

Exhibit A: Terms and Conditions



1.0 DEFINITIONS – ALL PATHWAYS

Advanced Metering Infrastructure (AMI): System of data measurement technologies and networks able to report and communicate detailed, time-based energy consumption information between utility companies and customers.

Assessment means diagnostic testing and Combustion Appliance Safety testing (test-in and/or test-out) events and document submission, but specifically excludes the physical installation of products, equipment, or material and performance of other work by Contractor and/or subcontractors.

Building Performance Institute (BPI): A nonprofit organization that develops technical standards for Energy Efficiency Measure (EEM) Retrofit work in North America.

Combustion Appliance Safety Policy: The PG&E safety policy regarding the safe installation, maintenance, and removal of Combustion Appliances and the detection and repair of gas leaks as more fully set forth in Exhibit B.

Comfortable Home Rebates Program: A Pay-for-Performance Program (Program) operated by Franklin Energy.

Confidential Information: Customer energy usage, customer name, and customer address, together with all data or information obtained as a result of participating and/or rendering any services under a Program or verbally identified as “confidential” or “proprietary” by Franklin Energy or PG&E. Notwithstanding any independent reference to Customer Information, Customer Information shall be included with the definition of Confidential Information. Confidential Information shall not include information that Contractor can prove: (i) was in the public domain at the time of the disclosure; (ii) is subsequently made available to the general public without restriction and without any breach of the Agreement by Contractor; or (iii) was lawfully received by Contractor from a third party who was not under any written confidentiality or non-disclosure obligations.

Customer: Any current or former PG&E gas and/or electric utility Customer and any individual that is eligible to be a gas or electric utility customer of PG&E at any time during the Program term.

Customer Information: Any and all information Contractor collects or obtains from PG&E or Franklin Energy with regard to Customers, including but not limited to names, addresses, telephone numbers, account numbers, utility bill data, energy usage, demographics, financial data, or any other personal information pertaining to any individuals residing in the Customer’s residence and such Customer information shall be deemed Confidential Information.

Customer Participation Period: The two years following the Initial Intervention End Date during which a Customer’s energy usage will be compared to his/her baseline to determine that customer’s energy savings.

Demand Response Program: A program that provides an opportunity for consumers to play a significant role in the operation of the electric grid by reducing or shifting their electricity usage during peak periods in response to time-based rates or other forms of financial incentives.

Early Retirement: Replacement of equipment that is operational and has been shown to have a Remaining Useful Life (RUL) of greater than one year.

EPA means the U.S. Environmental Protection Agency, an agency of the federal government.

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Energy Efficiency Measures (or EEM): All energy efficiency measures installed or serviced through our Improvement and Maintenance pathways.

ENERGY STAR™: A joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy helping us all save money and protect the environment through energy efficient products and practices. ENERGY STAR™ is a registered trademark and use of the ENERGY STAR™ logo must meet strict guidelines.

Energy Training Center: PG&E's Energy Training Center located in Stockton, California.

Exhibits: Additional Program documentation attached to the Contractor Participation Agreement.

Home: Any single-family detached residence or 2-4 unit residential structure eligible to have an Energy Efficient Measure Installed or air conditioner unit serviced as part of the Program.

Home Energy Rating System (HERS) Program: California Energy Commission (as required by Public Resources Code Section 25942) established this statewide home energy rating program for residential dwellings. California HERS regulations also established the requirements for Field Verification and Diagnostic Testing services used to show compliance with the Title 24, Part 6; Building Energy Efficiency Standards, and established the basic framework for HERS Independent Building Analyst training, certification, and quality assurance. A recent update to HERS established a systematic process for the delivery of California Whole-House Home Energy Ratings to provide California homeowners and prospective home buyers with information about the energy efficiency of the homes they live in or are considering for purchase. The Ratings also provide an evaluation of the cost-effectiveness of options that can improve the energy efficiency in these homes.

HVAC Services: The heating, ventilation, and cooling services performed by Trade Ally on Qualified Units pursuant to the terms of the Trade Ally Participation Agreement.

Incentive (Incentive Payment or Rebate): Amounts specified in the Improvement and Maintenance Pathways of the Comfortable Home Rebates Program, representing the incentive amounts the Program pays to the Customer or Trade Ally for performance of eligible Improvement installations or HVAC Maintenance.

Independent Building Analyst (or IBA): A Building Performance Institute (BPI) certified professional who works with contractors to assure work is performed in a safe manner, including full adherence to the Program's *Whole House Combustion Appliance Safety Test Procedure* (Exhibit B).

Intervention Start Date: The date that the Contractor first begins providing Energy Efficiency Measures to a Customer. The Customer's energy usage during the previous 12 months serve as the baseline, or pre-intervention period, against which future energy savings will be measured.

Intervention End Date: The date that marks the end of the project work Period and all Program measures are completely installed. The following 24 months will serve as the participation, or payment period, where the customer's energy usage will be compared to the baseline period to determine energy savings

Installed Measures: Energy Efficiency Measures installed at a Customer's Home through the Program.

Installer (Field) Verifier: A third party employed or engaged by Franklin Energy that: (a) reviews the work performed by an Installer in connection with a Program project; and (b) reviews and verifies that the Installer properly installed the Energy Efficiency Measures.

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Intellectual Property Rights: All trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trade marks), services marks, trade names, internet domain names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in inventions (whether patentable or not) including, but not limited to, any and all renewals or extensions thereof, and all other proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world, including, but not limited to, any and all renewals or extensions thereof.

Job: The Energy Efficiency Measure(s) that will be installed or serviced in a Participating Customer's Home by a Trade Ally, which shall be more fully described in a written agreement between the Participating Customer and Participating Contractor.

Maintenance Pathway: A path within the Comfortable Home Rebates Program that advances energy efficiency and resource conservation through regular maintenance of residential Heating, Ventilation, & Air Conditioning (HVAC) systems using ACCA 4 Standard practices.

Maintenance Technician Checklist: The document with a list of prospective technicians, their years of experience, and relevant training; also known as "Exhibit C" to the Contractor Participation Agreement.

Minimum Performance Level: For the Maintenance Pathway, the Qualified Unit meets the baseline level of performance in accordance with ACCA Standard 4, other Program requirements as described in the Maintenance Trade Ally Handbook, and the documentation provided by the Qualified Unit's manufacturer. For the Improvement Pathway, the EEM installed meets the standards detailed in the Installation Specifications.

Participating Trade Ally: The individual or entity that installs Maintenance or Improvement measures in the in the Customer's home and submits an Application on behalf of the Customer in the Improvement Pathway.

Participating Customer(s) (or Customer): Owners of a Home or the Customer who obtains the Owner's permission to install measures to participate in the Program by signing an EEM Improvement contract or Maintenance Rebate Application with the Participating Contractor.

PG&E: Pacific Gas and Electric Company.

Qualified Unit: Central air conditioning or heat pump unit installed at the Home that will be receiving Maintenance.

Improvement Pathway: A path within the Program that requires Whole House assessments consistent with Home Energy Rating System guidelines and the Building Performance Institute. The Improvement Pathway requires high levels of Trade Ally training and qualifications.

Replacement on Burnout: Replacement of equipment that is no longer operational.

Service Agreement Identification Number (SAID): Number used to document a specific service received by a Customer. The SAID serves as an identifier for PG&E's record of services completed, as well as Customer billing and energy usage data. Aggregator will be required to provide PG&E the SAIDs for all Customers receiving services through the Comfortable Home Rebates Program.

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Smart Meter: A device that measures the amount of electric energy and natural gas delivered to a home. Today, smart meters can record detailed energy consumption data every hour or less. This helps customers understand how and when their energy consumption increases or decreases.

Trade Ally: Any Participating Contractor or Independent Building Analyst working in the Improvement or Maintenance Pathways.

Work: Goods and services supplied by Participating Contractors, Independent Building Analysts, and/or subcontractors to Participating Customers.

2.0 TRADE ALLY COMMITMENT – ALL PATHWAYS

2.1 Trade Allies working in both Program Pathways shall:

- a. Perform and report a minimum of one (1) completed Job in each 12-month cycle of the Program period in order to be considered current participants;
- b. Avoid targeting customers who are expecting a reduction in occupancy in their homes, e.g. families with students headed off to college, or other factors expected to reduce energy savings for reasons unrelated to Program participation;
- c. Report accurate and complete Job data in a timely manner, as described in the Contractor Handbook;
- d. Abide by the quality assurance procedures including reporting and sampling protocols, as specified in the Program's *Participant Handbook* (Exhibit C);
- e. Maintain an effective Injury and Illness Prevention Program;
- f. Train internal staff to field Customer inquiries about the Comfortable Home Rebates Program;
- g. Provide excellent Customer service to any Customer requesting installation of Energy Efficiency Measure(s);
- h. Require all employees to present their employer identification upon the start of work each day in a Home;
- i. Represent and warrant that Contractor's leadership (President, CEO, etc.) have no prior conviction of crimes identified below in Section 6.0, as well as no lawsuits or liens filed against the Contractor or its leadership, within the previous seven (7) years;
- j. Abide by the Program standards in any co-marketing collateral that Contractor may produce, consistent with the *Participant Handbook* (Exhibit C);
- k. Immediately report to Franklin Energy, or its representatives, all Customer conflicts that are not resolved to Customer's full satisfaction;
- l. At no time lead the Customer to believe that Contractor or their staff are employees of Franklin Energy or PG&E; and

2.2 Trade Allies working in the Improvement Pathway shall:

- a. Assure that all Work in connection with an Assessment is performed in a safe and professional manner, including, but not limited to, full adherence to the Program's *Whole House Combustion Appliance Safety Test Procedure* (Exhibit B);
- b. Ensure that all CAS and diagnostic testing is performed by BPI-certified professional; and
- c. Obtain all legally required building permits and comply with Contractor licensing and certification requirements, applicable building codes, and all applicable federal, state, and local laws, ordinances, rules, and ¹regulations.

¹ Certification PUC 399.4 and Workforce Standards in CPUC D. _____

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2.2 Trade Allies working in the Maintenance Pathway shall:

- a. Provide technician(s) with computers or mobile devices with internet connectivity capabilities that will be able to access and execute the Program's web-based software application;
- b. Supply technician(s) with a basic toolkit that contains tools commonly used in the industry; and
- c. Provide access to a Qualified Unit to supplement Technician training, if necessary.

3.0 SUBCONTRACTORS— ALL PATHWAYS

If Trade Ally uses any subcontractors to perform work or services under the Program, then it shall require subcontractors to enter into a subcontract that incorporates this Agreement and requires the subcontractor to comply with all obligations and requirements imposed on Contractor under this Agreement, including but not limited to those with respect to safety, data security and PG&E IT Security requirements, confidentiality, insurance, and indemnification. Trade Ally agrees that Trade Ally is solely responsible for any acts or omissions of its subcontractors and any breach of the requirements of this Agreement by Trade Ally's subcontractors constitutes a breach by Trade Ally. All subcontractors shall be properly licensed for their trade. Trade Ally shall provide PG&E and Franklin Energy the name and license number of any subcontractors it engages to perform Work and discontinue work with any subcontractor as to whom PG&E or Franklin Energy pose reasonable objection.

4.0 INSURANCE – ALL PATHWAYS

Throughout the term of this Contractor Participation Agreement Trade Ally will procure and maintain adequate levels of insurance, specifically:

4.1 Commercial General Liability

4.1.1 Coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form, with no coverage deletions.

4.1.2 The limit shall not be less than **\$1,000,000 each occurrence / \$2,000,000 in aggregate for bodily injury, property damage and personal injury.**

4.1.3 Coverage shall: a) By "Additional Insured" endorsement add as insureds Franklin Energy Services, LLC, PG&E, and their respective affiliates, subsidiaries, parent companies, directors, officers, agents and employees with respect to liability arising out of or connected with the Work performed by or for the Contractor (ISO Form CG2010 or equivalent is preferred). In the event the Commercial General Liability policy includes a "blanket endorsement by contract," **the following language added to the certificate of insurance will satisfy these additional insured requirements: "Franklin Energy Services, LLC, PG&E, their respective affiliates, subsidiaries, parent companies, directors, officers, agents and employees with respect to liability arising out of the work performed by or for the Contractor/Independent Building Analyst are additional insureds under a blanket endorsement."**; b) be endorsed to specify that the Trade Ally's insurance is primary and that any insurance or self-insurance maintained by Franklin Energy Services, LLC or PG&E shall not contribute with it.

4.2 Business Automobile Liability

Coverage shall be at least as broad as the ISO Business Auto Coverage form covering Automobile Liability, code 1 "any auto." The limit shall not be less than **\$1,000,000 each accident for bodily injury and property damage.**

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4.3 Workers Compensation and Employers' Liability

Workers' Compensation insurance or self-insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, where Trade Ally performs the services in connection with the Job. Employers' Liability insurance shall not be less than \$1,000,000 for injury or death each accident. California Statutory Workers' Compensation insurance is not required for Trade Allies or Subcontractors that have no employees and provide Franklin Energy a waiver for workers' compensation liability Workers' Compensation Declaration.

4.4 Insurance Certificates

Trade Ally will provide to Franklin Energy certificate(s) of insurance evidencing the coverage required hereunder within thirty (30) days after Trade Ally's execution of this Agreement, and, if the Agreement extends beyond twelve (12) months, will provide updated certificate(s) no less frequently than annually on the anniversary of the Effective Date. Trade Ally shall provide Franklin Energy with no less than thirty (30) days written notice of any cancellation or changes in any above-mentioned insurance.

4.5 Professional Liability/Errors and Omissions – Optional

Professional Liability insurance is not required. Trade Ally is encouraged to consider such coverage in consultation with Trade Ally's insurance broker.

5.0 DISCLAIMER OF LIABILITY – ALL PATHWAYS

Trade Ally is responsible for performing the evaluation and technical feasibility of any design, system, appliance, or any measure installed or maintained as to its operational capability and reliability for this Program. Neither Franklin Energy nor PG&E make any representation or warranty, and they assume no liability with respect to the quality, safety, performance, or other aspect of any design, system, appliance, or any measure recommended or installed pursuant to this Agreement. Franklin Energy and PG&E expressly disclaim any such representation, warranty or liability. Trade Ally's compensation for the Work shall be determined by Trade Ally and Customer, it being understood that Trade Ally shall receive no compensation from Franklin Energy or PG&E except as expressly provided under the Contractor Participation Agreement.

6.0 CRIMINAL RECORD OF EMPLOYEES – ALL PATHWAYS

Trade Ally represents and warrants that:

(i) it has a security background check policy which includes, at a minimum, a search using federal, state and municipal databases (e.g., Global Watch Search, National Federal Crime Search, National Crime Database, etc.) to determine if an individual has been convicted of a felony or misdemeanor for any of the following crimes: arson, assault, battery, burglary, driving under the influence, domestic violence, larceny, manslaughter, murder, theft (including but not limited to identity theft), sexual crimes, felony drug conviction, and any crimes against children (the "Background Check"),

(ii) each employee of Trade Ally and any subcontractor who will perform any Work on the property of a PG&E Customer has successfully passed the Background Check and has not been convicted of any of the felonies or misdemeanors listed in the Background Check within the past seven (7) years OR has been working for the preceding twelve (12) consecutive months in a PG&E Energy Efficiency Program without incident,

(iii) said Trade Ally and subcontractor employees shall comply with the Background Check requirement throughout the Trade Ally's participation during the Term of the Programs and shall submit a Background Investigation Policy Compliance Certificate (Exhibit B) at the start of each calendar year,

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(iv) Notwithstanding anything to the contrary herein, if an individual has been convicted for driving under the influence or a similar offense (“DUI Conviction”) during the past three (3) years, the individual may be eligible to perform work on the property of a PG&E customer provided the individual has no more than one (1) DUI Conviction within the last three (3) years,

(v) it will not assign or permit any individual to perform work on the property of a PG&E customer that has not undergone and passed Trade Ally’s security background check,

(vi) If requested by PG&E or Franklin Energy, any person to be assigned by Trade Ally or a subcontractor to perform Work on Customer property will, prior to commencing such work, execute the necessary consents and releases to allow a third party agency acting on its own behalf to, without liability to Trade Ally’s or subcontractor’s personnel, collect and check the criminal background and qualifications of such personnel as permitted by applicable law,

(vii) Warrant that Trade Ally’s leadership (Owner, CEO, President, etc.) have no prior conviction of crimes identified in Section 6.0(i) above, as well as any lawsuits or liens filed against the Trade Ally or its leadership within the previous seven (7) years.

6.1 Additional Policies and Records

- a. Drug and Alcohol Policy. Any person that performs Work on the property of a PG&E Customer is and shall be drug and alcohol-free while performing such Work.
- b. Social Security Number Trace. Trade Ally has verified the identity and work authority of all persons who will perform Work and confirmed their compliance with the U.S. immigration laws.
- c. Trade Ally will provide the following information on all technicians who will be performing Work: Name, years of experience, and credentials held.

7.0 SAFETY PRECAUTIONS AND PROTECTION OF PROPERTY – ALL PATHWAYS

Trade Ally shall be solely responsible for maintaining a safe workplace and initiating, maintaining and supervising all safety precautions and programs in connection with Work, including those required by state, federal or local laws, regulations and ordinances. Trade Ally shall maintain an effective Injury and Illness Prevention Program and provide a written description to Franklin Energy for review. Franklin Energy may at any time designate safety precautions in addition to those in use or proposed by Trade Ally. Franklin Energy reserves the right to inspect and halt Work to ensure compliance with reasonable and safe work practices and with applicable federal, state, and local laws, rules and regulations. Neither the requirement that Trade Ally follow said practices and applicable laws, rules and regulations, and any special instructions given by Franklin Energy, nor the adherence thereto by Trade Ally, shall relieve Trade of the sole responsibility to maintain safe and efficient working conditions.

8.0 COMBUSTION SAFETY FAILURE – IMPROVEMENT PATHWAY

If, during the course of performing Work, Trade Ally reasonably believes that the presence of natural gas or other hazardous materials (collectively, the “Hazardous Condition”) has been encountered or detected at a Customer’s Home, the Trade Ally will promptly stop Work on the Job and immediately notify Franklin Energy and PG&E of such Hazardous Condition. PG&E or a representative designated by PG&E will investigate for the presence of the Hazardous Condition and inform Franklin Energy and Trade Ally of the results of this evaluation. Trade Ally will not resume any Work on the Job until the Hazardous Condition has been removed, disposed of, abated or remediated to PG&E’s reasonable satisfaction. In addition to the foregoing obligations, Trade Ally shall at all times strictly comply with PG&E’s *Whole House Combustion Appliance Safety Test Procedure* policy, attached hereto as EXHIBIT B.

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9.0 INDEMNIFICATION – ALL PATHWAYS

9.1 Indemnitees Defined. PG&E, Franklin Energy, Franklin Energy’s Program subcontractors, their affiliates, subsidiaries, parent companies, and each of the forgoing entities’ respective officers, managers, directors, agents, and employees are collectively referred to as “Indemnitees”.

9.2 Trade Ally Indemnity Obligations. To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782 et seq.), Trade Ally shall indemnify, hold harmless and defend each of the Indemnitees from and against all claims, demands, losses, damages, costs (including attorneys’ fees and expert witness fees), expenses, and liability of any kind (including settlements), which arise from or are in any way connected with performance of the Work by Trade Ally and any subcontractors, including but not limited to:

- (i) injury to or death of any persons;
- (ii) injury to property belonging to anyone;
- (iii) violation of local, state, or federal common law, statute, ordinance, code, or regulation, including but not limited to environmental laws or regulations;
- (iv) strict liability imposed by any law or regulation;
- (v) claims of any kind asserted by Customer relating to the Work;
- (vi) Trade Ally’s breach of this Agreement;
- (vii) payments to Trade Ally’s employees and/or subcontractor(s) arising from or in connection with this Agreement (including but not limited to any demands for payment, invoices, or liens) and/or Trade Ally’s delay or failure to pay any of its employees or subcontractor(s) the compensation, monies, wages or other payment due or allegedly due such subcontractor(s) with regard to any services performed hereunder; and/or
- (viii) Trade Ally’s breach of any representation made in entering or performing this Agreement or the Work.

As to each Indemnitee, Trade Ally’s foregoing indemnity, defense and hold harmless obligations shall not apply to the proportional extent that the same are caused by the active negligence or willful misconduct of such Indemnitee. Upon Franklin Energy’s request, Trade Ally shall defend, with counsel reasonable acceptable to Franklin Energy, any action, claim, or suit asserting a claim which might be covered by this indemnity.

10.0 CONFIDENTIALITY – ALL PATHWAYS

10.1 Duty of Confidentiality. Trade Ally shall hold all Confidential Information in strict confidence and such information shall only be used for purposes under the Contractor Participation Agreement. Without PG&E’s and Franklin Energy’s prior written approval, Trade Ally shall not use, disclose, reproduce, distribute, or otherwise misappropriate any Confidential Information. Nor shall Trade Ally take any action that may cause or fail to take any action necessary to prevent causing, any Confidential Information to lose its character as Confidential Information. This Duty of Confidentiality shall survive the term of the Contractor Participation Agreement

10.2 Return of Materials. Upon the termination or conclusion of the Contractor Participation Agreement for any reason, or upon earlier request by PG&E or Franklin Energy, Trade Ally shall promptly erase and destroy or otherwise return to Franklin Energy (as requested by Franklin Energy) all Confidential Information and other documents or data that contains Confidential Information.

10.3 Customer Information. Trade Ally acknowledges and agrees that all Customer Information shall be deemed the Confidential Information of PG&E. Trade Ally’s use of such information shall be subject to

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PG&E's Notice of Accessing, Collecting, Storing, Using and Disclosing Energy Usage Information, as well as Franklin Energy's Privacy Policy. In the event of a material conflict between these two policies, PG&E's policy shall control.

10.4 Data Security. Trade Ally will establish and maintain diligent safeguards and security practices to protect against the destruction, loss, or disclosure of any Confidential Information in its custody or possession. If Trade Ally discovers a breach of security, it shall immediately notify Franklin Energy and PG&E and use its best efforts to mitigate the breach and prevent any such disclosure or loss of Confidential Information.

11.0 RETENTION OF RECORDS – ALL PATHWAYS

Trade Ally agrees to retain all records and results of the Jobs and work performed under the Contractor Participation Agreement for a period of not less than three (3) years from the completion of any work performed for the Program or expiration date of the Contractor Participation Agreement. At Franklin Energy's request Trade Ally will deliver a copy of any or all original field notes, investigative notes, tests, photographs, records, calculations, summaries, reports, and records produced and collected in the course of the Work performed on all of the Jobs.

12.0 INTELLECTUAL PROPERTY – ALL PATHWAYS

Nothing in this Agreement or the Parties' performance of it is intended or shall be deemed to convey any Intellectual Property Rights to Trade Ally. All Intellectual Property Rights relating to the Program are expressly reserved to Franklin Energy, PG&E, and their respective licensors.

13.0 NO GUARANTEE OF WORK – ALL PATHWAYS

This is not an exclusive contract between Franklin Energy and Trade Ally. This Agreement does not guarantee Trade Ally any minimum number of Jobs or volume of Work.

14.0 FURTHER TRADE ALLY REPRESENTATIONS – ALL PATHWAYS

14.1 Trade Ally has, holds, and possesses all applicable licenses, certifications, permits and other governmental authorizations as required and necessary to conduct its business and to perform the Work.

14.2 Trade Ally has not received notice that any governmental authority intends to cancel, terminate or not renew any such licenses, permits or other governmental authorizations.

14.3 If Trade Ally is an entity (i.e., corporation or partnership), Trade Ally is duly organized, validly existing and in good standing under the laws of its domestic state.

14.4 This Agreement along with all documents which comprise this Agreement constitute the valid and binding legal obligation of Trade Ally enforceable in accordance with its terms.

15.0 WAIVER – ALL PATHWAYS

No provision of this Agreement may be waived unless agreed to by Franklin Energy in writing. Franklin Energy's failure to insist upon strict performance of any provision of the Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such a breach, shall not constitute a waiver of any right under this Agreement.

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16.0 DISPUTE RESOLUTION; ARBITRATION – ALL PATHWAYS

16.1 Meet and Confer. Before commencing any dispute resolution procedure, Trade Ally and Franklin Energy shall make a good faith effort to resolve the dispute by negotiation between representatives with decision-making power, who, to the extent possible, shall not have had substantive involvement in the matters of the dispute.

16.2 Arbitration. Except in situations where the Prime Contract provides a different dispute resolution process, any disputes remaining after the Parties' meet and confer efforts that arise out of or relate to this Agreement shall be resolved by binding arbitration administered by the initiating Party's selection of the American Arbitration Association or JAMS, under its then current rules. The arbitration shall be conducted in Oakland, California. The Parties hereby irrevocably waive any right to have such disputes tried before a jury. If either Party refuses or fails to participate in arbitration after receiving notice, then the arbitrator shall make an award based on the evidence presented to him or her. The arbitrator shall award the prevailing Party its fees and costs. Any arbitration award shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. In no event may arbitration be demanded on any claim after the applicable statute of limitation for commencing litigation has expired.

17.0 GOVERNING LAW – ALL PATHWAYS

This Agreement shall be deemed to have been executed in the City of Oakland, Alameda County, California and governed by the laws of the State of California, excluding its conflict of laws rules. The exclusive venue for any litigation arising from or relating to this Agreement shall be in Alameda County, California.

18.0 INDEPENDENT PROGRAM PARTICIPANT – ALL PATHWAYS

Trade Ally is a company, individual, and/or contractor independent of Franklin Energy and warrants that it shall, at its sole cost and expense, comply with all rules, ordinances, regulations, orders or laws of any kind of all governing bodies having jurisdiction over the Work, including without limitation laws pertaining to occupational health and safety and the handling, storage and disposal of hazardous materials and wastes. Trade Ally shall pay all related local, state and federal taxes of any kind, as well as all social security, unemployment, fringe benefits or other remunerations paid to Trade Ally's employees or which otherwise result from the performance of their labor as required by law or any collective bargaining agreement. Nothing herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the Parties and neither Party may create any obligations or responsibilities on behalf of the other Party.

19.0 SEVERABILITY – All Pathways

If any provision of this Agreement or its application to any person or circumstance is held invalid by any court of lawful jurisdiction, such invalidity does not affect other provisions of the Agreement which can be given effect without the invalid provision.