approved rates in the Budget, the difference may be charged to the agreement as a match share expenditure.

4) **Addition of job classifications and changes in hours.**

5) **Increased direct operating expenses and rates that exceed the expenses and rates identified in Exhibit B.**

9. Contracting and Procurement Procedures

This section provides general requirements for an agreement between the Recipient and a subcontractor ("subcontract") and for an agreement between the Recipient and an incentive recipient ("incentive agreement"). Where these terms require the Recipient to flow down terms to subcontracts, the Recipient shall ensure the subcontracts and incentive agreements also require the subcontractor and incentive recipient to flow down terms to any lower-tiered level of subcontractor.

A subcontractor (also "subrecipient") is any person or entity that receives grant funds directly from the Recipient and is entrusted by the Recipient to make decisions about how to conduct some of the block grant project's activities. A subcontractor's role involves discretion over grant activities and is not merely just selling goods or services. A subcontractor cannot also be an incentive recipient.

An incentive recipient is any person or entity that receives an incentive awarded under this Agreement. An incentive recipient cannot also be a subcontractor.

For subcontracts that are listed as "to be determined" in the Budget, the Recipient must submit a revised Budget to the CAM, identifying the subcontractor and specific items of cost expected to be incurred by that subcontractor. In addition, Recipient must have a fully executed subcontract before the subcontractor can incur any costs for which the Recipient will seek reimbursement payment.

Unless otherwise allowed in a CAM-approved Implementation Manual, Recipient must have a fully executed incentive agreement before the incentive recipient can incur any costs for which the incentive recipient will seek reimbursement.

The Recipient is required, where feasible, to employ contracting and procurement practices that promote open competition for all goods and services needed to complete this project. Recipient shall obtain price quotes from an adequate number of sources for all subcontracts.

The Recipient shall develop and implement controls to prevent incentive recipients from coordinating with affiliated companies to manipulate a single-applicant cap, if any such cap is applicable to distribution of block grant funds.

The Recipient shall develop and implement controls to prevent subrecipients and incentive recipients from artificially increasing the price claimed for equipment and materials to pass state funds through to partners or affiliates. In implementing this block grant, the Recipient shall include terms where appropriate giving CEC and the Recipient, in their sole discretion, the right to refuse payment to or disqualify an incentive applicant or subrecipient for severe performance issues under one or more prior or active CEC-funded agreement(s) within the last 10 years.

The Energy Commission will defer to the Recipient's own regulations and procedures as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in this Agreement.

Upon request, the Recipient must submit to the CAM a copy of all solicitations for services or products required to carry out the terms of this Agreement and copies of the proposals or bids received.

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

All subcontracts must incorporate all of the following:

- A clear and accurate description of the material, products, or services to be procured as well as a detailed budget and timeline.

- Provisions that allow for administrative, contractual, or legal remedies in instances where subcontractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
- Provisions for termination by the Recipient, including termination procedures and the basis for settlement, and language conforming to the "Termination" provision related to Executive Order N-6-22 – Russia Sanctions.
- Language conforming to the "Nondiscrimination" provision in this Agreement.
- The Standard of Performance provisions specified in this Agreement.
- Retention of Records provisions specified in this Agreement.
- Audits provisions specified in this Agreement.
- "Publications- Legal Statements on Reports" provisions specified in this Agreement
- Language conforming to the "Travel and Per Diem" provision in this Agreement
- Language conforming to the "Equipment" provision in this Agreement.
- Language conforming to the "Indemnification" provision in this Agreement.
- Language conforming to the "Change in Business" provision in this Agreement.
- Language conforming to the "Receipt of Confidential Information and Personal Information" provision in this Agreement.
- Public Work -- Payment of Prevailing Wages Generally Required by Law provisions in this Agreement.
- Assembly Bill 841 (2020) provision specified in this Agreement.
- Conflicts of Interest provision specified in this Agreement.
- Survival of the following provisions:
 - Retention of Records provisions specified in this Agreement.
 - Audits provisions specified in this Agreement.
 - Language conforming to the "Equipment" provision in this Agreement.
 - Language conforming to the "Indemnification" provision in this Agreement.
 - Language conforming to the "Receipt of Confidential Information and Personal Information" provision in this Agreement.

Recipients who are subcontracting with University of California (UC) may use the terms and conditions negotiated by the Energy Commission with UC for their subcontracts. Recipients who are subcontracting with the Department of Energy (DOE) national laboratories may use the terms and conditions negotiated with DOE.

Without limiting any of the Commission's other remedies, failure to comply with the above requirements may result in the termination of this Agreement.

Incentive agreements funded in whole or in part by this Agreement must incorporate all of the following:

- A clear and accurate description of the project.
- Provisions that allow for administrative, contractual, or legal remedies in instances where incentive recipients violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

- Provisions for termination by the Recipient, including termination procedures and the basis for settlement, and language conforming to the "Termination" provision related to Executive Order N-6-22 – Russia Sanctions.
- Provisions allowing the Recipient, at any time, by written notice to the incentive recipient, to require the incentive recipient to stop all or any part of the work tasks in the incentive agreement.
- Language conforming to the "Nondiscrimination" provision in this Agreement.
- The Standard of Performance provisions specified in this Agreement.
- Retention of Records provisions specified in this Agreement.
- Audits provisions specified in this Agreement.
- "Publications- Legal Statements on Reports" provisions specified in this Agreement.
- Language conforming to the "Travel and Per Diem" provision in this Agreement.
- Language conforming to the "Equipment" provision in this Agreement.
- Language conforming to the "Indemnification" provision in this Agreement.
- Language conforming to the "Change in Business" provision in this Agreement.
- Language conforming to the "Site Visits" provision in this Agreement.
- Language conforming to the "Receipt of Confidential Information and Personal Information" provision in this Agreement.
- Public Work -- Payment of Prevailing Wages Generally Required by Law provisions in this Agreement.
- Assembly Bill 841 (2020) provision(s) specified in this Agreement.
- Language requiring all installed charging ports to maintain an uptime of at least 97 percent for each year for six years after the beginning of operation ("operations requirements"), and uptime and downtime calculation methods, as described in Exhibit A of this Agreement.
- Language permitting the Energy Commission to enforce operations requirements, as described in the "Enforcement of Operations Requirements" provision in this Agreement.
- Survival of the following provisions:
 - Retention of Records provisions specified in this Agreement.
 - Audits provisions specified in this Agreement.
 - Language conforming to the "Equipment" provision in this Agreement.
 - Language conforming to the "Indemnification" provision in this Agreement.
 - Language conforming to the "Receipt of Confidential Information and Personal Information" provision in this Agreement.

10. Bonding and Insurance

The Recipient will follow its own bonding and insurance requirements relating to bid guarantees, performance bonds, and payment bonds without regard to the dollar value of the subcontract(s) as long as they reflect applicable state and local laws and regulations.

11. Permits and Clearances

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

12. Equipment

Equipment is defined as having a useful life of at least one year, having an acquisition unit cost of at least \$5,000, and purchased in whole or in part with grant funds. Electric vehicle supply equipment purchased in whole or in part with grant funds shall be considered "equipment" for purposes of this Agreement regardless of whether it has an acquisition cost of at least \$5,000. Equipment means any products, objects, machinery, apparatus, implements or tools purchased, used or constructed within the Project, including those products, objects, machinery, apparatus, implements or tools from which over thirty percent (30%) of the equipment is composed of materials purchased for the Project. For purposes of determining depreciated value of equipment used in the Agreement, the Project shall terminate at the end of the normal useful life of the equipment purchased, funded and/or developed with grant funds. The Energy Commission may determine the normal useful life of such equipment.

Title to equipment acquired by the Recipient in whole or in part with grant funds shall vest in the Recipient. The Recipient shall not encumber the property (e.g. transfer equipment title, allow a lien to be placed on the equipment, etc.) without CAM written approval. Title to equipment acquired by an incentive recipient in whole or in part with grant funds shall vest in the incentive recipient. The incentive recipient shall not encumber the property without Recipient approval. Recipient shall follow criteria approved by the CAM when determining whether to approve an incentive recipient's equipment encumbrance request.

The equipment title holder shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by grant funds. When no longer needed for the original project or program, the title holder shall contact the CAM for disposition instructions.

13. Termination

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

With Cause

The Energy Commission may, for cause, terminate this Agreement upon giving five (5) calendar days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations.

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

- Partial or complete loss of match funds;
- Reorganization to a business entity unsatisfactory to the Energy Commission;
- Retention or hiring of subcontractors, or replacement or addition of personnel, that fail to perform to the standards and requirements of this Agreement;
- The Recipient's inability to pay its debts as they become due and/or the Recipient's default of an obligation that impacts its ability to perform under this Agreement; or
- Significant change in state or Energy Commission policy such that the work or product being funded would not be supported by the Commission.

Without Cause

The Energy Commission may terminate this Agreement without cause upon giving thirty (30) days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations. In the event the Energy Commission terminates this Agreement without cause, the Energy Commission may reimburse Recipient for actual allowable expenditures incurred in accordance with this Agreement, including funds owed by Recipient to incentive recipients and subrecipients which are incurred and legally obligated up to the date of such termination.

c. 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 Recipient 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

Recipient advance written notice of such termination, allowing Recipient at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.

14. Stop Work

Energy Commission staff may, at any time, by written notice to Recipient, require Recipient to stop all or any part of the work tasks in this Agreement. Stop work orders may be issued for reasons such as a project exceeding budget, standard of performance, out of scope work, delay in Project schedule, misrepresentations and the like.

- a. Compliance. Upon receipt of such stop work order, Recipient shall immediately take all necessary steps to comply therewith and to stop the incurrence of costs allocable to the Energy Commission.
- b. Canceling a Stop Work Order. Recipient shall resume the work only upon receipt of written instructions from Energy Commission staff.

15. Travel and Per Diem

- a. The Recipient shall be reimbursed for travel and per diem expenses using the same rates provided to non-represented State employees. The Recipient must pay for travel in excess of these rates. The Recipient may obtain current rates from the Energy Commission's Web Site at: http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF.
- b. For purposes of payment, Recipient's headquarters shall be considered the location of the Recipient's office where the employees' assigned responsibilities for this award are permanently assigned.
- c. Travel identified in the Budget section of this Agreement is approved and does not require further authorization.
- d. Travel that is not included in the Budget section of this Agreement shall require written authorization from the CAM and Commission Agreement Officer prior to travel departure. The Energy Commission will reimburse travel expenses from the Recipient's office location.
- e. The Recipient must retain documentation of travel expenses in its financial records. The documentation must be listed by trip and include dates and times of departure and return, departure and destination cities. Travel receipts, including for travel meals and incidentals, shall be submitted with payment requests requesting reimbursement from the Energy Commission.

16. Standard of Performance

Recipient, its subcontractors and their employees, in the performance of Recipient's work under this Agreement shall be responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures used in the Recipient's field.

Any costs for failure to meet the foregoing standard or to correct otherwise defective work that requires re-performance of the work, as reasonably directed by CAM, shall be borne in total by Recipient and not the Energy Commission. The failure of a project to achieve the performance goals and objectives stated in the Scope of Work is not a basis for requesting re-performance unless the work conducted by Recipient and/or its subcontractors is deemed by the Energy Commission to have failed the foregoing standard of performance.

It is the Recipient's duty to use commercially reasonable efforts to identify when grant funds are misspent by incentive recipients. For example, Recipient must use commercially reasonable efforts to confirm grant funds are used to reimburse or otherwise pay for allowable costs that are actually incurred. This includes that it is the Recipient's duty to develop internal controls to detect fraud, waste, and abuse.

In the event Recipient/subcontractor fails to perform in accordance with the above standard:

- a. Recipient/subcontractor will re-perform, at its own expense, any task which was not performed to the reasonable satisfaction of the CAM. Any work re-performed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Recipient/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 re-performance of any task pursuant to this paragraph in the event that re-performance of a task within the original time limitations is not feasible; and
- c. The Energy Commission shall have the option to direct Recipient/subcontractor not to re-perform any task which was not performed to the reasonable satisfaction of the CAM pursuant to application of (a) and (b) above. In the event the Energy Commission directs Recipient/subcontractor not to re-perform a task, the Energy Commission and Recipient shall negotiate a reasonable settlement for satisfactory work performed. No previous payment shall be considered a waiver of the Energy Commission's right to reimbursement.

17. Payment of Funds

- a. Advance funds for incentives

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

Under this Agreement, the Recipient can request but is not guaranteed to receive advance funds for incentives. Funds will not be advanced for other project expenditures. It is solely within the CEC's discretion to allow advance funds. The Recipient shall establish a separate ledger account or fund for receipt and disbursement of advance funds for incentives under this Agreement.

Because the CEC earns interest on the funds in its accounts, the CEC can lose interest if it advances funds long before Recipient actually pays out the funds (i.e., the funds sit in Recipient's account instead of the CEC's interest-earning account).

Accordingly, the Recipient, if allowed to receive advance funds for incentives, shall take reasonable efforts to minimize the time from receiving advance funds and paying them out. The CEC can request at any time that the Recipient repay any funds advanced to Recipient that the Recipient has not paid out, and the Recipient shall repay the unspent advanced funds within 10 days of receiving the CEC's request.

The Recipient shall pay to the CEC any interest it earns on advanced funds that cumulatively total more than \$200. This means over the life of this Agreement, if the Recipient cumulatively earns more than \$200 on advanced funds, any additional interest amounts after that shall be paid to the CEC. Alternatively, the CEC in its sole discretion, can instead subtract the interest amount over \$200 from the amount paid to Recipient as requested in Recipient's future invoices.

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

b. Reimbursement for all other project expenditures

The CEC agrees to reimburse the Recipient for actual allowable expenditures incurred in accordance with this Agreement for all other project expenditures besides incentives. The rates in the Budget are rate caps, or the maximum amount allowed to be billed.

The Recipient can only bill for actual expenses incurred at the Recipient's actual rates not to exceed the rates specified in the Budget (e.g., direct labor rates, fringe benefit rates, and indirect rates). For example, if the Budget includes an employee's hourly rate of \$50/hour but the employee is only paid \$40/hour, the Recipient can only bill for \$40/hour. Under the same example, if the employee earned \$70/hour but the Budget only lists \$50/hour, the Recipient can only bill for \$50. Another example is if the maximum fringe benefit rate listed in the Budget is 20% but the Recipient's actual fringe benefit rate is only 15%, the Recipient can only bill at 15%. If the actual rates (e.g., direct labor rates, fringe benefit rates, and indirect rates) exceed the approved rates in the Budget, the difference may be charged to the agreement as a match share expenditure.

c. **Administrative Costs**

Similar to all project expenditures other than incentives, the Energy Commission agrees to reimburse the Recipient for actual allowable expenditures for administrative costs. Recipient only has authority to spend up to a maximum of \$5,000,000 in administrative costs, subject to the parameters described in section 1 of this Exhibit C.

d. **Payment Requests**

The Recipient may request payment from the Energy Commission at any time during the term of this Agreement. The final payment request must be received by either (1) the approved Agreement end term date, or (2) the date specified in the Special Terms and Conditions of this Agreement (if any), whichever is earlier.

Payments for all allowable project expenditures except advance funds for incentives will be made on a cost reimbursement basis, i.e., after the Recipient has incurred the cost for a service, product, supplies, or other approved budget item. No reimbursement for food or beverages shall be made other than allowable per diem charges.

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

e. **Documentation**

All payment requests must be submitted using a completed Payment Request form. This form must be accompanied by an itemized list of all charges and copies of all proper supporting documentation, such as receipts or invoices necessary to document these charges for both Energy Commission and match share, including backup documentation for actual expenditures, such as time cards, vendor invoices, and proof of payment. Any payment request that is submitted without the itemization or the proper supporting documentation will not be authorized for reimbursement. If the itemization or documentation is incomplete, inadequate, or inaccurate, the CAM will inform the Recipient via a Dispute Notification Form (Std. 209) and hold the invoice until all required information is received or corrected. Any penalties imposed on the Recipient by a subcontractor because of delays in payment will be paid by the Recipient.

Any documentation in foreign currency must be converted to dollars, and the conversion rate must be included in the itemization.

f. **Certification**

The following certification shall be included on each Payment Request form and signed by the Recipient's authorized officer:

I certify that this invoice is correct and proper for payment, and reimbursement for these costs has not and will not be received from any other sources, including but not limited to a government entity contract, subcontract or other procurement method.

Additional certification required related to the payment of prevailing wages. Refer to section 27 of these terms and conditions for more information.

g. Government Entity

Government Entity is defined as a governmental agency from California or any state or a state college or state university from California or any state; a local government entity or agency, including those created as a Joint Powers Authority; an auxiliary organization of the California State University or a California community college; the Federal Government; a foundation organized to support the Board of Governors of the California Community Colleges or an auxiliary organization of the Student Aid Commission established under Education Code 69522.

h. Release of Funds

The CAM will not process any payment request during the Agreement term until the following conditions have been met:

- All required reports have been submitted and are satisfactory to the CAM.
- All applicable special conditions have been met.
- All appropriate permits or permit waivers from governmental agencies have been issued to the Recipient and copies have been received by the CAM.
- All products due have been submitted and are satisfactory to the CAM.
- Other prepayment conditions as may be required by the CAM have been met. Such conditions will be specified in writing ahead of time, if possible.

i. Fringe Benefits, Indirect Overhead, and General and Administrative (G&A),

Indirect cost rates must be developed in accordance with generally accepted accounting principles (GAAP). If the Recipient has an approved fringe benefits or indirect cost rate (indirect overhead or G&A) from their cognizant Federal Agency, the Recipient may bill at the federal rate up to the Budget rate caps if the following conditions are met:

- The Recipient may bill at the federal provisional rate but must adjust annually to reflect their actual final rates for the year in accordance with the Labor, Fringe, and Indirect Invoicing Instructions which can be accessed in this agreement.

- The cost pools used to develop the federal rates must be allocable to the Energy Commission Agreement, and the rates must be representative of the portion of costs benefiting the Energy Commission Agreement. For example, if the federal rate is for manufacturing overhead at the Recipient's manufacturing facility and the Energy Commission Agreement is for research and development at their research facility, the federal indirect overhead rate would not be applicable to the Energy Commission Agreement.
- The federal rate must be adjusted to exclude any costs that are specifically prohibited in the Energy Commission Agreement.
- The Recipient may only bill up to the Agreement Budget rate caps unless and until an amendment to the Agreement Budget is approved.

j. Retention

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

(1) Early Release of Retention for Completed Project Startup Phase

The CEC may choose to release retention if the project startup phase is completed. In order to consider release of retention early for the completed project startup phase, Recipient must complete the following Task deliverables and activities associated with the project startup phase to the satisfaction of the CAM:

Task 1: All products in subtasks 1.1, 1.7, and 1.8;

Task 2: All products;

Task 3: All products;

Task 4: All products;

Task 5: All products;

Task 6: All products;

Task 9: Initial Project Fact Sheet

(2) Early Release of Retention for Completed Incentive Agreement Projects

The CEC may choose to release retention for individual incentive agreement projects that complete all incentive agreement requirements. In order to consider release of retention early for a completed incentive agreement project, the Recipient must submit information requested by the CAM demonstrating all incentive agreement requirements were met to the satisfaction of the CAM.

k. State Controller's Office

Payments are made by the State Controller's Office.

18. Fiscal Accounting Requirements

a. Accounting and Financial Methods

The Recipient shall establish a separate ledger account or fund for receipt and disbursement of grant funds under this Agreement. The Recipient shall also establish a separate ledger account or fund for receipt and disbursement of advance funds for incentives under this Agreement. Expenditure details must be maintained in accordance with the approved budget details using appropriate accounting practices.

b. Retention of Records

The Recipient shall retain all project records (including financial records, progress reports, and payment requests) for a minimum of three (3) years after the final payment has been received or three years after the federal grant term, whichever is later, unless otherwise specified in the funding Agreement.

Records for nonexpendable personal property acquired with grant funds shall be retained for three years after its final disposition or three years after the federal grant term, whichever is later.

c. Audits

Upon written request from the Energy Commission, the Recipient shall provide detailed documentation of all expenses at any time throughout the project. In addition, the Recipient agrees to allow the Energy Commission or any other agency of the State, or their designated representative, upon written request, to have reasonable access to and the right of inspection of all records that pertain to the project during the term of this Agreement and for a period of three (3) years thereafter or three years after the federal grant term, whichever is later, unless the Energy Commission notifies the Recipient, prior to the expiration of such three-year period, that a longer period of record retention is necessary. Further, the Recipient agrees to incorporate an audit of this project within any scheduled audits, when specifically requested by the State. Recipient agrees to include a similar right to audit in any subcontract.

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

d. Match Share Requirements

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

The Recipient agrees to provide the Minimum Match Share Percentage of Total Allowable Project Costs, even if the Agreement is terminated early or otherwise ends before project completion. The Minimum Match Share Percentage is the Minimum Match Share Required (as specified on the CEC-146) divided by the Total of Reimbursable Amount and Minimum Match Share Required (as specified on the CEC-146). Total Allowable Project Costs is the sum of all actual, allowable costs incurred in performance of the Agreement and approved by the Energy Commission.

For example, if the CEC-146 specifies the following,

Reimbursable Amount
\$200,000
Minimum Match Share Required
\$50,000
Total of Reimbursable Amount and Minimum Match Share Required
\$250,000
Minimum Match Share Percentage of Total Allowable Project Costs
20%

the Recipient agrees to be liable for a minimum of 20% (\$50,000 divided by \$250,000) of Total Allowable Project Costs. In this example and at the end of the agreement, if Total Allowable Project Costs is \$125,000, the Recipient shall have provided a minimum of \$25,000 (\$125,000 times 20%) as match share.

Without limiting any of the Energy Commission's other rights or remedies, the Recipient agrees that if it fails to provide the Minimum Match Share Percentage of Total Allowable Project Costs, and if requested by the Energy Commission, the Recipient shall repay an amount to ensure the Recipient

provides, at a minimum, the Minimum Match Share Percentage of Total Allowable Project Costs.

For example, and building upon the previous example, if:

- A. Grant funds disbursed = \$110,000
- B. Match Share Documented and Approved = \$15,000
- C. Total Allowable Project Costs = \$125,000 (Line A plus Line B)
- D. Minimum Match Share Percentage of Total Allowable Project Costs = 20%
- E. Minimum Match Share Amount Required = \$25,000 (Line C multiplied by Line D)

the Energy Commission may request, and the Recipient would be required to repay upon such request, \$10,000 (Line E minus Line B) to the Energy Commission.

The maximum amount to be reimbursed by the Energy Commission under this Agreement is the Reimbursable Amount specified on the CEC-146. The Energy Commission award amount is fixed and will not be augmented. If actual Total Allowable Project Costs exceed estimated Total Allowable Project Costs, the Recipient is responsible for those additional costs.

The Recipient must maintain accounting records detailing the expenditure of the Match Share and provide documentation of expenditures as described in this Agreement (e.g., under this Exhibit C "Payment of Funds" and "Fiscal Accounting Requirements").

In the event of any conflict or inconsistency between the Minimum Match Share Required specified on the CEC-146 and the Match Share specified on other Exhibits to this Agreement, the Minimum Match Share Required specified on the CEC-146 shall control.

19. Indemnification

The Recipient agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from: (i) any and all claims and losses accruing or resulting to Recipient, the Energy Commission, and to any and all contractors, subcontractors, incentive recipients, vendors, materialmen, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and (ii) from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged, in each case of subsections (i) and (ii) to the extent caused by the Recipient in the performance of this Agreement.

This includes repayment to CEC for funds advanced which were not spent, by the Recipient, in accordance with the terms of this Agreement.

20. Workers' Compensation Insurance

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

21. General Provisions

- a. **Governing Law**

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

- b. **Independent Capacity**

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

- c. **Assignment**

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

- d. **Timeliness**

Time is of the essence in this Agreement.

- e. **Unenforceable Provision**

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

- f. **Waiver**

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law.

g. Assurances

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

h. Change in Business

- (1) Recipient shall promptly notify the Energy Commission of the occurrence of each of the following:
 - (a) A change of address.
 - (b) A change in the business name or ownership.
 - (c) The existence of any litigation or other legal proceeding affecting the project.
 - (d) The occurrence of any casualty or other loss to project personnel, equipment or third parties of a type commonly covered by insurance.
 - (e) Receipt of notice of any claim or potential claim against Recipient for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the Energy Commission's rights.
- (2) Recipient shall not change or reorganize the type of business entity under which it does business except upon prior written notification to the Energy Commission. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. In the event the Energy Commission is not satisfied that the new entity can perform as the original Recipient, the Energy Commission may terminate this Agreement as provided in the termination paragraph.

i. Survival of Terms

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

- Data collection requirements described in Exhibit A Scope of Work
- "Payments of Funds"
- "Equipment"
- "Change in Business"
- "Termination"
- "Audit"
- "Indemnification"
- "Fiscal Accounting Requirements"

- "Receipt of Confidential Information and Personal Information"

22. Certifications and Compliance

a. Federal, State and Municipal Requirements

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

b. Nondiscrimination Statement of Compliance

During the performance of this Agreement, Recipient and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Recipient and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Recipient and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part of it as if set forth in full. Recipient and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

c. Drug-Free Workplace Certification

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

- (1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a)(1).

- (2) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
- The dangers of drug abuse in the workplace;
 - The person's or organization's policy of maintaining a drug-free workplace;
 - Any available counseling, rehabilitation, and employee assistance programs; and
 - Penalties that may be imposed upon employees for drug abuse violations.
- (3) Provide, as required by Government Code Section 8355(a)(3), that every employee who works on the proposed project:
- Will receive a copy of the company's drug-free policy statement;
 - Will agree to abide by the terms of the company's statement as a condition of employment on the project.

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

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

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

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

e. **Americans with Disabilities Act**

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

23. Site Visits

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

24. Confidential Recipient Information

a. **Identification of Confidential Recipient Information**

For the purposes of this Section, "Confidential Recipient Information" refers to information belonging to the Recipient that the Recipient 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 Recipient information considered confidential at the commencement of this Agreement is designated in an Attachment to this Exhibit.

b. **Confidential Deliverables: Labeling and Submitting Confidential Recipient Information**

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

- c. Submittal of Unanticipated Confidential Recipient Information as a Deliverable

The Recipient and the Energy Commission agree that during this Agreement, it is possible that the Recipient may obtain or develop additional data or information not originally identified as a confidential deliverable. In this case, Recipient 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 Recipient Information

Disclosure of Confidential Recipient 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 Recipient or any other entity become public records and are no longer subject to the above confidentiality designation.

25. Receipt of Confidential Information and Personal Information

- a. For the purposes of this Section, "confidential information" refers to information the Energy Commission has designated as confidential pursuant to Title 20 CCR Section 2505 et seq., information the Energy Commission has otherwise deemed or stated to be confidential, and other information exempt from public disclosure under the provisions of the California Public Records Act or other applicable state or federal laws.
- b. For the purposes of this Section, "personal information" refers to 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.
- c. For the purposes of this Section, "special terms for confidential information" refers to the Energy Commission's special terms and conditions for the receipt of confidential information and personal information. The Energy Commission's special terms for confidential information include, but are not limited to, having in place an Information Security Program Plan and obtaining nondisclosure agreements from all individuals who will be provided access to confidential information or personal information.
- d. If the Recipient will receive confidential information or personal information from the Energy Commission or a third-party for the performance of this Agreement, the Recipient must first agree to and comply with the Energy Commission's special terms for confidential information.
- e. If any other individual or entity participating in any way with this Agreement, including but not limited to subcontractors, incentive recipients, vendors, and other project partners, will receive confidential information or personal information from the CEC or a third-party for the performance of this Agreement, that individual or entity must first agree to and comply with the CEC's special terms for confidential information. The Recipient must flow-

down the CEC's special terms for confidential information into each subcontract, incentive agreement, vendor agreement, or other project partner agreement that will be provided access to confidential information or personal information before the individual or entity has access to any such information. Recipient must also require all individuals and entities to flow-down this Section to any lower tier subcontractors, incentive recipients, 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.

- f. If this Agreement does not include the Energy Commission's special terms for confidential information and the Energy Commission determines the Recipient or any other individual or entity participating in any way with this Agreement will receive confidential information or personal information from the Energy Commission or a third-party for the performance of this Agreement, the Energy Commission reserves the option to amend this Agreement to add its special terms for confidential information.
- g. Except as provided in Title 20 CCR Sections 2506, 2507, and 2508, and the Energy Commission's special terms for confidential information, Recipient or any other individual or entity participating in any way with this Agreement may not disclose any information provided to it by the Energy Commission or a third party for the performance of this Agreement if the information has been designated as confidential or is the subject of a pending application for confidential designation.

26. Budget Contingency Clause

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

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the Energy Commission shall have the option to either: 1) cancel this Agreement with no liability occurring to the Energy Commission; or 2) offer an Agreement Amendment to the Recipient to reflect the reduced amount.

27. Public Works -- Payment of Prevailing Wages

Generally Required by Law

Projects that receive an award of public funds from the Energy Commission often involve construction, alteration, demolition, installation, repair or maintenance work over \$1,000.

NOTE: Projects that receive an award of public funds from the Energy Commission are likely to be considered public works under the California Labor Code. See Chapter 1 of Part 7 of Division 2 of the California Labor Code, commencing with Section 1720 and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000.

Accordingly, the Energy Commission assumes that all projects it funds are public works. Projects deemed to be public works require among other things the payment of prevailing wages.

NOTE: Prevailing wage rates can be significantly higher than non-prevailing wage rates.

By accepting this Agreement, Recipient as a material term of this Agreement shall be fully responsible for complying with all California public works requirements including but not limited to payment of prevailing wage. Therefore, as a material term of this Agreement, Recipient must either:

(a) Proceed on the assumption that the project is a public work and ensure that:

- (i) prevailing wages are paid; and
- (ii) the project budget for labor reflects these prevailing wage requirements; and
- (iii) the project complies with all other requirements of prevailing wage law including but not limited to keeping accurate payroll records, and complying with all working hour requirements and apprenticeship obligations;

or,

(b) Timely obtain a legally binding determination from DIR or a court of competent jurisdiction before work begins on the project that the proposed project is not a public work.

NOTE: Only the California Department of Industrial Relations (DIR) and courts of competent jurisdiction have jurisdiction to issue legally binding determinations that a particular project is or is not a public work.

If the Recipient is unsure whether the project receiving this award is a "public work" as defined in the California Labor Code, it may wish to seek a timely determination from the California Department of Industrial Relations (DIR) or an appropriate court.

NOTE: Such processes can be time consuming and therefore it may not be possible to obtain a timely determination before the date for performance of the award commences.

If the Recipient does not timely obtain a binding determination from DIR or a court of competent jurisdiction that the project is not a public work, before this Agreement from the Energy Commission is executed, the Recipient shall assume that the project is a public work and that payment of prevailing wages is required and shall pay prevailing wages unless and until such time as the project is subsequently determined to not be a public work by DIR or a court of competent jurisdiction.

NOTE: California Prevailing Wage law provides for substantial damages and financial penalties for failure to pay prevailing wages when payment of prevailing wages is required.

Subcontractors and Flow-down Requirements. Recipient shall ensure that its subcontractors and incentive recipients, if any, also comply with above requirements with respect to public works/prevailing wage. Recipient shall ensure that all agreements with its contractors/subcontractors and incentive recipients to perform work related to this Project contain the above terms regarding payment of prevailing wages on public works projects. Recipient shall be responsible for any failure of Recipient's subcontractors and incentive recipients to comply with California prevailing wage and public works laws.

Indemnification and Breach. Any failure of Recipient or its subcontractors or incentive recipients to comply with the above requirements shall constitute a breach of this Agreement that excuses the Energy Commission's performance of this Agreement at the Energy Commission's option, and shall be at Recipient's sole risk. In such a case, Energy Commission may refuse payment to, or request repayment by Recipient of any amount under this Agreement and Energy Commission shall be released, at its option, from any further performance of this award or any portion thereof. By accepting this Agreement, and as a material term of this Agreement, Recipient agrees to indemnify the Energy Commission and hold the Energy Commission harmless for any and all financial consequences arising out of or resulting from the failure of Recipient and/or any of Recipient's subcontractors or incentive recipients to pay prevailing wages or to otherwise comply with the requirements of prevailing wage law.

Budget. Budgets on public works projects must indicate which job classifications are subject to prevailing wage. For detailed information about prevailing wage and the process to determine if the proposed project is a public work, Recipient may wish to contact the California Department of Industrial Relations (DIR) or a qualified labor attorney of their choice for guidance.

Covered Trades. For public works projects, Recipient may contact DIR for a list of covered trades and the applicable prevailing wage.

Questions. If Recipient has any questions about this contractual requirement or the wage, record keeping, apprenticeship or other significant requirements of California prevailing wage law, it is recommended that Recipient consult DIR and/or a qualified labor attorney of its choice before accepting this Agreement.

Certification. Recipient shall certify to the Energy Commission on each Payment Request Form, either that (1) prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and that the Recipient and all contractors and subcontractors otherwise complied with all California prevailing wage laws, or (2) that the project is not a public work requiring the payment of prevailing wages. In the latter case, Recipient shall provide competent proof of a DIR or court determination that the project is not a public work requiring the payment of prevailing wages.

Prior to the release of any retained funds under this Agreement, the Recipient shall submit to the Energy Commission the above-described certificate signed by the Recipient and all contractors and subcontractors performing public works activities on the project. Absent such certificate, Recipient shall have no right to any funds under this Agreement, and Energy Commission shall be relieved of any obligation to pay said funds.

28. Intellectual Property

The Energy Commission makes no claim to intellectual property developed under this Agreement that is not specified for delivery, except as expressly provided herein.

29. Commission Remedies for Recipient's Non-Compliance

Without limiting any of its other remedies, the Commission may, for Recipient's noncompliance of any Agreement requirement, withhold future payments, demand and be entitled to repayment of past reimbursements, or suspend or terminate this Agreement. The tasks in the Scope of Work are non-severable, and completion of all of them is material to this Agreement. Thus, the Commission, without limiting its other remedies, is entitled to repayment of all funds paid to Recipient if the Recipient does not timely complete all tasks in the Scope of Work.

Further, if any penalty, fine, or other assessment is issued against the CEC or the CEC and other parties as a result of the Recipient, its subcontractors, or its incentive recipients' failure to comply with Agreement requirements, the Recipient shall pay all assessment amounts with its own, non-grant funds, including any assessment against CEC. Should the Recipient fail to pay the penalty, fine, or other assessment, Recipient acknowledges that such monies may be paid out of retention.

30. Assembly Bill 841 (2020)

By signing this Agreement, Recipient as a material term of this Agreement shall be fully responsible for complying with this section. AB 841 (Ting, 2020) added Public Utilities Code (PUC) section 740.20, which requires Electric Vehicle Infrastructure Training Program (EVITP) certification to install electric vehicle charging infrastructure and equipment for work performed on or after January 1, 2022, subject to certain exceptions. As a policy matter, the CEC is applying the EVITP certification requirements to project work funded under this Agreement, regardless

of whether it might be performed prior to January 1, 2022, unless an exception applies.

Therefore, applying PUC 740.20 EVITP requirements to this Agreement means that all electric vehicle charging infrastructure and equipment located on the customer side of the electrical meter shall be installed by a contractor with the appropriate license classification, as determined by the Contractors' State License Board, and at least one electrician on each crew, at any given time, who holds an EVITP certification. Projects that include installation of a charging port supplying 25 kilowatts or more to a vehicle must have at least 25 percent of the total electricians working on the crew for the project, at any given time, who hold EVITP certification. One member of each crew may be both the contractor and an EVITP certified electrician. The requirements stated in this paragraph do not apply to any of the following:

- (1) Electric vehicle charging infrastructure installed by employees of an electrical corporation or local publicly owned electric utility.
- (2) Electric vehicle charging infrastructure funded by moneys derived from credits generated from the Low Carbon Fuel Standard Program (Subarticle 7 (commencing with Section 95480) of Article 4 of Subchapter 10 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations).
- (3) Single-family home residential electric vehicle chargers that can use an existing 208/240-volt outlet.

31. Conflicts of Interest

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

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

c. Prohibition on Participating in Energy Commission Funding Opportunities

Under this Agreement, the Recipient and its subcontractors and project partners will, with oversight from the Commission, develop and implement a block grant program to provide grant-funded incentives. Accordingly, the Recipient and its subcontractors and project partners are prohibited from participating and agree not to participate in any manner (e.g., as an applicant, subcontractor, or match-funding partner) in any incentive project awarded under this Agreement.

d. Possible amendment of conflicts of interest provisions

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

32. Enforcement of Operations Requirements

Exhibit A of this Agreement contains certain operations requirements for charging ports installed as part of incentive recipient agreements. If an incentive recipient fails to meet the operations requirements, the CEC, as a real party in interest to the incentive recipient agreements, may attempt to seek repayment of incentive funds with no obligation on the part of Recipient to do so.

In order to facilitate CEC's enforcement of operations requirements, the Recipient shall include the following paragraph as part of all incentive recipient agreements:

"This agreement contains certain uptime requirements for EV charging stations and charging ports installed under this agreement. By signing this agreement, and as a material term of this agreement, the incentive recipient agrees to be fully responsible for complying with the operations requirements. Incentive recipient also agrees that CEC, as the party providing the incentive funding, is a real party in interest to this incentive agreement. Accordingly, if incentive recipient fails to meet the operations requirements, incentive recipient agrees that CEC is entitled to repayment

of incentive funds. The amount repaid shall be an amount CEC, in its sole discretion, deems reasonable to compensate for the harm done."

In the event the CEC adopts regulations that include uptime and operations requirements, for example as required by AB 2061 (Ting, Chapter 345, Statutes of 2022) and/or AB 126 (Reyes, Chapter 319, Statutes of 2023), those requirements shall supersede the requirements contained in this Agreement wherever, as determined by the CAM, they conflict or are redundant.

EXHIBIT C- APPENDIX 1

STREAMLINING GRANT TERMS AND CONDITIONS

The California Energy Commission (CEC) has undergone a significant effort to improve its grant agreements across its programs. Until the CEC is able to revise all of its standard terms and conditions templates to implement these improvements, the CEC is adding this Exhibit C Appendix to new grant agreements. The CEC acknowledges that terms in this Appendix will conflict with some of the terms and other requirements in the grant agreement. Accordingly, where there is a conflict, the CEC and Recipient agree that this Appendix controls. Outside of the changes made by this Appendix, all other grant terms and requirements remain unchanged.

Acronyms and Terms Used in this Document and Their Meaning

Acronym/ Term	Meaning
Agreement	The grant agreement executed between the CEC and the Recipient.
Budget Categories	Means the following categories in Exhibit B, Budget: Direct Labor, Fringe Benefits, Travel, Equipment, Materials and Miscellaneous, Subrecipients and Vendors (formerly Subcontractors), and Indirect Costs and Profit.
CAM	Commission Agreement Manager
CEC	California Energy Commission
Existing Terms	The terms that might be found in any of the CEC grant agreements in any of its programs, including the terms for this Agreement.
Incentive recipient	An incentive recipient is any person or entity that receives an incentive awarded under this Agreement. An incentive recipient cannot also be a subrecipient.

Acronym/ Term	Meaning
Incurred Costs	An expense for which the Recipient has become liable (legally obligated) to pay.
MTDC	Modified Total Direct Costs, which means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, rental costs, tuition remission, scholarships and fellowships, and the portion of each subaward in excess of \$25,000.
Paid Costs	An expense for which the Recipient has already made payment.
Recipient	The entity that executed this Agreement with the CEC.
Subaward	For the Recipient, a Subaward means all agreements it has with Subrecipients and Vendors. For a Subrecipient, a Subaward means all agreements it has with Sub-Subrecipients and Vendors. For any lower-tiered level of Sub-Subrecipient, a Subaward means all agreements it has with its own Sub-Subrecipients and Vendors.
Subcontract	An agreement between the Recipient and a Subrecipient.
Subrecipient (also Subcontractor)	A person or entity that receives grant funds directly from the Recipient and is entrusted by the Recipient to make decisions about how to conduct some of the block grant project's activities. A Subrecipient's role involves discretion over grant activities and is not merely just selling goods or services. A subrecipient cannot also be an incentive recipient.
Sub-Subrecipient	Has the same meaning as a Subrecipient except that it receives grant funds from a Subrecipient or any lower tier level of a Sub-Subrecipient.
Vendor	A person or entity that sells goods or services to the Recipient, Subrecipient, or any lower-tiered level of Sub-Subrecipient, in exchange for some of the grant funds, and does not make decisions about how to perform the grant's activities. The Vendor's role is ministerial and does not involve discretion over grant activities.

Acronym/**Term****Meaning**

These Terms

The terms in this document titled "Streamlining Grant Terms and Conditions."

1. Decoupling Products from Invoices

Existing Terms typically require grant recipients to submit products with invoices. This is no longer required. Recipients can separately submit products and invoices.

2. Quarterly Instead of Monthly Reports

Most grants include within their scopes of work an administrative task requiring grant recipients to submit monthly progress reports, often concurrent with submission of an invoice. This is no longer required. Instead, Recipients will now submit progress reports quarterly instead of monthly. Unless a different arrangement is discussed with and approved by the Commission Agreement Manager (CAM) in writing, which can be done without amending these terms (e.g., as simple as an email from the CAM), quarterly means by the tenth day of each January, April, July, and October.

3. New Requirement for Monthly Calls with the CAM

Instead of monthly progress reports currently required under Task 1, Recipients shall participate in brief phone calls that will occur at least monthly and which will be initiated by the CAM to briefly discuss project progress and identify any emerging issues. Monthly calls might not be held on those months when a quarterly progress report is submitted or the CAM determines that a monthly call is unnecessary.

4. Amendments and Other Changes

Existing Terms typically require a written amendment signed by both the CEC and Recipient for any change to the grant agreement. In contrast, These Terms allow certain changes, as described in this document, to be made to this Agreement without a formal amendment.

A. Budget Reallocations

No CEC approval is needed for a Recipient, Subrecipient, or any lower-tiered level of Sub-Subrecipient to move funds within each of the following Budget Categories listed in the Exhibit B: Direct Labor, Fringe Benefits, Travel, Equipment, Materials and Miscellaneous, Subrecipients, and Indirect Costs. (However, please note that per section 4.B. below, any new M&M, Equipment, Subrecipient or Vendor not listed in the budget does need to be approved prior to reimbursement.) However, funds allocated to incentives cannot be moved or reallocated without an amendment to the Agreement. If the Recipient wants to move funds between Budget Categories or submits an invoice that if paid would exceed a Budget Category, the Recipient has at least the following choices:

1. Request an amendment from the CEC. The CEC will not pay the invoice if and until an amendment is approved, except possibly for the final invoice per section 4.A.3 below. In its sole discretion, the CEC might pay the portion of the invoice that does not involve the amount that goes beyond the Budget Category.
2. Retract the invoice and resubmit a corrected one that keeps within Budget Categories. The Recipient can treat the amount paid beyond the Budget Category as match funds if the expenditure meets all of the applicable Agreement requirements for match funds.
3. If there is a Budget Category overage on the final invoice, the Recipient can discuss with the CAM if the invoice can be approved without needing the amendment in section 4.A.1 above. The CAM will require a written justification for the budget category overage to determine if the invoice can be approved.

This new flexibility does NOT mean the Recipient can exceed the overall Agreement amount.

Because Existing Terms may define "Budget Reallocation" to mean the movement of funds between tasks and possibly in other ways than moving funds between Budget Categories, such definitions are considered deleted and superseded by These Terms.

B. New Items under Materials and Miscellaneous, and Equipment

The CAM must approve in writing of any new materials and miscellaneous expenses of \$5,000 or more or new equipment the Recipient plans to purchase and be reimbursed under this Agreement that is not already listed in Exhibit B, Budget. To accomplish this, the Recipient can submit either prior to invoicing or with its invoice a completed form titled "[NEW EQUIPMENT/M&M FORM](#)" which includes a description of the item and a brief explanation of the need for the item. The CAM will approve items that he or she determines to be necessary to the Agreement and do not exceed budgeted amounts for each Budget Category unless Recipient follows the processes in section 4.A. "Budget Reallocation" directly above.

Any restrictions in the solicitation or elsewhere in the Agreement still apply to the specific items under Materials and Miscellaneous, and Equipment that can be purchased using grant funds or Match Share Funds. The restrictions still apply even though the CAM does not have to approve new materials and miscellaneous expenses under \$5,000.

C. An Amendment is No Longer Needed to Replace "Key Personnel."

Existing Terms typically require Recipients and their Subrecipients to obtain advance written approval, sometimes through a formal written amendment, before the Recipient added or replaced key or other personnel, or added or removed job classifications. Now, except when replacing "key personnel" the Recipient and its Subrecipients and any lower-tiered level of Sub-Subrecipient, can make change related to their respective personnel without written approval. Although changes to "key personnel" do require written approval, that approval can be requested and granted simply through an e-mail communication or other form of written communication.

These Terms clarify that Recipients may be reimbursed for actual expenses incurred by new "key personnel" during the term of the Agreement, even if written approval comes

after an individual begins work on the project. However, if the replacement is not approved, then the Energy Commission will not reimburse for any expenses charged for the individual. Accordingly, Recipients are strongly encouraged to obtain advance written approval for "key personnel" or risk not being reimbursed for their work.

Recipient must keep the CAM informed of personnel changes through monthly calls and quarterly progress reports. In addition to any other rights and remedies available to the CEC, the Energy Commission retains its authority to issue a Stop Work Order if it becomes clear that a Recipient or Subrecipient's personnel, key or otherwise, are unable to fulfill their responsibilities under the Agreement.

Please note that the process in the Existing Terms for replacing Subrecipients and Vendors, and each tier lower of Sub-Subrecipients, may have changed. See section 7 below titled "Subrecipients and Vendors."

D. Assignment of New Personnel to an Existing Job Classification

Existing Terms might require Recipients to submit a resume and other information to the CAM to approve before assigning new personnel to existing job classifications. The Existing Terms might also require an amendment, and that an amendment must be fully executed before new personnel can begin work on the agreement. This pre-approval is no longer required. Instead, Recipient will keep the CAM informed of personnel changes and provide any information requested by the CAM during monthly calls and/or quarterly progress reports. Please see section 5.A. below in the "Budgets and Payment of Funds" term for how direct labor rates will now be handled.

E. Promotion of Existing Personnel to an Existing Job Classification

Existing Terms might require grant recipients to execute an amendment or otherwise provide information to, and obtain approval from, the CAM before promoting existing personnel to existing job classifications. None of this is required any longer. Please see section 5.A. below in the "Budgets and Payment of Funds" term for how direct labor rates will now be handled.

5. Budgets and Payment of Funds

A. No More Capped Maximum Rates for Direct Labor and Fringe Benefits

Existing Terms typically state that rates in Exhibit B, Budget, for Direct Labor, Fringe Benefits, Indirect Costs, and Profit (for Subrecipients) are maximum rates and Recipients can invoice for actual expenses up to these capped, maximum rates.

Under These Terms, the rates in Exhibit B, Budget, for Direct Labor and Fringe Benefits are now treated as estimates and not capped rates. The Recipient can invoice at higher rates as long as it is only invoicing for actual expenditures it has made. However, the Recipient cannot invoice and be paid for more than the total amount in each Budget Category without an amendment (please see section 4.A. above in these terms), or for more than the total Agreement amount.

Please note this new flexibility only applies to rates for Direct Labor and Fringe Benefits. Except as otherwise provided in These Terms, restrictions on Indirect Costs and Profit in the Existing Terms still apply.

Please also note that rates listed in the budget are NOT "negotiated rates" that can be charged by a Recipient or Subrecipient – documentation must be made available upon request to show that the rates charged reflect actual costs incurred.

B. Options for Indirect Costs

Existing Terms typically allow grant recipients to invoice and receive reimbursement for actual Indirect Costs up to the maximum amount listed in Exhibit B, Budget. Indirect Costs are subject to audit, and recipients are required to provide backup documentation upon request proving the actual amount of their Indirect Costs. These Terms provide two additional options.

The following options may be available to any Recipient who has not yet invoiced for indirect costs at the time of this amendment. These options are not available to any Recipient that has opted not to claim indirect. A Recipient may not use these options to increase a current indirect rate on which the Recipient was scored in the application process. Once a Recipient has been reimbursed for indirect costs, they may not switch among options.

1. De Minimis Option

Under These Terms, the Recipient can elect to invoice and receive a de minimis amount at the set rate of 10% of the Modified Total of Direct Costs (MTDC) for Indirect Costs. This cannot be combined with any other Indirect Rate option.

MTDC is defined for purposes of These Terms as all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, rental costs, tuition remission, scholarships and fellowships, and the portion of each subaward in excess of \$25,000. This is the same definition used in federal grants. Keeping this the same as the federal definition should make this easy for recipients with both federal and CEC grants that elect this option.

If the Recipient chooses this de minimis option for Indirect Costs, the Recipient will not have to provide backup documentation for the de minimis amount and will not be audited on it. However, the Existing Term requirements, including for backup documentation and audits, still apply to any Indirect Costs invoiced by the Recipient and reimbursed by the CEC not utilizing the de minimis amount.

2. Defense Contract Audit Agency (DCAA) or other Federally Approved Indirect Rate

An entity that has a federally approved indirect rate from DCAA or another Federal agency may use the approved indirect rate for Energy Commission grants. A copy of the Federal agency's letter must be provided.

This rate will typically shift annually, and this shift is generally acceptable. This is the only Indirect Cost option that is not strictly subject to the max rate cap that typically applies to Indirect Costs. If the federal rate decreases from year to year, that will be a cost savings under this budget category. If the federal rate increases from year to year, this will require a budget reallocation. If the Energy Commission, in its sole discretion, determines that a budget reallocation to accommodate an increased Indirect Rate would risk the ultimate success of the project, or is otherwise not in its best interest, the Energy Commission reserves the right to either propose a smaller increase that would not risk the ultimate success of the project, or refuse to increase the Indirect Rate. For any increase the Energy Commission will not reimburse from grant funds, the Recipient or Subrecipient may choose to charge the increase as Match Funds.

If the Recipient chooses this option for Indirect Costs, the Recipient will not be audited on this budget category. However, the Existing Term requirements, including for backup documentation and audits, still apply to any Indirect Costs invoiced by the Recipient and reimbursed by the CEC not utilizing this option.

C. Travel and Per Diem

1. Travel not listed in Exhibit B, Budget, can be added without an amendment via CAM approval. CAM approval can come in one of two forms: written authorization from the CAM prior to the Recipient taking the trip, or through the invoice review. Outside of a budget reallocation, additional travel requests are submitted using the CEC's [Travel Form](#). Recipient understands, however, that any travel taken that is not listed in Exhibit B, the Budget, or not pre-approved by the CAM in writing, is at the Recipient's own financial risk. The CAM might not approve the trip as part of invoice review. Please note that the Recipient cannot invoice and be paid for more than the total amount in the Travel Budget Category without an amendment (please see section 4.A. above in These Terms), or for more than the total Agreement amount.
2. Existing Terms explain what recipients can invoice for and be reimbursed for travel and per diem expenses. After this Agreement is amended to include These Terms, Recipients can instead invoice and be reimbursed using the rates listed on the ECAMS Resources webpage. Because the rates maintained on the ECAMS Resources webpage can change over time, the Recipient will be allowed to be reimbursed for the rates in place when the trip expenses become an Incurred Cost. The CEC shall notify the Recipient in writing by way of the Active Agreements Subscription Topic if the travel rates change. Please sign up for the Active Agreements [Subscription Topic](#) to stay informed of all updates.
3. Lodging

The Recipient can invoice at standard room rates. The CEC will not reimburse for luxury accommodations.

4. Airfare

The Recipient can invoice at coach rates on commercial carriers. The CEC will not pay for upgrades on flights.

5. Rental Car

The Recipient can invoice for vehicles appropriate for the purpose of the travel. The CEC will not reimburse expenses for luxury vehicles.

6. Bus/Train

The Recipient can invoice for standard coach rates. The CEC will not reimburse for upgrades.

7. Per Diem

Per diem is allowable for actual costs incurred up to the total daily maximum for the following combined expenses:

- Meals
- Incidentals (i.e. tips for hotel staff and taxi/ride share drivers)
- Parking

- Tolls
- Taxi/ride share

The CEC will not reimburse any expenses under this Agreement for alcoholic beverages. In addition, the daily per diem is for the individual expenses of those traveling and working on the Agreement only. It cannot be used to pay for expenses of others (e.g., it cannot be used to buy a meal for someone else).

D. Payment Request Format

Existing Terms may list specific items the Recipient must include in its invoices. These requirements in the Existing Terms are no longer required. Instead, the CAM will provide an invoice template, and any further modifications to it, that the Recipient shall use.

E. Rounding

Under These Terms, the only exception to the CEC paying actual expenses is rounding to the nearest cent. Recipient, Subrecipients, and each lower-tiered level of Sub-Subrecipients shall round invoiced amounts to the nearest cent (\$0.01) using standard rounding, which is rounding down for \$0.000 through \$0.004, and rounding up for \$0.005 through \$0.009. Rounding cannot be used to exceed the amount in any Budget Category (see section 4.A. above in These Terms) or exceed the total Agreement amount.

F. New Certification for Payment Requests

Existing Terms may require recipients to include and sign a certain certification in its payment requests. These Terms instead require the Recipient to include and sign the certification provided by the CAM in the Invoice Template. The CAM can change this certification without amending this Agreement.

G. The CEC No Longer Must Use a Specific Dispute Notification Form to Dispute Invoices

Existing Terms may require the CEC to use a Dispute Notification Form, Std. 209 Form, or other specific form when disputing invoices. These requirements no longer apply. Under These Terms, the CEC can now dispute an invoice in any manner it chooses as long as it is provided in writing to the Recipient.

6. Incurred Costs

Existing Terms may not allow recipients to be reimbursed for Incurred Costs. Accordingly, These Terms change that and allow the CEC to reimburse the Recipient for Incurred and Paid Costs that are (1) incurred during the Agreement Term; (2) invoiced within the required timeframes of this Agreement; (3) made in accordance with the Agreement's Budget; and (4) actual and allowable expenses under this Agreement.

The Recipient shall pay ALL Incurred Costs for which it has invoiced the CEC within 14 calendar days of receiving payment under this Agreement for the Incurred Costs. For example, if the Recipient invoices the CEC and then receives payment on September 15 for an Incurred Cost of \$10,000, the Recipient shall pay the entire \$10,000 by September 29. This requirement is needed to prevent Recipient from creating long lead times for Incurred Costs (e.g., invoicing and receiving payment from the CEC but not paying for the Incurred Costs for weeks or months).

The Recipient shall only invoice the CEC for Incurred Costs the Recipient will pay within 14 calendar days of receiving payment. For example, assume the Recipient has an Incurred Cost for a piece of equipment that costs \$300,000 and will pay in three installments of \$100,000 each over three months. The Recipient shall only invoice the CEC for \$100,000 each month. The Recipient shall not invoice for the entire \$300,000 and retain the balance over the three months.

For any Incurred Costs for which the Recipient received funds from the CEC and does not pay within 14 calendar days, the Recipient shall on the very next business day after the 14 calendar days submit repayment of the unpaid amount back to the CEC. Repaid funds will be placed back into the Agreement and will be available to reimburse allowable costs in accordance with this Agreement. When making a repayment under this provision, the Recipient shall specify "Repayment of Unspent Funds under Agreement [insert agreement number]." Recipient shall remit the repayment to:

California Energy Commission

Accounting Office

715 P Street, MS-2

Sacramento, CA 95814

This repayment requirement of the Recipient is in addition to any other rights the CEC can enforce relative to this Agreement. Recipient agrees and acknowledges that time is of the essence in paying Incurred Costs and submitting repayments, and the CEC can treat the Recipient's breach of either requirement as a material breach. Recipient can contact the CAM for any questions about the logistics of making repayments.

7. Subrecipients and Vendors

Existing Terms typically only distinguish between the Recipient and any lower tier of subcontractors. But not all subcontractors are the same. Some are entrusted with significant responsibility to meet the Agreement's objectives, and others are merely suppliers of goods and services.

These Terms allow the Recipient with CAM written approval to divide subcontractors into Subrecipients and Vendors. If this distinction is not made between Subrecipients and Vendors, all entities currently deemed subcontractors will be treated as Subrecipients.

A Subrecipient is defined as a person or entity that receives grant funds directly from the Recipient and is entrusted by the Recipient to make decisions about how to conduct some of the grant's activities. A Subrecipient's role involves discretion over grant activities and is not merely just selling goods or services.

Characteristics which support the classification of the entity as a subrecipient include when the entity:

- (1) Has its performance measured in relation to whether objectives of a CEC program were met;
- (2) Has responsibility for programmatic decision-making;
- (3) Is responsible for adherence to applicable CEC program requirements specified in the CEC award agreement;
- (4) In accordance with its agreement, uses the grant funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the recipient or subrecipient; or,
- (5) Provides match share funding contributions to the CEC-funded project.

A Sub-Subrecipient has the same meaning as a Subrecipient except that it receives grant funds from a Subrecipient. There can also be further levels below of Sub-Subrecipients.

A Vendor is defined as a person or entity that sells goods or services to the Recipient, Subrecipient, or any lower-tiered level of Sub-Subrecipient, in exchange for some of the grant funds, and does not make decisions about how to perform the Agreement's activities. The Vendor's role is ministerial and does not involve discretion over Agreement activities. A vendor is an entity selected through a competitive process or is otherwise providing a product or service at a fair and reasonable price. Characteristics

indicative of a procurement relationship between the Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient and a Vendor are when the Vendor:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Normally operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the CEC program; and
- (5) may not be subject to compliance with all of the requirements of the CEC program as a result of the agreement, though similar requirements may apply for other reasons.

A. Subrecipient, Sub-Subrecipient, and Incentive Recipient Flow-Down Terms

For Recipient's agreements with Subrecipients and incentive recipients, the Recipient shall follow any flow-down requirements in the Existing Terms for subcontractors and incentive recipients, except the Recipient does not need to include the following terms if they are not applicable to a given Subrecipient or incentive recipient:

1. The Publications- Legal Statements on Reports term does not have to be included if the Subrecipient or incentive recipient will not generate any Products.
2. The Travel and Per Diem term does not have to be included if the Subrecipient or incentive recipient will not be reimbursed for travel with grant funds.
3. The Equipment term does not have to be included if the Subrecipient or incentive recipient will not be reimbursed for equipment with grant funds.
4. The Receipt of Confidential Information and Personal Information term does not have to be included if the Subrecipient or incentive recipient will not receive Confidential or Personal Information as defined in Section 25.

B. Vendor Requirements

The flow-down requirements in the Existing Terms either come from the CEC or the law. Recipient does not have to include any CEC-created requirements in agreements with its Vendors unless it is necessary for the Recipient to meet its obligations to the CEC under the Agreement. But the Recipient is still required to make reasonable effort to make sure the Vendor complies with all applicable laws. For example, the Recipient still must make reasonable effort to ensure any Vendor complies with applicable Public Work Requirements, including the payment of prevailing wage, and also with the Nondiscrimination clause. These are requirements under the law.

The Recipient does not have to include in its Vendor agreements CEC-created terms, such as Equipment, Confidential Recipient Information, Travel and Per Diem, Retention of Records, and Audits, if the Recipient does not need them to fulfill its obligations to the CEC. An example where the Recipient might need to include a CEC-created term in a Vendor agreement is intellectual property. The Recipient must ensure the CEC has the intellectual property rights required under this Agreement. If a Vendor creates intellectual property that the Recipient provides to the CEC as part of the Agreement,

the Recipient shall ensure its Vendor agreement secures the appropriate rights. Another example is the receipt of confidential information of personal information. If a vendor will have access to confidential information of personal information provided by the Energy Commission or a third-party for the performance of this Agreement, the Recipient must ensure its agreement with the vendor includes the Energy Commission's special terms and conditions for the receipt of confidential information and personal information before the vendor has access to any such information.

C. Replacing Subrecipients or Vendors

Under These Terms, all changes to Subrecipients and Vendors require advance written approval by at least the Commission Agreement Manager. A higher level of approval may be required based upon Energy Commission policy. Required approvals are included in the "Changes to Grants - Level of Approval and Notification Chart" commonly referred to as the "Changes Chart."

These Terms clarify that Recipients may be reimbursed for actual expenses incurred by a new **Vendor** during the term of the Agreement, even if written approval comes after the entity has completed work on the project. However, if the new Vendor is not approved, then the Energy Commission will not reimburse for any expenses charged for the entity. Accordingly, Recipients are strongly encouraged to obtain advance written approval for new Vendors or risk not being reimbursed for their work.

However, any work completed by an entity that may replace an existing **Subrecipient** **WILL NOT BE REIMBURSED** for any work completed prior to advance written approval. If a Subrecipient expends funds prior to approval, they can only be claimed as Match Funds.

8. Match Fund Timing

Existing Terms typically require recipients to proportionally spend match funds concurrently or in advance of grant funds. But this timing does not always work, especially if the grant funds are used for expensive equipment early in the project.

These Terms allow a CAM, in writing and with Supervisor approval, to authorize a Recipient to spend grant funds in advance of Match Funds pursuant to [Match Fund Spending Plan](#). The Plan must estimate how Match Funds and grant funds will be spent over each quarter and briefly explain why it is not practical to spend Match Funds concurrent with grant funds. While These Terms allow additional flexibility, the Recipient agrees to spend the agreed match funds as soon as practicable during the Agreement in order to resume proportionality between grant funds and Match funds spent.

EXHIBIT F – Specified Incorporation by Reference of CEC ZESBI Terms and Conditions

The following sections of the CEC Terms are hereby incorporated by reference as though fully set forth in the Agreement and as though Incentive Recipient were in the position of CALSTART under such terms and conditions unless otherwise noted.

CEC – EXHIBIT C- Grant Agreement Terms and Conditions

Subject	Section A	Note
Travel and Per Diem	15	Incentive Recipient to comply with these provisions to the same extent as "Recipient" thereunder
Certifications and Compliance	22.a-c.	Incentive Recipient to comply with these provisions to the same extent as "Recipient" thereunder
Enforcement of Operations Requirements	32	This section is fully incorporated herein with Incentive Recipient to comply with the uptime requirements as "incentive recipient" thereunder.

Exhibit H: Drug-Free Workplace

CERTIFICATION OF DRUG-FREE WORKPLACE ACT REQUIREMENTS

The Contractor certifies that it provides a drug-free workplace, in accordance with the federal Drug-Free Workplace Act of 1988 (41 USC 701 et seq.), 28 CFR Part 67; and the California Drug-Free Workplace Act of 1990, CA Gov't Code §§ 8350- 8357:

- a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- b) Establishing a drug-free awareness program to inform employees about—
 - 1) The dangers of drug abuse in the workplace;
 - 2) The grantee's policy of maintaining a drug-free workplace;
 - 3) Any available drug counseling, rehabilitation and employee assistance programs; and
 - 4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
 - 1) Abide by the terms of the statement; and
 - 2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after each conviction;
- e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;
- f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—
 - 1) Taking appropriate personnel action against such an employee, up to and including termination; or
 - 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Redwood City Elementary School District

Agency Name

Martin Cervantes

Name and Title of Authorized Representative

Signature

Date