

**EXHIBIT C**  
**ELECTRIC PROGRAM INVESTMENT CHARGE (EPIC) STANDARD**  
**GRANT TERMS AND CONDITIONS**

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**ATTACHMENT 1: CONFIDENTIAL PRODUCTS AND PROJECT-RELEVANT PRE-EXISTING AND INDEPENDENTLY FUNDED INTELLECTUAL PROPERTY**

**ATTACHMENT 2: SAMPLE LETTER OF AGREEMENT**

# EXHIBIT C

## TERMS AND CONDITIONS

### 1. **Introduction**

This grant agreement (Agreement) between the California Energy Commission (Energy Commission, or Commission) and the Recipient is funded by the Electric Program Investment Charge (EPIC), an electricity ratepayer surcharge authorized by the California Public Utilities Commission (CPUC).

This Agreement includes: (1) the Agreement signature page (**form CEC-146**); (2) the scope of work (**Exhibit A**); (3) the budget (**Exhibit B**); (4) these terms and conditions (**Exhibit C**); (5) any special terms and conditions that address the unique circumstances of the funded project (**Exhibit D**); (6) a contacts list (**Exhibit E**); (7) all attachments; and (8) all documents incorporated by reference.

All work and expenditure of funds (Commission-reimbursed and/or match share) must occur within the Agreement term specified on the CEC-146 form.

### 2. **Documents Incorporated by Reference**

The documents 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 applicable)**

- a. The funding solicitation for the project supported by this Agreement
- b. The Recipient's proposal submitted in response to the solicitation

#### **CPUC Decision**

- c. Decision 13-11-025 (Decision Addressing Applications of the California Energy Commission, Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company for Approval of their Triennial Investment Plans for the Electric Program Investment Charge Program for the Years 2012 through 2014) <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M081/K773/81773445.PDF>

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

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

#### **Federal Acquisition Regulations (applicable to commercial organizations)**

- e. 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**

- f. 2 California Code of Regulations, Section 8101 et seq.: Contractor Nondiscrimination and Compliance

## **General Laws**

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

### **3. Standard of Performance**

In performing work under the Agreement, the Recipient, its subcontractors, and their employees are responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures for the type of work performed.

### **4. Due Diligence**

The Recipient must take timely actions that, taken collectively, move this project to completion. The Commission Agreement Manager will periodically evaluate the project schedule for completion of Scope of Work tasks. If the Commission Agreement Manager determines that: (1) the Recipient is not diligently completing the tasks in the Scope of Work; or (2) the time remaining in this Agreement is insufficient to complete all project tasks by the Agreement end date, the Commission Agreement Manager may recommend that this Agreement be terminated, and the Commission may terminate this Agreement without prejudice to any of its other remedies.

### **5. Products**

- a. **“Products”** are any tangible item specified for delivery to the Energy Commission in the Scope of Work, such as reports and summaries.
- The Recipient will submit all products identified in the Scope of Work to the Commission Agreement Manager, in the manner and form specified in the Scope of Work.
  - The Recipient will also submit all products prepared during the invoicing period to the Accounting Office along with the invoice, as specified in subsection (c) of Section 8 (Payment of Funds).

If the Commission Agreement Manager determines that a product is substandard given its description and intended use as described in the Scope of Work, the Commission Agreement Manager may refuse to authorize payment for the product and any subsequent products that rely on or are based upon the product under this Agreement.

- b. Confidential Products

Please see Section 19 (Confidentiality) for instructions regarding confidential products.

- c. Rights in Products

The Energy Commission owns all products identified in the Scope of Work, with the exception of products that fall within the definition of “intellectual property.” The Recipient owns all intellectual property developed under this Agreement (please see the “Intellectual Property” section).

The Recipient has a non-exclusive, non-transferable, irrevocable, worldwide, perpetual license to use, publish, translate, modify, and reproduce products that do not fall within the definition of “intellectual property.”

d. Failure to Submit Products

Failure to submit a product required in the Scope of Work will be considered material noncompliance with the Agreement terms, unless the Commission Agreement Manager waives the failure in writing. Noncompliance may result in actions such as the withholding of future payments or awards, or the suspension or termination of the Agreement.

e. Final Report and Payment

The Recipient may only submit a request for the final payment (including any retention) after the final report is completed and the Commission Agreement Manager has verified satisfactory completion of work.

f. Legal Statements on Products

- 1) All documents that result from work funded by this Agreement and are released to the public must include the following statement to ensure no Commission endorsement of documents:

**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. Neither the Commission, the State of California, nor the Commission's employees, contractors, or subcontractors makes any warranty, express or implied, or assumes any 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. This document has not been approved or disapproved by the Commission, nor has the Commission passed upon the accuracy of the information in this document.**

- 2) The Recipient will apply copyright notices to all documents prepared for this Agreement that are released to the public (including reports, articles submitted for publication, and all reprints) using the following form or any other form that may be reasonably specified by the Energy Commission.

**"©[Year of first publication of product] [the Copyright Holder's name]. All Rights Reserved."**

**6. Amendments**

a. Procedure for Requesting Changes

The Recipient must submit a written request to the Commission Agreement Manager 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; and
- The revised section(s) of the Agreement, with changes made in underline/strikethrough format.

b. Approval of Changes

Certain changes to the Agreement (e.g., changes that increase the Agreement amount or substitute one Recipient for another) must be approved at a Commission business meeting or by the Executive Director (or his/her designee). Generally, changes that are not significant to the Agreement may be documented in a Letter of Agreement signed by both parties (electronic signatures are acceptable). See Attachment 2 for a sample Letter of Agreement.

The Commission Agreement Manager 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 Commission Agreement Manager, in addition to the appropriate level of Commission approval as described in subsection (b).

1) Replacement of Key Personnel, Subcontractors, and Vendors

The Commission Agreement Manager 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 Commission Agreement Manager 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 to an Existing Job Classification

Recipient or subcontractor personnel that are identified in Exhibit B may be assigned to a higher-paying job classification identified in Exhibit B. If the Recipient performs any work under the new rate prior to the effective date of the amendment documenting the change, the Recipient will bear the expense of the difference between the new and old rates.

4) Addition of Subcontractors

In order to add subcontractors to Exhibit B, the Commission Agreement Manager must submit a "Subcontractor Addition" form to the Commission Agreement Officer. The form identifies the new subcontractor, bidding method used (competitive or non-competitive), and the tasks the new subcontractor will perform.

5) Addition of Job Classifications and Changes in Hours

6) Increased Direct Operating Expenses and Rates that Exceed the Expenses and Rates Identified in Exhibit B

## 7. **Contracting and Procurement Procedures**

This section provides general requirements for agreements entered into between the Recipient and subcontractors for the performance of this Agreement.

### a. Contractor's Obligations to Subcontractors

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

2) Nothing contained in this Agreement or otherwise creates any contractual relation between the Commission and any subcontractors, and no subcontract may relieve the Recipient of its responsibilities under this Agreement. The Recipient agrees to be as fully responsible to the Commission for the acts and omissions of its subcontractors or persons directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Recipient.

The Recipient's obligation to pay its subcontractors is an independent obligation from the Commission's obligation to make payments to the Recipient. As a result, the Commission has no obligation to pay or enforce the payment of any funds to any subcontractor.

3) The Recipient is responsible for establishing and maintaining contractual agreements with and reimbursing each subcontractor for work performed in accordance with the terms of this Agreement.

### b. Flow-Down Provisions

Subcontracts funded in whole or in part by this Agreement must include language conforming to the provisions below, unless the subcontracts are entered into by the University of California (UC) or the U.S. Department of Energy (DOE) national laboratories. UC may use the terms and conditions negotiated by the Energy Commission with UC for its subcontracts. DOE national laboratories may use the terms and conditions negotiated with DOE (please contact the Commission Grants Officer for these terms).

- Standard of Performance (Section 3)
- Legal Statements on Products (included in Section 5, "Products")
- Travel and Per Diem (Section 9)
- Prevailing Wage (Section 10)
- Recordkeeping, Cost Accounting, and Auditing (Section 11)
- Equipment (Section 14)
- Disputes (Section 15)
- Indemnification (Section 18)
- Confidentiality (Section 19)
- Pre-Existing and Independently Funded Intellectual Property (Section 20)
- Intellectual Property (Section 21)
- Royalty Payments to the Commission (Section 22)
- Access to Sites and Records (included in Section 23, "General Provisions")
- Nondiscrimination (included in Section 24, "Certifications and Compliance")

- Survival of the following sections:
  - Equipment (Section 14)
  - Recordkeeping, Cost Accounting, and Auditing (Section 11)
  - Pre-Existing and Independently Funded Intellectual Property (Section 20)
  - Intellectual Property (Section 21)
  - Royalty Payments to the Commission (Section 22)
  - Access to Sites and Records (included in Section 23, “General Provisions”)

Subcontracts funded in whole or in part by this Agreement must also include the following:

- A clear and accurate description of the material, products, or services to be procured.
- A detailed budget and timeline.
- Provisions that allow for administrative, contractual, or legal remedies in instances where subcontractors breach contract terms, in addition to sanctions and penalties as may be appropriate.
- Provisions for termination by the Recipient, including termination procedures and the basis for settlement.
- A statement that further assignments will not be made to any third or subsequent tier subcontractor without additional advance written consent of the Commission.

c. Audits

All subcontracts entered into for the performance of this Agreement are subject to examination and audit by the Energy Commission and/or Bureau of State Audits for a period of three (3) years after payment of the Recipient’s final invoice under this Agreement. The Energy Commission may audit subcontracts that are relevant to the Recipient’s royalty payment obligations (see Section 22) for a period of ten (10) years after the Agreement’s end date.

d. Copies of Subcontracts

The Recipient must provide a copy of its subcontracts upon request by the Energy Commission.

e. Conflicting Subcontract Terms

Prior to the execution of this Agreement, the Recipient will notify the Commission Agreement Manager of any known or reasonably foreseeable conflicts between this Agreement and its agreements with any subcontractors (e.g., conflicting intellectual property or payment terms). If the Recipient discovers any such conflicts after the execution of this Agreement, it will notify the Commission Agreement Manger of the conflict within fifteen (15) days of discovery. The Energy Commission may terminate this Agreement if any conflict impairs or diminishes its value.

f. Penalties for Noncompliance

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

## 8. **Payment of Funds**

The Energy Commission will reimburse the Recipient for actual allowable expenditures incurred during the Agreement term specified on the Agreement signature page (form CEC-146), provided that the expenditures are made in accordance with the Agreement. The rates in the budget are caps, or the maximum amount allowed to be billed. All work and expenditure of funds (Commission-reimbursed and/or match share) must occur within the Agreement term.

### a. **Conditions for Payment**

- 1) **Actual, allowable expenses:** The Recipient may only bill for actual expenses incurred at its actual direct labor, fringe benefit, and indirect rates, not to exceed the maximum rates specified in the budget. See subsection (b) for a discussion of allowable and unallowable costs.
- 2) **Advance payment:** No payment will be made in advance of services rendered unless prior written approval has been obtained by the Contracts, Grants, and Loans Office, which may impose conditions on such payments. In the absence of this approval, payments will be made on a reimbursement basis for the Recipient's expenditures (i.e., after the Recipient has paid for a service, product, supplies, or other approved budget item).
- 3) **Frequency of payment requests:** Unless otherwise specified in the Agreement, the Recipient may request payment from the Energy Commission at any time during the Agreement term, but no more frequently than monthly. However, it is preferred that payment requests be submitted with the progress reports.
- 4) **Invoice Approval and Disputes:** Each request for payment is subject to the Commission Agreement Manager's approval. Payments will be made to the Recipient for undisputed invoices. An undisputed invoice is an invoice submitted by the Recipient for work performed, for which project expenditures and products meet all Agreement conditions, and for which additional evidence is not required to determine its validity.  

The invoice will be disputed if all products due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. If the invoice is disputed, the Recipient will be notified via a Dispute Notification Form within fifteen (15) working days of receipt of the Commission Agreement Manager's invoice.
- 5) **Recipient's headquarters:** For purposes of payment, the Recipient's headquarters is the location of the Recipient's office where the majority of its employees assigned responsibilities for this Agreement are permanently assigned.
- 6) **Deadlines:** The final invoice must be received by the Energy Commission no later than thirty (30) calendar days after the Agreement end date.
- 7) **Expiration of Fiscal Year Funding:** If a funding source for this Agreement expires prior to the end date of the Agreement, the Recipient must submit all products and invoices to the Commission at least two months prior to the expiration date in order to receive payment from the source. For example, if the funding source expires on June 30, 2020, the Recipient must submit all products and invoices to the Energy Commission by April 30, 2020 to receive payment from the source.

- 8) **Multiple Non-Energy Commission Funding Sources:** No payment will be made for costs identified in recipient invoices that have been or will be reimbursed by another source, including but not limited to an agreement with another government entity.

“Government Entity” means: (1) a state governmental agency; (2) a state college or university; (3) a local government entity or agency, including those created as a Joint Powers Authority; (4) an auxiliary organization of the California State University or a California community college; (5) the federal government; (6) a foundation organized to support the Board of Governors of the California Community Colleges; and (7) an auxiliary organization of the Student Aid Commission established under California Education Code Section 69522.

- 9) **Reduced funding:** If the Energy Commission does not receive sufficient funds under the Budget Act or from the investor-owned utility administrators of the EPIC program to fully fund the work identified in Exhibit A (Scope of Work), the following will occur:

- a) If the Energy Commission has received a reduced amount of funds for the work, it may: (1) offer an Agreement amendment to the Recipient to reflect the reduced amount; or (2) cancel this Agreement (with no liability occurring to the State).
- b) If the Energy Commission has received no funds for the work identified in Exhibit A: (1) this Agreement will be of no force and effect; (2) the State will have no obligation to pay any funds to the Recipient; and (3) the Recipient will have no obligation to perform any work under this Agreement.

b. Allowability of Costs

1) Allowable Costs

The costs for which the Recipient will be reimbursed under this Agreement include all costs, direct and indirect, incurred in the performance of the work identified in the Scope of Work. Costs must be incurred within the Agreement term. Factors to be considered in determining whether an individual item of cost is allowable include: (i) reasonableness of the item, including necessity of the item for the work; (ii) applicable federal cost principles or acquisition regulations incorporated by reference in Section 2 of this Agreement; and (iii) the terms and conditions of this Agreement.

2) Unallowable Costs

Below are examples of unallowable costs. Details concerning the allowability of costs are available from the Energy Commission’s Accounting Office.

- a) Profit of the Recipient or fees (this restriction does not apply to subcontractors);
- b) Contingency costs;
- c) Imputed costs (e.g., cost of money);
- d) Fines and penalties;
- e) Losses;
- f) Excess profit taxes; and
- g) Unapproved, increased rates and fees for this Agreement

- 3) Except as provided for in this Agreement or applicable California law or regulations, the Recipient will use the federal cost principles and/or acquisition regulations incorporated by reference in Section 2 of this Agreement when determining allowable and unallowable costs. In the event of a conflict, this Agreement takes precedence over the federal cost principles and/or acquisition regulations.

c. Payment Request Format

Each request for payment will consist of, but not be limited to, the following:

- 1) An invoice that includes a list of actual expenses incurred during the billing period, up to any budget rate caps. The Recipient may only bill the lower of actual rates or budget rate caps. Backup documentation is required at the time of invoice submittal. Unless otherwise specified in Exhibit B or the invoice template, the invoice must include the following:
  - a) Agreement number;
  - b) Date prepared;
  - c) Recipient's Federal tax ID number;
  - d) Billing period;
  - e) Recipient's actual labor expenditures, including hourly unloaded labor rates by individual name and classification, hours worked, and benefits (fully loaded rates may only be used if they are included in the grant budget);
  - f) Non-labor expenses, including fringe benefits, indirect overhead, and general/administrative expenses;
  - g) Operating expenses, including travel, equipment, materials, and other;
  - h) By budget line item (cost component) category, the budgeted amount, amount billed to date, currently billed amount, and balance of funds;
  - i) Match fund expenditures (if applicable);
  - j) Receipts for travel (including departure and return times), equipment, materials, and miscellaneous; and
  - k) Subcontractor invoices that include all items above, for correspondence with the budget (e.g., if the budget lists hourly labor rates, the subcontractor's invoice should include hourly labor rates).
- 2) A progress report that documents evidence of progress, as described in the Scope of Work.
- 3) Products prepared by the Recipient during the invoicing period, as described in the Scope of Work.

The Commission will accept computer-generated or electronically transmitted invoices without backup documentation provided that the Recipient mails a hard copy the same day.

The Recipient must submit all invoices to the following address:

California Energy Commission  
Accounting Office  
1516 Ninth Street, MS-2  
Sacramento, CA 95814

d. Certification

The following certification will be included on each payment request form and signed by the Recipient's authorized officer:

***The documents included in this request for payment are true and correct to the best of my knowledge and I, as an agent of [Company Name] have authority to submit this request. I certify that 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. For projects considered to be a public work, prevailing wages were paid to eligible workers who provided labor for the work covered by this invoice; the Recipient and all subcontractors have complied with prevailing wage laws.***

e. Fringe Benefit, Indirect Overhead, General and Administrative (G&A), and Facilities and Administration (F&A) Rates

Indirect cost rates must be developed in accordance with generally accepted accounting principles and the applicable federal cost principles or acquisition regulations (see the provisions incorporated by reference in Section 2). If the Recipient has an approved fringe benefits or indirect cost rate (indirect overhead, G&A, or F&A) from its 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 its actual final rates for the year in accordance with the Labor, Fringe, and Indirect Invoicing Instructions contained in the budget (Exhibit B, Attachment 1).
- The cost pools used to develop the federal rates must be allocable to the Agreement, and the rates must be representative of the portion of costs benefiting the Agreement. For example, if the federal rate is for manufacturing overhead at the Recipient's manufacturing facility and the Agreement is for research and development at the Recipient's research facility, the federal indirect overhead rate would not be applicable to the Agreement.
- The federal rate must be adjusted to exclude any costs that are specifically prohibited in the Agreement.
- The Recipient may only bill up to the Agreement budget rate caps, unless and until an amendment to the budget is approved.

f. Retention

It is the Commission's policy to retain ten percent (10%) of any payment request or of the total 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 Commission Agreement Manager will review the project file and authorize release of the retention when satisfied that the terms of the Agreement have been fulfilled.

Retention may be released upon completion of tasks that are considered separate and distinct (i.e., the task is a stand-alone piece of work and could be completed without the other tasks). Tasks for administration or management of the Agreement and/or subcontractors are not considered separate and distinct tasks. The tasks for which retention may be released prior to the end of the Agreement must be identified in Exhibit B (budget).

**9. Travel and Per Diem**

- a. Travel not listed in the budget requires prior written authorization from the Commission Agreement Manager.
- b. No reimbursement for food or beverages will be made other than for allowable per diem charges.
- c. The Recipient will be reimbursed for authorized travel and per diem up to, but not to exceed, the rates allowed nonrepresented state employees. Current allowable travel reimbursement rates can be obtained from the Commission's web site at [http://www.energy.ca.gov/contracts/TRAVEL\\_PER\\_DIEM.PDF](http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF).
- d. Travel expense claims must detail expenses using the allowable rates, and the Recipient must sign and date each travel expense claim before submitting it to the Commission for payment. Expenses must be listed by trip, including dates and times of departure and return. Travel expense claims supporting receipts and expense documentation must be attached to the Recipient's Payment Request. A vehicle license number is required when claiming mileage, parking, or toll charges. Questions regarding allowable travel expenses or per diem should be addressed to the Commission Agreement Manager.

**10. Prevailing Wage**

a. Requirement

Projects funded by the Energy Commission often involve construction, alteration, demolition, installation, repair, or maintenance work over \$1,000. Such projects might be considered "public works" under the California Labor Code (See California Labor Code Section 1720 et seq. and Title 8 California Code of Regulations, Section 16000 et seq.). Public works projects require the payment of prevailing wages. Prevailing wage rates can be significantly higher than non-prevailing wage rates.

b. Determination of Project's Status

Only the California Department of Industrial Relations (DIR) and courts of competent jurisdiction may issue legally binding determinations that a particular project is or is not a public work. If the Recipient is unsure whether the project funded by the Agreement is a "public work" as defined in the California Labor Code, it may wish to seek a timely determination from DIR or an appropriate court. As such processes can be time consuming, it may not be possible to obtain a timely determination before the date for performance of the Agreement.

By accepting this grant, the Recipient is fully responsible for complying with all California public works requirements, including but not limited to payment of prevailing wage. As a material term of this grant, the Recipient must either:

- 1) 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; or
- 2) Assume that the project is a public work and ensure that:
  - Prevailing wages are paid unless and until DIR or a court of competent jurisdiction determines that the project is not a public work;
  - The project budget for labor reflects these prevailing wage requirements; and
  - 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.

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

c. Subcontractors and Flow-down Requirements

The Recipient will ensure that its subcontractors also comply with the public works/prevailing wage requirements above. The Recipient will ensure that all agreements with its subcontractors to perform work related to this Project contain the above terms regarding payment of prevailing wages on public works projects. The Recipient is responsible for any failure of its subcontractors to comply with California prevailing wage and public works laws.

d. Indemnification and Breach

Any failure of the Recipient or its subcontractors to comply with the above requirements will constitute breach of this Agreement which excuses the Commission's performance of this Agreement at the Commission's option, and will be at the Recipient's sole risk. In such a case, the Commission will refuse payment to the Recipient of any amount under this award and the Commission will be released, at its option, from any further performance of this Agreement or any portion thereof. The Recipient will indemnify the Energy Commission and hold it harmless for any and all financial consequences arising out of or resulting from the failure of the Recipient and/or any of its subcontractors to pay prevailing wages or to otherwise comply with the requirements of prevailing wage law.

e. Budget

The Recipient's budget 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, the Recipient may wish to contact DIR or a qualified labor attorney for guidance.

f. Covered Trades

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

g. Questions

If the Recipient has any questions about this contractual requirement or the wage, record keeping, apprenticeship, or other significant requirements of California prevailing wage law, the Recipient should consult DIR and/or a qualified labor attorney before entering into this Agreement.

h. Certification

The Recipient will certify to the Energy Commission on each payment request form either that: (a) prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and the Recipient and all contractors and subcontractors otherwise complied with all California prevailing wage laws; or (b) the project is not a public work requiring the payment of prevailing wages. In the latter case, the Recipient will 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 will 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 this certificate, the Recipient will have no right to any funds under this Agreement, and Commission will be relieved of any obligation to pay any funds.

**11. Recordkeeping, Cost Accounting, and Auditing**

a. Cost Accounting

The Recipient will keep separate, complete, and correct accounting of the costs involved in completing the project and any match-funded portion of the project. The Commission or its agent will have the right to examine the Recipient's books of accounts at all reasonable times, to the extent necessary to verify the accuracy of the Recipient's reports.

b. Accounting Procedures

The Recipient's costs will be determined on the basis of its accounting system procedures and practices employed as of the effective date of this Agreement, provided that the Recipient uses generally accepted accounting principles and cost reimbursement practices. The Recipient's cost accounting practices used in accumulating and reporting costs during the performance of this Agreement will be consistent with the practices used in estimating costs for any proposal to which this Agreement relates; provided that such practices are consistent with the other terms of this Agreement and that such costs may be accumulated and reported in greater detail during performance of this Agreement.

The Recipient's accounting system will distinguish between direct and indirect costs. All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to costs incurred under this Agreement.

c. Audit Rights

The Recipient will maintain books, records, documents, and other evidence, based on the procedures set forth above, sufficient to reflect properly all costs claimed to have been incurred in the performance of this Agreement. The Energy Commission, another state agency, and/or a public accounting firm designated by the Energy Commission may audit the Recipient's accounting records at all reasonable times, with prior notice by the Energy Commission.

It is the intent of the parties that the audits will ordinarily be performed not more frequently than once every twelve (12) months during the performance of the work and once at any time within three (3) years after payment by the Energy Commission of the Recipient's final invoice. However, performance of any such interim audits by the Energy Commission does not preclude further audit. The Energy Commission may audit books, records, documents, and other evidence relevant to the Recipient's royalty payment obligations (see Section 22) for a period of ten (10) years after payment of the Recipient's final invoice.

The Recipient will allow the auditor(s) to access such records during normal business hours, and will allow interviews of any employees who might reasonably have information related to such records. The Recipient will include a similar right of the state to audit records and interview staff in any subcontract related to the performance of this Agreement.

d. Refund to the Energy Commission

If the Energy Commission determines that any invoiced and paid amounts exceed the actual allowable incurred costs, the Recipient will repay the amounts to the Energy Commission within thirty (30) days of request or as otherwise agreed by the Energy Commission and the Recipient. If the Energy Commission does not receive such repayments, it will be entitled to take actions such as withholding further payments to the Recipient and seeking repayment from the Recipient.

e. Audit Cost

The Recipient will bear its cost of participating in any audit (e.g., mailing or travel expenses). The Energy Commission will bear the cost of conducting the audit unless the audit reveals an error detrimental to the Energy Commission that exceeds more than ten percent (10%) or \$5,000 (whichever is greater) of: (1) the amount audited; or (2) if a royalty audit, the total royalties due in the period audited. The Recipient will pay the refund as specified in subsection (d), and will reimburse the Energy Commission for reasonable costs and expenses incurred by the Commission in conducting the audit.

f. Match or Cost Share

If the budget includes a match share requirement, the Recipient's commitment of resources, as described in this Agreement, is a required expenditure for receipt of Energy Commission funds. The funds will be released only if the required match percentages are expended. The Recipient must maintain accounting records detailing the expenditure of the match (actual cash and in-kind, non-cash services), and report on match share expenditures on its request for payment.

**12. Workers' Compensation Insurance**

- a. The Recipient 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 Commission Agreement Manager satisfactory evidence of this insurance upon the Commission Agreement Manager's request.
- b. If the Recipient is self-insured for worker's compensation, it warrants that the self-insurance is permissible under the laws of the State of California and agrees to furnish to the Commission Agreement Manager satisfactory evidence of the insurance upon the Commission Agreement Manager's request.

**13. Permits and Clearances**

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

**14. Equipment**

Title to equipment acquired by the Recipient with grant funds will vest in the Recipient. The Recipient may use the equipment in the project or program for which it was acquired as long as needed, regardless of whether the project or program continues to be supported by grant funds. However, the Recipient may not sell, lease, or encumber the property (i.e., place a legal burden on the property such as a lien) during the Agreement term without the Commission Agreement Manager's prior written approval.

The Recipient may refer to the applicable federal regulations incorporated by reference in this Agreement for guidance regarding additional equipment requirements.

**15. Disputes**

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

- a. Commission Agreement Manager/Commission Agreement Officer
  - The Recipient must first discuss the problem informally with the Commission Agreement Manager.
  - If the problem cannot be resolved at this stage, the Recipient must submit a Contractor Dispute Statement, along with any evidence, to the Commission Agreement Officer. The statement must include: (1) a summary of the issues in dispute; (2) the legal authority or other basis for the Recipient's position; and (3) the remedy sought.
- b. Commission Agreement Officer/ Program Office Manager
  - The Commission Agreement Officer and the Program Office Manager must make a determination on the problem within ten (10) working days of receipt of the Recipient's Dispute Statement.
  - The Commission Agreement Officer will submit a Dispute Finding to the Recipient that includes: (1) a decision; and (2) an explanation of the decision.
  - The Recipient may appeal to the Commission's Executive Director if it disagrees with the Commission Agreement Officer's decision.

c. Executive Director

- The Recipient must submit an Appeal to the Commission's Executive Director within ten (10) working days of receipt of the Commission Agreement Officer's Dispute Finding. The Appeal must explain why the Commission Agreement Officer's decision is unacceptable. The Recipient must include the following as attachments to the Appeal: (1) the Recipient Dispute Statement; (2) any supporting documents; and (3) the Dispute Finding.
- The Executive Director or his/her designee will meet with the Recipient to review the issues raised.
- A written decision signed by the Executive Director or his/her designee will be sent to the Recipient within twenty (20) working days of receipt of the Appeal. The Executive Director may exercise the option of presenting the decision to the Commission at a business meeting.
- If the Recipient disagrees with the Executive Director's decision, it may appeal to the Commission at a regularly scheduled business meeting. The Commission Agreement Officer will inform the Recipient of the procedure for placing the appeal on a Commission Business Meeting Agenda.

**16. Stop Work**

The Commission Agreement Officer may, at any time by written notice to the Recipient, require the 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, noncompliance with the standard of performance, out of scope work, project delays, and misrepresentations.

- a. Compliance. Upon receipt of a stop work order, the Recipient must immediately take all necessary steps to comply with the order and to minimize the incurrence of costs allocable to the work stopped.
- b. Equitable Adjustment. The Energy Commission will make an equitable adjustment based upon a written request from the Recipient. The Recipient must make the adjustment request within thirty (30) days from the date of the stop work order.
- c. Canceling a Stop Work Order. The Recipient may resume the work only upon receipt of written instructions from the Commission Agreement Officer.

**17. Termination**

a. Purpose

Because the Energy Commission is a state entity and provides funding on behalf of all California ratepayers, it must be able to terminate the Agreement upon the default of the Recipient and to proceed with the work required under the Agreement in any manner it deems proper. The Recipient agrees that upon any of the events triggering the termination of the Agreement by the Energy Commission, the Energy Commission has the right to terminate the Agreement, and it would constitute bad faith of the Recipient to interfere with the immediate termination of the Agreement by the Energy Commission.

b. Breach

The Energy Commission will provide the Recipient written notice of intent to terminate due to the Recipient's breach. The Recipient will have fifteen (15) calendar days to fully perform or cure the breach. If the Recipient does not cure

the breach within fifteen (15) days, the Energy Commission may, without prejudice to any of its other remedies, terminate this Agreement upon five (5) calendar days written notice to the Recipient. In this event, the Energy Commission will pay the Recipient only the reasonable value of the services performed satisfactorily by the Recipient before the notice of termination, as may be agreed upon by the parties or determined by a court of law, but not to exceed the maximum payable Agreement amount.

c. For Cause

The Energy Commission may, for cause, terminate this Agreement upon giving thirty (30) 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 Energy Commission will pay the Recipient for any services rendered and expenses incurred within thirty (30) days after notice of termination that the Recipient could not have avoided by reasonable efforts, in an amount not to exceed the maximum payable Agreement amount. The Recipient will relinquish possession of equipment purchased for this Agreement with Energy Commission funds to the Commission, or the Recipient may purchase the equipment as provided by the terms of this Agreement, with approval of the Energy Commission.

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.

d. Without Cause

The Energy Commission may terminate this Agreement without cause in whole or in part, 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. Also, the Energy Commission will pay the Recipient for all satisfactory services rendered and expenses incurred within thirty (30) calendar days after notice of termination that the Recipient could not avoid by reasonable efforts, in an amount not to exceed the maximum payable under this Agreement.

**18. Indemnification**

To the extent allowed under California law, the Recipient will indemnify, defend, and hold harmless the state (including the Energy Commission) and state officers, agents, and employees from any and all claims and losses in connection with the performance of this Agreement.

## 19. Confidentiality

### a. Identification of Confidential Information

- 1) Prior to the effective date of this Agreement, the Recipient will identify all products (or information contained within products) that it considers to be confidential, in addition to the legal basis for confidentiality, in Attachment 2 to this Exhibit. If the Energy Commission agrees that the information is confidential, it will not disclose it except as provided in subsection (b).
- 2) During the Agreement, if the Recipient develops additional products (or information contained within products) not originally anticipated as confidential, it will follow the procedures for a request for designation of confidential information specified in Title 20 California Code of Regulations (CCR) Section 2505.

The Energy Commission's Executive Director will make the confidentiality determination. Following this determination, the confidential information may be added to Attachment 2 through a Letter of Agreement (see the "Amendments" section). The Energy Commission will not disclose information subject to an application for confidential designation except as provided in subsection (b).

- 3) When submitting products containing confidential information, the Recipient will mark each page of any document containing confidential information as "confidential", and present it in a sealed package to the Contracts, Grants, and Loans Office.

The Commission Agreement Manger may require the Recipient to submit a non-confidential version of the product, if it is feasible to separate the confidential information from the non-confidential information. The Recipient is not required to submit such products in a sealed package.

### b. Disclosure of Confidential Information

The Energy Commission will only disclose confidential information under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508. All confidential information that is legally disclosed by the Recipient or any other entity will become a public record and will no longer be subject to the Energy Commission's confidentiality designation.

### c. Waiver of Consequential Damages

In no event will the Energy Commission, the California Public Utilities Commission, or the state of California be liable for any special, incidental, or consequential damages based on breach of warranty, breach of contract, negligence, strict tort, or any other legal theory for the disclosure of the Recipient's confidential information, even if the Commission has been advised of the possibility of such damages.

Damages that the Energy Commission, the California Public Utilities Commission, and the state of California will not be responsible for include but are not limited to: lost profit; lost savings or revenue; lost goodwill; lost use of the product or any associated equipment; cost of capital; cost of any substitute equipment, facilities, or services; downtime; the claims of third parties including customers; and injury to property.

d. Limitations on the Recipient's Disclosure of Products

- 1) During the Agreement, the Recipient must receive approval from the Commission Agreement Manager prior to disclosing the contents of any draft product to a third party. However, if the Energy Commission makes a public statement about the content of any product provided by the Recipient and the Recipient believes the statement is incorrect, the Recipient may state publicly what it believes is correct.
- 2) After any document submitted has become a part of the public records of the state, the Recipient may publish or use it at its own expense.
- 3) Except as provided in Title 20 CCR Sections 2506, 2507, and 2508, the Recipient may not disclose any information provided to it by the Energy Commission 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. At the election of the Commission Agreement Manager, the Recipient, its employees, and its subcontractors must execute a confidentiality agreement provided by the Commission Agreement Manager.
- 4) The Recipient will ensure that each of its officers, employees, and subcontractors who are involved in the performance of this Agreement are informed about these disclosure limitations and will abide by them.

**20. Pre-Existing and Independently Funded Intellectual Property**

a. Ownership

The Energy Commission makes no ownership, license, or royalty claims to pre-existing intellectual property, independently funded intellectual property, or project-relevant pre-existing or independently funded intellectual property. **“Ownership”** means exclusive possession and control of all rights to property, including the right to use and transfer property. Intellectual property licenses and royalties are discussed in Sections 21 and 22.

- 1) **“Pre-existing intellectual property”** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that the Recipient or a third party owned or possessed prior to the effective date of this Agreement and that have not been developed, altered, or reduced to practice with Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.
- 2) **“Independently funded intellectual property”** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice by the Recipient or a third party during or after the Agreement term without Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.

“Works of authorship” does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices. The Commission owns such products regardless of their funding source.

- 3) **“Project-relevant pre-existing intellectual property” and “project-relevant independently funded intellectual property”** mean pre-existing and independently funded intellectual property used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement.

b. Project-Relevant Pre-Existing and Independently Funded Intellectual Property

1) Identification of Property

- a) The Recipient will identify all project-relevant pre-existing intellectual property in Attachment 2 to this Exhibit prior to the effective date of the Agreement, or within sixty (60) days of becoming aware that the property has been or will be used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement. Attachment 2 may be amended by a Letter of Agreement (see the “Amendments” section).
- b) The Recipient will identify all project-relevant independently funded intellectual property and the source of funding for the property in Attachment 2 to this Exhibit within sixty (60) days of becoming aware that the property has been or will be used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement.
- c) Failure to identify project-relevant pre-existing or independently funded intellectual property in Attachment 2 to this Exhibit may result in the property’s designation as “intellectual property” that is subject to licenses and royalties, as described in Sections 21 and 22.

2) Access to Property

The extent of Energy Commission and California Public Utilities Commission access to project-relevant pre-existing and independently funded intellectual property is limited to that reasonably necessary to: (a) demonstrate the validity of any premise, postulate, or conclusion referred to or expressed in any product; or (b) establish a baseline for repayment purposes.

Upon the Commission Agreement Manager’s request, the Recipient will provide the Commission Agreement Manager and any reviewers designated by the Energy Commission or the California Public Utilities Commission with access to review the Recipient’s project-relevant pre-existing and independently funded intellectual property. If the property has been designated as confidential as specified in Section 19, the Energy Commission will only disclose it under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508.

3) Preservation of Property

The Recipient will preserve any project-relevant pre-existing or

independently funded intellectual property at its own expense for at least ten (10) years from the Agreement's end date, unless the Recipient agrees to a longer retention period.

The Energy Commission and the California Public Utilities Commission will have reasonable access to the project-relevant pre-existing or independently funded property throughout the retention period.

## 21. **Intellectual Property**

### a. Ownership

- 1) The Recipient owns all intellectual property, subject to the licenses described in subsection b.

**“Intellectual property”** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice with Agreement or match funds during or after the Agreement term; (b) any associated proprietary rights to these items, such as patent and copyright; and (c) any upgrades or revisions to these items.

“Works of authorship” does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices.

- 2) The Energy Commission owns all products identified in the Scope of Work, with the exception of products that fall within the definition of “intellectual property.”

**“Product”** means any tangible item specified for delivery to the Energy Commission in the Scope of Work.

### b. Intellectual Property Licenses

- 1) Both the Energy Commission and the California Public Utilities Commission have a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce intellectual property for governmental purposes. The licenses are transferable only to load-serving entities for the purpose described below.

- 2) Both the Energy Commission and the California Public Utilities Commission may grant load-serving entities a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce intellectual property to enhance the entities' service to EPIC ratepayers. **“Load-serving entity”** means a company or other organization that provides electricity to EPIC ratepayers.

The licenses are transferable to third parties only for the purpose of facilitating the load-serving entity's enhancement of service to EPIC ratepayers. Load-serving entities must obtain prior written approval from the Energy Commission or California Public Utilities Commission (whichever agency granted the load-serving entity the license) in order to transfer the license to a third party.

- 3) The Recipient has a non-exclusive, non-transferable, irrevocable, worldwide, perpetual license to use, publish, translate, modify, and reproduce written products created for Agreement reporting and management purposes, such as reports and summaries.
- 4) If any intellectual property that is subject to the licenses above has been designated as confidential as specified in Section 19, all license holders will only disclose the intellectual property under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508.

All license holders will ensure that their officers, employees, and subcontractors who have access to the intellectual property are informed of and abide by the disclosure limitations in Section 19.

c. Energy Commission's Rights to Inventions

**"Invention"** means intellectual property that is patentable.

1) March-In Rights

At the Energy Commission's request, the Recipient will forfeit and assign to the Energy Commission all rights to any invention (with the exception of U.S. Department of Energy reserved rights) if the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the invention. The Energy Commission will have the unfettered right to use and/or dispose of the rights in whatever manner it deems most suitable to help transfer the invention into the marketplace, including but not limited to seeking patent protection or licensing the invention.

2) Notice of Patent

If any patent is issued for an invention, the Recipient will send the Commission Agreement Manager written notice of the issuance within three (3) months of the issuance date. The notice must include the patent title, issuance number, and a general description of the invention.

3) Legal Notice

The Recipient and all persons and/or entities obtaining an ownership interest in patentable intellectual property must include the following statement within the specification of any United States patent application, and any subsequently issued patent for the invention:

**"This invention was made with State of California support under California Energy Commission grant number EPC-14-008. The Energy Commission has certain rights to this invention."**

d. Access to and Preservation of Intellectual Property

1) Access to Intellectual Property

Upon the Commission Agreement Manager's request, the Recipient will provide the Commission Agreement Manager and any individuals designated by the Energy Commission or the California Public Utilities Commission with access to the Recipient's intellectual property in order to exercise the license and march-in rights described above, and to determine any royalty payments due under the Agreement.

2) Preservation of Intellectual Property

The Recipient will preserve intellectual property at its own expense for at least ten (10) years from the Agreement's end date, unless the Recipient agrees to a longer retention period.

e. Intellectual Property Indemnity

The Recipient may not, in supplying work under this Agreement, knowingly infringe or misappropriate any intellectual property right of a third party, and will take reasonable actions to avoid infringement.

The Recipient will defend and indemnify the Energy Commission and the California Public Utilities Commission from and against any claim, lawsuit, or other proceeding, loss, cost, liability, or expense (including court costs and reasonable fees of attorneys and other professionals) to the extent arising out of: (i) any third party claim that a product infringes any patent, copyright, trade secret, or other intellectual property right of any third party; or (ii) any third party claim arising out of the negligent or other tortious acts or omissions by the Recipient or its employees, subcontractors, or agents in connection with or related to the products or the Recipient's performance under this Agreement.

**22. Royalty Payments to the Commission**

**"Sale," "sales," and "sold"** mean the sale, license, lease, or other transfer of intellectual property. **"Sales Price"** means the price at which intellectual property is sold, excluding sales tax.

- a. The Recipient will pay the Energy Commission a royalty of one and one-half percent (1.5%) of the sales price of all sales for which the Recipient receives a payment, beginning on the Agreement's effective date and extending for ten (10) years from the Agreement's end date.
- b. The Recipient will make payments in annual installments due on the first day of March in the calendar year immediately following the year during which the Recipient received any payment for sales.
- c. The Recipient is not required to make a royalty payment for any calendar year in which payments for sales are less than \$1000. Total royalty payments will be limited to three (3) times the amount of funds paid by the Energy Commission under the Agreement.
- d. If intellectual property was developed in part with match funds during the Agreement term, the royalty payment will be reduced in accordance with the percentage of intellectual property development activities that were funded with match funds. For example, if 10% of the development activities were funded with match funds during the Agreement and payments for sales totaled \$100,000 in one year, the Recipient would owe the Energy Commission \$1350 for the year (1.5% of \$100,000 = \$1500; 10% of \$1500 = \$150; \$1500 - \$150 = \$1350).

If the Energy Commission is providing funds to the Recipient under this Agreement as a project match partner and Energy Commission funds are used in part to develop intellectual property, the royalty payments will be reduced in accordance with the percentage of intellectual property development activities that were funded with non-Energy Commission funds during the Agreement term. For example, if 80% of the development activities were funded with Recipient and/or third party funds during the Agreement and payments for sales totaled \$100,000 in one year, the Recipient would owe the Energy Commission \$300 for the year (1.5% of \$100,000 = \$1500; 80% of \$1500 = \$1200; \$1500 - \$1200 = \$300).

- e. The Recipient may make an early buyout payment to the Energy Commission without a pre-payment penalty, as an alternative to making annual royalty payments for ten (10) years following the Agreement's end date. The payment must be in a lump sum amount equal to one and a half (1.5) times the amount of funds paid by the Energy Commission under the Agreement and made within five (5) years of the Agreement's end date. The payment amount due under the early buyout option will not be reduced by the percentage of match funds as described above.
- f. The Recipient may not make any sale of intellectual property for consideration other than fair market value. Such activity constitutes breach of this Agreement, and will obligate the Recipient to repay within sixty (60) days the early buyout amount due. In the event of breach, the Energy Commission may exercise all rights and remedies available to it under law and at equity.
- g. Royalty payments not made within fifteen (15) days of the due date will constitute breach of this Agreement. The payments will become debt obligations of the Recipient to the Energy Commission, due upon demand and bearing interest at the maximum interest rate allowed by law.
- h. The Recipient will maintain separate accounts within its financial and other records for the purpose of tracking components of sales and royalties due to the Energy Commission under this Agreement.
- i. Payments to the Energy Commission are subject to audit as provided for under the Recordkeeping, Cost Accounting, and Auditing section.
- j. The Recipient will include these royalty provisions in its agreements with all subcontractors who develop or assist with the development of intellectual property.

**23. General Provisions**

a. Governing Law

This Agreement is governed by the laws of the State of California as to interpretation and performance.

b. Independent Capacity

In the performance of this Agreement, the Recipient and its agents, subcontractors, and employees will act in an independent capacity and not as officers, employees, or agents of the State of California.

c. Assignment

This Agreement is not assignable or transferable by the Recipient either in whole or in part without the consent of the Energy Commission in the form of an amendment.

d. Timeliness

Time is of the essence in this Agreement.

e. Severability

If any provision of this Agreement is unenforceable or held to be unenforceable, all other provisions of this Agreement will remain in full force and effect.

f. Waiver

No waiver of any breach of this Agreement constitutes waiver of any other breach. All remedies in this Agreement will be taken and construed as cumulative, meaning in addition to every other remedy provided in the Agreement or by law.

g. Assurances

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

h. Change in Business

- 1) The Recipient will promptly notify the Energy Commission of the occurrence of any of the following:
  - a) A change of address.
  - b) A change in business name or ownership.
  - c) The existence of any litigation or other legal proceeding affecting the project or Agreement.
  - d) The occurrence of any casualty or other loss to project personnel, equipment, or third parties.
  - e) Receipt of notice of any claim or potential claim against the Recipient for patent, copyright, trademark, service mark, and/or trade secret infringement that could affect the Energy Commission's rights.
- 2) The Recipient must provide the Commission Agreement Manager with written notice of a planned change or reorganization of the type of business entity under which it does business. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. If the Energy Commission does not seek to amend this Agreement or enter into a new agreement with the changed or new entity for any reason (including that the Commission is not satisfied that the new entity can perform in the same manner as the Recipient), it may terminate this Agreement as provided in the "Termination" section.

i. Access to Sites and Records

Energy Commission and California Public Utilities Commission staff and representatives will have reasonable access to all project sites and to all records related to this Agreement.

j. Prior Dealings, Custom, or Trade Usage

These terms and conditions may not be modified or supplemented by prior dealings, custom, or trade usage.

k. Survival of Terms

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

- Legal Statements on Products (included in Section 5, "Products")
- Payment of Funds (Section 8)
- Recordkeeping, Cost Accounting, and Auditing (Section 11)
- Equipment (Section 14)
- Disputes (Section 15)
- Termination (Section 17)

- Indemnification (Section 18)
- Pre-Existing and Independently Funded Intellectual Property (Section 20)
- Intellectual Property (Section 21)
- Royalty Payments to the Commission (Section 22)
- Change in Business (see this section)
- Access to Sites and Records (see this section)

**24. Certifications and Compliance**

a. Federal, State, and Local Laws

The Recipient will comply with all applicable federal, state and local laws, rules and regulations.

b. Nondiscrimination Statement of Compliance

During the performance of this Agreement, the Recipient and its subcontractors will 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, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, or denial of family care leave. The Recipient and its subcontractors will ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

The Recipient and its subcontractors will 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 7285 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 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. The Recipient and its subcontractors will give written notice of their obligations under this section to labor organizations with which they have a collective bargaining or other Agreement.

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

c. Drug-Free Workplace Certification

By signing this Agreement, the Recipient certifies under penalty of perjury under the laws of the State of California that it 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).
- 2) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) 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(c), that every employee who works on the proposed project:
- Will receive a copy of the company's drug-free policy statement; and
  - 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 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. National Labor Relations Board Certification (Not applicable to public entities)

The Recipient, by signing this Agreement, swears under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Recipient within the immediately preceding two year period because of the Recipient's failure to comply with an order of a federal court that orders the Recipient to comply with an order of the National Labor Relations Board.

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

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

- 1) It recognizes the importance of child and family support obligations and will 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
- 2) 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.

f. Air or Water Pollution Violation

Under state laws, the Recipient will not be:

- 1) In violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;
- 2) Subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
- 3) Finally determined to be in violation of provisions of federal law relating to air or water pollution.

g. Americans With Disabilities Act

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

**25. Definitions**

- **Agreement Term** means the length of this Agreement, as specified on the Agreement signature page (form CEC-146).
- **Budget Reallocation** means the movement of funds between tasks identified in the budget (Exhibit B).
- **Confidential Information** means information that the Recipient has satisfactorily identified as confidential in Attachment 2 to this Exhibit and that the Energy Commission has agreed to designate as confidential under Title 20 California Code of Regulations Section 2505.
- **Data** means any recorded information that relates to the project funded by the Agreement, whether created or collected before or after the Agreement's effective date.
- **Effective Date** means the date on which this Agreement is signed by the last party required to sign, provided that signature occurs after the Agreement has been approved by the Energy Commission at a business meeting or by the Executive Director or his/her designee.
- **EPIC** means the Electric Program Investment Charge, an electricity ratepayer-funded surcharge authorized by the California Public Utilities Commission in December 2011.
- **Equipment** means products, objects, machinery, apparatus, implements, or tools that are purchased or constructed with Energy Commission funds for the project, and that have a useful life of at least one year and an acquisition unit cost of at least \$5,000. "Equipment" includes products, objects, machinery, apparatus, implements, or tools that are composed by over thirty percent (30%) of materials purchased for the project. For purposes of determining depreciated value of equipment used in the Agreement, the project will terminate at the end of the normal useful life of the equipment purchased and/or developed with Energy Commission funds. The Energy Commission may determine the normal useful life of the equipment.
- **Independently Funded Intellectual Property** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice by the Recipient or a third party during or after the Agreement term without Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.

“Works of authorship” does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices. The Commission owns such products regardless of their funding source.

- **Intellectual Property** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice with Agreement or match funds during or after the Agreement term; (b) any associated proprietary rights to these items, such as patent and copyright; and (c) any upgrades or revisions to these items.

“Works of authorship” does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices.

- **Invention** means intellectual property that is patentable.
- **Load-serving entity** means a company or other organization that provides electricity to EPIC ratepayers.
- **Match Funds** means cash or in-kind (i.e., non-cash) contributions provided by the Recipient or a third party for a project funded by the Energy Commission. If this Agreement resulted from a solicitation, refer to the solicitation’s discussion of match funding for guidelines specific to the project.
- **Materials** means the substances used to construct a finished object, commodity, device, article, or product, such as equipment.
- **Ownership** means exclusive possession of all rights to property, including the right to use and transfer property.
- **Pre-existing intellectual property** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that the Recipient or a third party owned or possessed prior to the effective date of this Agreement and that have not been developed, altered, or reduced to practice with Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.
- **Product** means any tangible item specified for delivery to the Energy Commission in the Scope of Work.
- **Project** means the entire effort undertaken and planned by the Recipient and consisting of the work funded by the Energy Commission. The project may coincide with or extend beyond the Agreement term.
- **Project-relevant pre-existing intellectual property and project-relevant independently funded intellectual property** mean pre-existing and independently funded intellectual property used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement.
- **Sale, Sales, and Sold** mean the sale, license, lease, or other transfer of intellectual property.

- **Sales Price** means the price at which intellectual property is sold, excluding normal returns and allowances such as sales tax.
- **State** means the state of California and all California state agencies within it, including but not limited to commissions, boards, offices, and departments.

# ATTACHMENT 1

## Confidential Products and Project-Relevant Pre-Existing and Independently Funded Intellectual Property

### 1. Instructions

#### Identification of Confidential Information

- **Prior to the effective date of the Agreement**, the Recipient must identify in Section 2 of this attachment any products (or information contained within products) that it considers to be confidential. If the Energy Commission agrees that the information is confidential, it will not disclose it except as provided in Section 19 (Confidentiality) of these terms and conditions.
- **During the Agreement**, if the Recipient develops additional information not originally anticipated as confidential, it must follow the procedures for a request for designation of confidential information specified in Title 20 California Code of Regulations (CCR) Section 2505.

The Energy Commission's Executive Director will make the confidentiality determination. Following this determination, the confidential information may be added to this attachment through a Letter of Agreement (see Section 6 (Amendments) and Attachment 2 (Sample Letter of Agreement)). The Energy Commission will not disclose information subject to an application for confidential designation except as provided in Section 19.

- **When submitting products containing confidential information**, the Recipient must mark each page of any document containing confidential information as "confidential" and present it in a sealed package to the Contracts, Grants, and Loans Office.

The Commission Agreement Manager may require the Recipient to submit a non-confidential version of the product, if it is feasible to separate the confidential information from the non-confidential information.

#### Identification of Project-Relevant Independently Funded and Pre-Existing Intellectual Property

- The Recipient must identify all project-relevant pre-existing intellectual property and project-relevant independently funded intellectual property in Section 3 of this attachment prior to the effective date of the Agreement, or within sixty (60) days of becoming aware that the property has been or will be used to support a premise, postulate, or conclusion referred to or expressed in any product under the Agreement. This attachment may be amended by a Letter of Agreement (see Section 6 (Amendments) and Attachment 2 (Sample Letter of Agreement)).
  - **"Project-relevant pre-existing intellectual property" and "project-relevant independently funded intellectual property"** mean pre-existing and independently funded intellectual property used to support a premise, postulate, or conclusion referred to or expressed in any product under the Agreement.
  - **"Pre-existing intellectual property"** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that the Recipient or a third party owned or possessed prior to the effective date of this Agreement and that have not been developed, altered, or reduced to practice with Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.

- **“Independently funded intellectual property”** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice by the Recipient or a third party during or after the Agreement term without Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.

“Works of authorship” does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices. The Commission owns such products regardless of their funding source.

- **Failure to identify project-relevant pre-existing or independently funded intellectual property** in this attachment may result in the property’s designation as “intellectual property” that is subject to licenses and royalties, as described in Sections 21 (Intellectual Property) and 22 (Royalty Payments to the Commission).

**2. Confidential Products and/or Confidential Information Contained within Products**

The Energy Commission designates the following products (or information contained within products) as confidential, in accordance with Title 20 California Code of Regulations Section 2505(c)(2)(B).

<b>Product name</b>	
<b>Task/subtask number</b>	
<b>Information to be kept confidential</b>	<input type="checkbox"/> Entire product <input type="checkbox"/> Selected information within product <i>(describe below; be as specific as possible)</i> :
<b>Legal basis for confidentiality designation</b>	<input type="checkbox"/> California Public Records Act, located in California Government Code Sections 6250 et seq. <i>(identify the relevant section(s) and subsections(s) below)</i> :  <input type="checkbox"/> Other law <i>(identify below, including the relevant section(s) and subsections(s))</i> :
<b>Term of confidentiality</b>	MM-DD-YY to MM-DD-YY
<p><b>Trade secrets only</b></p> <p>Answer the following questions if the product/information described above is considered a trade secret (i.e., confidential business information that provides the business with a competitive advantage):</p> <ol style="list-style-type: none"> <li>1. What is the nature of the competitive advantage provided by the product/information?</li> <li>2. How would the competitive advantage be lost by disclosure? (generally describe the value of the product/information and the ease or difficulty with which it may be legitimately acquired or duplicated by others).</li> </ol>	

**Cut and paste this chart as necessary to add products.**

### 3. Project-Relevant Pre-Existing Intellectual Property and Project-Relevant Independently Funded Intellectual Property

The Recipient has identified the following items as “project-relevant pre-existing intellectual property” and/or “project-relevant independently funded intellectual property,” as defined in Sections 20 (Pre-Existing and Independently Funded Intellectual Property) and 25 (Definitions) of these terms and conditions. The Commission makes no ownership, license, or royalty claims to this property, and may only access it for the purposes described in Section 20.

<b>Name/Title of Intellectual Property</b>	
<b>Type of Intellectual Property</b>	<input type="checkbox"/> Project-relevant pre-existing intellectual property <input type="checkbox"/> Project-relevant independently funded intellectual property  <input type="checkbox"/> Invention <input type="checkbox"/> Process <input type="checkbox"/> Technology <input type="checkbox"/> Technique <input type="checkbox"/> Design <input type="checkbox"/> Work of Authorship <input type="checkbox"/> Drawing <input type="checkbox"/> Trademark/ Service mark <input type="checkbox"/> Data <input type="checkbox"/> Logo <input type="checkbox"/> Software <input type="checkbox"/> Formula
<b>Registered or Pending Intellectual Property (i.e., copyrights, patents, or trademarks that are registered or pending with the U.S. Copyright Office or the U.S. Patent and Trademark Office)</b>	<input type="checkbox"/> Copyright <input type="checkbox"/> Patent <input type="checkbox"/> Trademark/ Service mark Name of owner: Number and date: <hr/> <i>For pending applications</i> Name of applicant: Application number and date:
<b>Unregistered Intellectual Property</b>	<input type="checkbox"/> Copyright <input type="checkbox"/> Trademark/ Service mark <input type="checkbox"/> Trade Secret Name of owner:
<b>Description of how the property will be or has been used to support a premise, postulate, or conclusion referred to or expressed in any product under the Agreement</b>	

Cut and paste this chart as necessary to add intellectual property.

**ATTACHMENT 2:  
Sample Letter of Agreement**

Generally, changes that are not significant to the Agreement may be documented in a Letter of Agreement signed by both parties. Recipients must request changes to the Agreement using the procedure described in Section 6 (Amendments). If the changes are approved, the Commission Agreement Officer will prepare a Letter of Agreement using the format below.

Electronic signatures in the form of scanned signatures are acceptable if the Letter of Agreement is sent via email.

**LETTER OF AGREEMENT**

**California Energy Commission and [Recipient], Agreement Number [#]  
[Letter of Agreement date]**

The California Energy Commission (Energy Commission) and [Recipient] entered into Agreement Number [#] (Agreement) on [agreement's effective date]. The purpose of the Agreement is to [brief purpose statement].

The purpose of this Letter of Agreement (Letter) is to add the changes listed in Attachment 1 of this Letter to the Agreement. The changes in Attachment 1 include: [brief description of changes (e.g., formatting revisions)].

Please sign this Letter below and return it to me via e-mail or U.S. mail (if returning via email, an electronic signature in the form of a scanned signature is acceptable). The Energy Commission's Agreement Officer will then sign the Letter, and a copy containing both signatures will be sent to you via email or U.S. mail. If you have any questions you may call me at (916) 654-5186 or e-mail me at [Agreement Officer's email address].

Sincerely,

[NAME OF AGREEMENT OFFICER]  
Energy Commission Agreement Officer

Approved by:

**RECIPIENT**

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<i>BY (Authorized Signature)</i> 	DATE SIGNED
PRINTED NAME AND TITLE OF PERSON SIGNING	

**STATE OF CALIFORNIA**

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**California Energy Commission (Energy Commission)**

<i>BY (Authorized Signature)</i> 	DATE SIGNED
PRINTED NAME AND TITLE OF PERSON SIGNING	

**LETTER OF AGREEMENT**  
**Attachment 1**  
**Changes to Agreement Number [#]**

**Use the format below to list changes to Agreement exhibits.**

**Scope of Work (Exhibit A)**

1. **Page [#], Task [#] (name), Subtask [#] (name)**  
Insert a brief description of the change.

**Budget (Exhibit B)**

1. **Exhibit [#], Page [#]**  
Insert a brief description of the change.

**Terms and Conditions (Exhibit C)**

1. **Page [#], Section [#] (name)**  
Insert a brief description of the change.

**Special Terms and Conditions (Exhibit D)**

1. **Page [#], Section [#] (name)**  
Insert a brief description of the change.

**Contacts List (Exhibit E)**

1. **Recipient's Contact Information or Energy Commission's Contact Information**  
Insert a brief description of the change.