STANDARD AGREEMENT

STD. 213 (NEW 06/03)

AGREEMENT NUMBER
XXX-XX-XXX
REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below

STATE AGENCY'S NAME

State Energy Resources Conservation and Development Commission (Commission)

CONTRACTOR'S NAME

2. The term of this Agreement is: Date through Date. The effective date of this Agreement is either the start date or the approval date by the Dept. of General Services, whichever is later. No work shall commence until the effective date.

3. The maximum amount of this Agreement is: **$**

4. The parties agree to comply with the terms and conditions of the following Exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work	Pages
Exhibit B – Budget Detail and Payment Provisions	Pages
Exhibit C* – General Terms and Conditions	GTC 610
Exhibit D – Special Terms and Conditions(Attached herto as part of this agreement)	Pages
Exhibit E – Additional Provisions	Pages
Exhibit F – Contacts	Page

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at http://www.ols.dgs.ca.gov/Standard%20Language/default.htm.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		***California Department of General Services Use Only***
CONTRACTOR'S NAME *(If other than an individual, state whether a corporation, partnership, etc.)*		
BY *(Authorized Signature)* –	DATE SIGNED *(Do not type)*	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		
STATE OF CALIFORNIA		
AGENCY NAME State Energy Resources Conservation and Development Commission (Commission)		
BY *(Authorized Signature)* –	DATE SIGNED *(Do not type)*	☐ **Exempt per:**
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS 1516 Ninth Street, Sacramento, CA 95814		

EXHIBIT A

Scope of Work described in the RFP

Exhibit B, Attachment 1:
Budget Contingency Clause

This contract (Agreement) between the California Energy Commission (Energy Commission) and the Contractor is funded by: (1) the Electric Program Investment Charge (EPIC), an electricity ratepayer surcharge authorized by the California Public Utilities Commission (CPUC); and (2) the possibly further funding from other Energy Commission funds.

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

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

Contractor understands that the Energy Commission does not yet have, and has not yet allocated, $5,000,000.00 of the $13,000,000.00 under this Agreement. Upon execution of this Agreement, Contractor has approval to spend only $8,000,000.00 for certain identified tasks in the Scope of Work. The Energy Commission may allocate none, part, or all of the remaining $5,000,000.00 depending upon whether these funds become available from other Energy Commission funds. Because the remaining $5,000,000.00 is contingent upon the availability of these funds, Contractor will only be authorized to spend these funds, or part thereof, if authorized in writing by the Contracts Officer.

EXHIBIT D

CALIFORNIA COMMERCIAL END-USE SURVEY SPECIAL CONTRACT TERMS AND CONDITIONS

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EXHIBIT D

EPIC SPECIAL CONTRACT TERMS AND CONDITIONS

1. Introduction

This contract (Agreement) between the California Energy Commission (Energy Commission, or Commission) and the Contractor is funded by: (1) the Electric Program Investment Charge (EPIC), an electricity ratepayer surcharge authorized by the California Public Utilities Commission (CPUC); and (2) possibly further funding from other Energy Commission funds.

All work and expenditure of funds (Commission-reimbursed and/or match share) must occur within the Agreement term specified on the STD 213 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 (h). 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 the allowability of items included in the budget. Documents incorporated by reference include:

Solicitation Documents (if applicable)

a. The funding solicitation for the project supported by this Agreement

b. The Contractor's proposal submitted in response to the solicitation

Department of General Services Terms and Conditions

c. Exhibit C, General Terms and Conditions (GTC 610)

d. Contractor Certification Clauses (CCC 307), as incorporated by reference in Exhibit C (GTC 610), Section 11.

CPUC Decision

e. 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)***

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

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

g. 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)

Federal Audit Requirements

h. 2 CFR Part 200, Subpart F (Sections 200.500 et seq.): Audits of States, Local Governments, and Non-Profit Organizations

Nondiscrimination

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

General Laws

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

k. 10 CFR Part 600: U.S. Department of Energy Financial Assistance Regulations

3. Standard of Performance

In performing work under the Agreement, the Contractor, 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.

The Contractor and its subcontractors will bear any costs that result from failure to meet this standard, including the cost of re-performance of work that was not performed to the Commission Agreement Manager's reasonable satisfaction. Nothing contained in this section limits any of the rights or remedies available to the Energy Commission under law or at equity. The following provisions apply if the Commission Agreement Manager requires the re-performance of work:

a. The Contractor and/or subcontractor will bear the expense of re-performing any work that was not performed to the Commission Agreement Manager's reasonable satisfaction. The work must be completed within the original timeframe identified in the project schedule, unless the Commission Agreement Manager determines that re-performance is not possible within the timeframe. In this event, the Commission Agreement Manager will provide a new schedule for re-performance.

b. The Contractor and/or subcontractor will work any overtime required to meet the task deadline at no additional cost to the Energy Commission.

If the Contractor and/or subcontractor does not perform work to the Commission Agreement Manager's reasonable satisfaction but the Commission Agreement Manger does not require the re-performance of the work, the Commission Agreement Manager and Contractor Project Manager will negotiate a reasonable settlement for satisfactory services rendered. No previous payment will be considered a waiver of the Energy Commission's right to reimbursement.

4. Due Diligence

The Contractor 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 Contractor 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. Performance Evaluation

In accordance with California Public Contract Code Sections 10367 through 10370, the Energy Commission will prepare a performance evaluation upon the completion of this Agreement if it is a consulting services contract that totals $5,000 or more. "Consulting services contract" is defined in California Public Contract Code Section 10335.5.

If the Energy Commission files an unsatisfactory evaluation with the Department of General Services (DGS), it will notify and send a copy of the evaluation to the Contractor within fifteen (15) days. The Contractor will have thirty (30) days to prepare and send a statement to the Energy Commission and DGS defending its performance. The Contractor's statement will be filed with the evaluation in the Energy Commission's contract file and with DGS for thirty-six (36) months.

In accordance with Public Contract Code Section 10370, neither the evaluation nor any Contractor statement will be a public record.

6. Deliverables

a. **"Deliverables"** are any tangible item specified for delivery to the Energy Commission in the Scope of Work, such as reports and summaries.

- The Contractor will submit all deliverables identified in the Scope of Work to the Commission Agreement Manager, in the manner and form specified in the Scope of Work.
- The Contractor will also submit all deliverables prepared during the invoicing period to the Accounting Office along with the invoice, as specified in subsection (c) of Section 10 (Payment of Funds).

If the Commission Agreement Manager determines that a deliverable 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 Deliverables

Please see Section 23 (Confidentiality) for instructions regarding confidential deliverables.

c. Rights in Deliverables

The Energy Commission owns all deliverables identified in the Scope of Work and all intellectual property developed under this Agreement, unless otherwise specified in Attachment 1, Section 4 of this Exhibit. Please see the Section 25 (Intellectual Property).

d. Failure to Submit Deliverables

Failure to submit a deliverable required in the Scope of Work will be considered material noncompliance with the Agreement terms, unless the Commission 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 Contractor 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 Deliverables

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 Contractor 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 deliverable] [the Copyright Holder's name]. All Rights Reserved."

7. Amendments

a. Procedure for Requesting Changes

The Contractor 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 Contractor for another) must be approved at a Commission business meeting or by the Executive Director (or his/her designee). All changes must be in writing. Changes not needing approval at a Commission business meeting will 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 Contractor 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 Manger 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) Replacement of a Disabled Veteran Business Enterprise Subcontractor

Please see Section 12 (Disabled Veteran Business Enterprise Requirements)

3) Addition of Subcontractors

In order to add subcontractors to Exhibit B, the Commission Agreement Manager must submit a "Subcontractor Addition" form (CEC-97) 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. Please see Section 8 (Contracting and Procurement Procedures) for additional requirements.

4) Assignment of New Personnel to an Existing Job Classification

If the Contractor or a subcontractor seeks to assign new personnel to a job classification identified in Exhibit B, the Contractor or subcontractor must submit the individual's resume and proposed job classification and rate to the Commission Agreement Manger for approval. The proposed rate may not exceed the maximum rate identified for the job classification. Neither the Contractor 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 Contractor will bear the expense of the work.

Please see Section 8 (Contracting and Procurement Procedures) for additional requirements.

5) Promotion of Existing Personnel to an Existing Job Classification

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

6) Addition of Job Classifications and Changes in Hours

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

8. Contracting and Procurement Procedures

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

a. Contractor's Obligations to Subcontractors

1) The Contractor 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 Contractor of its responsibilities under this Agreement. The Contractor 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 Contractor.

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

3) The Contractor 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. Process for Adding Personnel and Subcontractors

1) Prior to adding personnel or subcontractors to the Agreement, the Contractor will take the following actions:

- Offer the work to qualified personnel or subcontractors listed in the Agreement.
- If all qualified personnel or subcontractors listed in the Agreement decline the work, provide the Commission Agreement Manager with documentation from the personnel or subcontractors that were offered and declined the work.
- Request approval of the change by the Commission Agreement Manager, in accordance with Section 7(c).

2) The Contractor will use one of the following bidding procedures to select subcontractors that will be added to the Agreement:

- A competitive bid process with written evaluation criteria, which involves obtaining three or more bids and advertising the work to a suitable pool of subcontractors. Potential advertising sources include the California Contracts Register, the Contractor's mailing lists, mass media, professional papers or journals, websites, and telephone and email solicitations.
- A non-competitive bid process with a specific subcontractor.

3) In order to add subcontractors to Exhibit B, the Commission Agreement Manager must submit a "Subcontractor Addition" form (CEC-97) 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.

c. 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 with the University of California (UC) or the U.S. Department of Energy (DOE) national laboratories. The Contractor and its subcontractors may use the terms and conditions negotiated by the Energy Commission with UC for its subcontracts with UC.

In subcontracts with the Lawrence Livermore National Laboratory, Lawrence Berkeley National Laboratory, Sandia National Laboratories, the Contractor and its subcontractors may use the terms and conditions negotiated with the California Department of General Services for these laboratories. For subcontracts to all other DOE national laboratories, the Contractor and its subcontractors may use the terms and conditions negotiated by the Energy Commission with the Department of Energy. Please contact the Commission Agreement Officer for these terms.

- Standard of Performance (Section 3)
- Legal Statements on Deliverables (included in Section 6, "Deliverables")
- Travel and Per Diem (Section 11)
- Prevailing Wage (Section 13)
- Recordkeeping, Cost Accounting, and Auditing (Section 14)
- Equipment (Section 17)
- Disputes (Section 19)
- Indemnification (Section 22)
- Confidentiality (Section 23)
- Pre-Existing and Independently Funded Intellectual Property (Section 24)
- Intellectual Property (Section 25)
- Royalty Payments to the Commission (Section 26)
- Access to Sites and Records (included in Section 27, "General Provisions")
- Nondiscrimination (included in Section 28, "Certifications and Compliance")
- Survival of the following sections:
  - Equipment (Section 17)
  - Recordkeeping, Cost Accounting, and Auditing (Section 14)
  - Indemnification (Section 22)
  - Pre-Existing and Independently Funded Intellectual Property (Section 24)
  - Intellectual Property (Section 25)
  - Royalty Payments to the Commission (Section 26)
  - Access to Sites and Records (included in Section 27, "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, deliverables, 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 Contractor, 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 obtaining the advance written consent of the Commission Agreement Manager and following the bidding procedures for selecting subcontractors described in subsection (b) above.

d. 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 Contractor's final invoice under this Agreement. The Energy Commission may audit subcontracts that are relevant to the Contractor's royalty payment obligations (see the "Royalty Payments to the Commission" section) for a period of ten (10) years after the Agreement's end date.

e. Copies of Subcontracts

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

f. Conflicting Subcontract Terms

Prior to the execution of this Agreement, the Contractor 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 Contractor 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.

g. Notice of Termination

The Contractor will provide written notification to the Commission Agreement Manager and Commission Agreement Officer of the termination of any subcontract or lower tier subcontract with a subcontractor identified in the Agreement, immediately upon termination of the subcontract.

h. 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.

9. Work Authorizations

"Work Authorization" means a contract that supplements the Scope of Work and budget of an existing contract that is broadly drafted to meet the Energy Commission's future, undetermined needs. Work authorizations are incorporated into the original contract and do not amend or supersede the original contract.

a. Work Authorization Development

1) If an Agreement requires work authorizations, the Commission Agreement Manager will prepare them with the Contractor's assistance.

2) The following individuals will sign the work authorization: (1) an individual authorized by the Contractor; (2) the Commission Project Manager for the work authorization (if applicable); and the Commission Agreement Manager. Commission staff will sign the work authorization after signature by the Contractor's authorized representative.

3) The Commission Agreement Manager will submit the signed work authorization to the Commission Agreement Officer, who will submit it, if necessary, to the California Department of General Services (DGS) for approval.

4) The effective date of the work authorization is the date of Energy Commission or DGS approval, whichever occurs last. If DGS approval is required, no work may begin under the work authorization until it has been approved by DGS.

b. Work Authorization Content

Each work authorization will include the following information, at a minimum:

1) Original agreement title and number
2) Work authorization title, number, and applicable original agreement task(s)
3) Effective date and end date
4) Funding source(s)
5) Goal(s) and objective(s)
6) Scope of work (including project schedule)
7) Budget that includes:
   - Hours and unloaded hourly rates by person or job classification, as allowed by the original agreement budget
   - Fringe benefit, indirect overhead, general/administrative, and profit rates
   - Other direct operating expenses, as allowed by the original agreement budget
   - Names of entities that identify as Disabled Veteran Business Enterprises (see Section 12, DVBE Requirements)
8) Contact information for the Contractor

c. Budget

The work authorization budget may not exceed the amount of the original agreement budget. The Contractor will bear any costs that it or any subcontractor incurs if the costs are not identified in the approved work authorization budget.

d. Amendment

Work authorization amendments require approval by the Commission as described in Section 7 (Amendments), and by the California Department of General Services.

e. Stop Work and Termination

The Energy Commission may require the Contractor to stop work as specified in Section 20 (Stop Work), and may terminate the Agreement as specified in Section 21 (Termination).

10. Payment of Funds

The Energy Commission will reimburse the Contractor for actual allowable expenditures incurred during the Agreement term specified on the Agreement signature page (form STD 213), 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 Contractor may only bill for 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 Contractor's expenditures (i.e., after the Contractor has paid for a service, deliverable, supplies, or other approved budget item).

3) **Frequency of payment requests:** Unless otherwise specified in the Agreement, the Contractor 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 Contractor for undisputed invoices. An undisputed invoice is an invoice submitted by the Contractor for work performed, for which project expenditures and deliverables meet all Agreement conditions, and for which additional evidence is not required to determine its validity.

   The invoice will be disputed if all deliverables 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 Contractor will be notified via a Dispute Notification Form within fifteen (15) working days of receipt of the Commission Agreement Manager's invoice.

5) **Contractor's headquarters:** For purposes of payment, the Contractor's headquarters is the location of the Contractor'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) **Prompt Payment:** The Energy Commission will make payments in accordance with the Prompt Payment Act (California Government Code Section 927 et seq.), which requires payment of properly submitted, undisputed invoices within 45 days of receipt or the automatic payment of late penalties.

8) **Expiration of Fiscal Year Funding:** If a funding source for this Agreement expires prior to the end date of the Agreement, the Contractor must submit all deliverables 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 Contractor must submit all deliverables and invoices to the Energy Commission by April 30, 2020 to receive payment from the source.

9) **Multiple Non-Energy Commission Funding Sources:** No payment will be made for costs identified in Contractor invoices that have 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.

10) **Reduced funding:** If the Energy Commission does not receive sufficient funds under the Budget Act, from the investor-owned utility administrators of the EPIC program, or other funding sources 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 Contractor 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 Contractor; and (3) the Contractor will have no obligation to perform any work under this Agreement.

b. Allowability of Costs

1) Allowable Costs

The costs for which the Contractor 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) Contractor profit, fees, or mark-ups on any subcontracted budget item (including subcontracts of any tier). Subcontractors that receive funding under this Agreement may not charge profit for their subcontractors' costs.
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 Contractor 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 Contractor 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 (and work authorization number, if applicable);
   b) Date prepared;
   c) Contractor's Federal tax ID number;
   d) Billing period;
   e) Contractor'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 Agreement 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, balance of funds, and (if applicable) work authorization tasks for which expenditures are made;
   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) Deliverables prepared by the Contractor 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 Contractor mails a hard copy the same day.

The Contractor 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 Contractor'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 Contractor 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 Contractor has an approved fringe benefits or indirect cost rate (indirect overhead, G&A, or F&A) from its cognizant federal agency, the Contractor may bill at the federal rate up to the budget rate caps if the following conditions are met:

- The Contractor 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 Contractor's manufacturing facility and the Agreement is for research and development at the Contractor'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 Contractor 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 Contractor 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), and for Agreements with work authorizations, retention can also be released upon completion of each work authorization. But, the Commission will not release retention for agreement tasks or work authorizations for administration or management of the Agreement and/or subcontractors. The tasks for which retention may be released prior to the end of the Agreement must be identified in Exhibit B (budget).

11. Travel and Per Diem

a. Travel not listed in the Agreement or work authorization budget requires prior written authorization from the Commission Agreement Manager and Commission Agreement Officer.

b. No reimbursement for food or beverages will be made other than for allowable per diem charges.

c. The Contractor 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.

Travel expense claims must detail expenses using the allowable rates, and the Contractor 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 Contractor'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.

12. Disabled Veteran Business Enterprise (DVBE) Requirements

a. Identification and Use of DVBEs

"Disabled Veteran Business Enterprise" means a business that is certified by the California Department of General Services as meeting the requirements in California Military and Veterans Code Section 999(b)(7).

If the Contractor made a commitment to achieve DVBE participation for this Agreement, it must identify each DVBE that will perform work under this Agreement in Exhibit B (budget). As the award of this Agreement is based in part on the Contractor's DVBE commitment, the Contractor must use each identified DVBE for work under this Agreement.

b. Reporting

The Contractor must certify the following in a report to the Commission Agreement Officer, within sixty (60) days of receiving final payment under the Agreement:

1) The total amount the Contractor received under the Agreement;

2) The name and address of the DVBE(s) that participated in the performance of the Agreement;

3) The amount that each DVBE received from the Contractor;

4) That all payments under the Agreement have been made to the DVBEs; and

5) The actual percentage of DVBE participation that was achieved.

In accordance with California Military and Veterans Code Section 999.5(d), a person or entity that knowingly provides false information will be subject to a civil penalty for each violation.

c. Replacement of a DVBE Subcontractor

In accordance with California Military and Veterans Code Section 999.5(e), a DVBE subcontractor may only be replaced by another DVBE subcontractor, and must be approved by the California Department of General Services. If the Contractor believes that an identified DVBE must be replaced, it must inform the Commission Agreement Manager and Commission Agreement Officer in writing of the reason for the DVBE replacement.

If the DVBE is replaced, the Contractor will complete revised certification forms (provided by the Commission Agreement Officer) that identify the new DVBE, and the Agreement will be amended as specified in Section 7.

d. Grounds for Termination, Damages, and Penalties

Without limiting the Commission's available remedies, the Contractor's failure to adhere to its committed DVBE participation level or to the requirements of this section may be cause for termination of the Agreement, recovery of damages, and/or penalties as outlined in California Military and Veterans Code Section 999.9 and Public Contract Code Section 10115.10.

13. 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 Contractor 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 Agreement, the Contractor 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 Agreement, the Contractor 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 Contractor will ensure that its subcontractors also comply with the public works/prevailing wage requirements above. The Contractor 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 Contractor 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 Contractor 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 Contractor's sole risk. In such a case, the Commission will refuse payment to the Contractor 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 Contractor 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 Contractor and/or any of its subcontractors to pay prevailing wages or to otherwise comply with the requirements of prevailing wage law.

e. Budget

The Contractor'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 Contractor may wish to contact DIR or a qualified labor attorney for guidance.

f. Covered Trades

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

g. Questions

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

h. Certification

The Contractor 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 Contractor 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 Contractor 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 Contractor will submit to the Energy Commission the above-described certificate signed by the Contractor and all contractors and subcontractors performing public works activities on the project. Absent this certificate, the Contractor will have no right to any funds under this Agreement, and the Commission will be relieved of any obligation to pay any funds.

14. Recordkeeping, Cost Accounting, and Auditing

a. Cost Accounting

The Contractor 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 Contractor's books of accounts at all reasonable times, to the extent necessary to verify the accuracy of the Contractor's reports.

b. Accounting Procedures

The Contractor'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 Contractor uses generally accepted accounting principles and cost reimbursement practices. The Contractor'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 Contractor'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 Contractor 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 Contractor'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 Contractor'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 Contractor's royalty payment obligations (see Section 26) for a period of ten (10) years after payment of the Contractor's final invoice.

The Contractor 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 Contractor 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 Contractor will repay the amounts to the Energy Commission within thirty (30) days of request or as otherwise agreed by the Energy Commission and the Contractor. If the Energy Commission does not receive such repayments, it will be entitled to take actions such as withholding further payments to the Contractor and seeking repayment from the Contractor.

e. Audit Cost

The Contractor 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 Contractor 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 Contractor'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 Contractor 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.

15. Workers' Compensation Insurance

a. The Contractor 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 Contractor 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.

16. Permits and Clearances

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

17. Equipment

a. Title and Disposition

The Energy Commission has title to equipment acquired by the Contractor with Agreement funds. The Contractor may not sell, lease, or encumber the property (i.e., place a legal burden on the property such as a lien) without the Commission Agreement Manager's prior written approval.

Upon termination of the Agreement, the Energy Commission may:

1) Authorize the continued use of the equipment to further project goals;
2) 2)Allow the Contractor to purchase the equipment for an amount that does not exceed its residual value as of the Agreement's end date; or
3) Request delivery of the equipment to the Energy Commission at the Commission's expense.

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

b. Financing Statement

The Commission Agreement Officer will file a Uniform Commercial Code (UCC.1) Financing Statement with the California Secretary of State's Office for equipment purchased with Agreement funds. Invoices for such equipment will not be processed until the statement has been filed.

c. Liability

The Contractor will assume all risk for maintenance, repair, destruction, and damage to the equipment while it is in the Contractor's possession or is subject to its control. The Contractor is not required to repair or replace equipment that is intended as part of the project to undergo significant modification or testing to the point of damage or destruction.

18. Conflicts of Interest

a. Notice of Potential Conflicts

The Contractor will continuously review new and upcoming projects in which members of its team may be involved for potential conflicts of interest. The Contractor will inform the Commission Agreement Manager as soon as a question arises about whether a conflict may exist. The Commission's Chief Counsel's Office and the Commission Agreement Manager will determine what constitutes a potential conflict of interest. The Energy Commission may redirect work and funding on a project if the Chief Counsel's Office determines that there is a conflict of interest.

b. Economic Interest Statement Requirement

The Contractor will submit an economic interest statement (Fair Political Practices Commission's Form 700) for each employee or subcontractor that the Chief Counsel's Office, in consultation with the Commission Agreement Officer, determines is a "consultant" under the Political Reform Act and is thus subject to the requirements of the Act. This determination will be based on the nature and duration of the work to be performed by the employee or subcontractor.

Each employee/subcontractor determined to be a "consultant" will be subject to the same disclosure category or categories applicable to the Energy Commission staff who perform the same nature and scope of work as the employee/subcontractor.

c. Follow-on Work Prohibition

In accordance with California Public Contract Code Section 10365.5, no person, firm, or subsidiary thereof that has been awarded a consulting services contract may submit a bid for or be awarded an agreement for the provision of services, the procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services agreement. "Consulting services contract" is defined in California Public Contract Code Section 10335.5.

This restriction does not apply to any person, firm, or subsidiary thereof that has been awarded a subcontract of a consulting services contract that amounts to no more than ten percent (10%) of the total monetary value of the consulting services contract.

19. Disputes

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

a. Commission Agreement Manager/Commission Agreement Officer

- The Contractor must first discuss the problem informally with the Commission Agreement Manager.
- If the problem cannot be resolved at this stage, the Contractor 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 Contractor'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 Contractor's Dispute Statement.
- The Commission Agreement Officer will submit a Dispute Finding to the Contractor that includes: (1) a decision; and (2) an explanation of the decision.
- The Contractor may appeal to the Commission's Executive Director if it disagrees with the Commission Agreement Officer's decision.

c. Executive Director

- The Contractor 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 Contractor must include the following as attachments to the Appeal: (1) the Contractor Dispute Statement; (2) any supporting documents; and (3) the Dispute Finding.
- The Executive Director or his/her designee will meet with the Contractor to review the issues raised.
- A written decision signed by the Executive Director or his/her designee will be sent to the Contractor 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 Contractor 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 Contractor of the procedure for placing the appeal on a Commission Business Meeting Agenda.

20. Stop Work

The Commission Agreement Officer may, at any time by written notice to the Contractor, require the Contractor to stop all or any part of the work tasks in this Agreement. Stop work orders may be issued for reasons such as a project exceeding budget, noncompliance with the standard of performance, out of scope work, project delays, and misrepresentations.

a. Compliance. Upon receipt of a stop work order, the Contractor 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 Contractor. The Contractor must make the adjustment request within thirty (30) days from the date of the stop work order.

c. Canceling a Stop Work Order. The Contractor may resume the work only upon receipt of written instructions from the Commission Agreement Officer.

21. 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 Contractor and to proceed with the work required under the Agreement in any manner it deems proper. The Contractor 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 Contractor to interfere with the immediate termination of the Agreement by the Energy Commission.

b. Breach

The Energy Commission will provide the Contractor written notice of intent to terminate due to the Contractor's breach. The Contractor will have fifteen (15) calendar days to fully perform or cure the breach. If the Contractor 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 Contractor. In this event, the Energy Commission will pay the Contractor only the reasonable value of the services performed satisfactorily by the Contractor 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 Contractor. In this event, the Contractor will use all reasonable efforts to mitigate its expenses and obligations. The Energy Commission will pay the Contractor for any services rendered and expenses incurred within thirty (30) days after notice of termination that the Contractor could not have avoided by reasonable efforts, in an amount not to exceed the maximum payable Agreement amount. The Contractor will relinquish possession of equipment purchased for this Agreement with Energy Commission funds to the Commission, or the Contractor 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 Contractor's inability to pay its debts as they become due and/or the Contractor'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 Contractor. In this event, the Contractor will use all reasonable efforts to mitigate its expenses and obligations. Also, the Energy Commission will pay the Contractor for all satisfactory services rendered and expenses incurred within thirty (30) calendar days after notice of termination that the Contractor could not avoid by reasonable efforts, in an amount not to exceed the maximum payable under this Agreement.

22. Indemnification

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

23. Confidentiality

a. Identification of Confidential Information

1) Prior to the effective date of this Agreement, the Contractor will identify all deliverables (or information contained within deliverables) 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 Contractor develops additional deliverables (or information contained within deliverables) 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 must 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 deliverables containing confidential information, the Contractor 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 Contractor to submit a non-confidential version of the deliverable, if it is feasible to separate the confidential information from the non-confidential information. The Contractor is not required to submit such deliverables 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 Contractor 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 Contractor'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 deliverable 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 Contractor's Disclosure of Deliverables

1) During the Agreement, the Contractor must receive approval from the Commission Agreement Manager prior to disclosing the contents of any draft deliverable to a third party. However, if the Energy Commission makes a public statement about the content of any deliverable provided by the Contractor and the Contractor believes the statement is incorrect, the Contractor 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 Contractor may publish or use it at its own expense.

3) Except as provided in Title 20 CCR Sections 2506, 2507, and 2508, the Contractor 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 Contractor, its employees, and its subcontractors must execute a confidentiality agreement provided by the Commission Agreement Manager.

4) The Contractor 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.

24. 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 25 and 26.

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 Contractor 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 Contractor 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 deliverables created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices. The Commission owns such deliverables 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 deliverable under this Agreement.

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

1) Identification of Property

a) The Contractor will identify all project-relevant pre-existing intellectual property in Attachment 1 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 deliverable under this Agreement. Attachment 1 must be amended by a Letter of Agreement (see the "Amendments" section).

b) The Contractor will identify all project-relevant independently funded intellectual property and the source of funding for the property in Attachment 1 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 deliverable under this Agreement.

c) Failure to identify project-relevant pre-existing or independently funded intellectual property in Attachment 1 to this Exhibit may result in the property's designation as "intellectual property" that is subject to licenses and royalties, as described in Sections 25 and 26.

2) Access to Property

The extent of Energy 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 deliverable; or (b) establish a baseline for repayment purposes.

The California Public Utilities Commission has the same access rights as the Energy Commission to project-relevant pre-existing and independently funded intellectual property that is used to support a premise, postulate, or conclusion referred to or expressed in any deliverable funded in whole or in part by EPIC under this Agreement.

Upon the Commission Agreement Manager's request, the Contractor will provide the Commission Agreement Manager and any reviewers designated by the Energy Commission (or the California Public Utilities Commission, if applicable) with access to review the Contractor's project-relevant pre-existing and independently funded intellectual property. If the property has been designated as confidential as specified in Section 23, 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 Contractor 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 Contractor agrees to a longer retention period.

The Energy Commission will have reasonable access to the project-relevant pre-existing or independently funded property throughout the retention period. The California Public Utilities Commission has the same access rights as the Energy Commission to property used to support a premise, postulate, or conclusion referred to or expressed in any deliverable funded in whole or in part by EPIC under this Agreement.

25. Intellectual Property

a. Ownership

"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.

1) The Energy Commission owns all intellectual property, unless the Commission authorizes the Contractor's ownership of intellectual property. All intellectual property owned by the Contractor will be identified in Attachment 1 to this Exhibit and will be designated as "Contractor-owned intellectual property." Failure to identify contractor-owned intellectual property in Attachment 1 will result in the Commission's ownership of the intellectual property.

2) The Energy Commission owns all deliverables identified in the Scope of Work. "Deliverable" means any tangible item specified for delivery to the Energy Commission in the Scope of Work.

b. Intellectual Property Licenses

1) If the contractor-owned intellectual property is funded in whole or in part by EPIC, 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 the intellectual property for governmental purposes.

If the contractor-owned intellectual property is funded exclusively by ERPA or other non-EPIC Energy Commission funds, only the Energy Commission has the license described above. Energy Commission and California Public Utilities Commission licenses are transferable only to load-serving entities for the purpose described below.

2) If the contractor-owned intellectual property is funded in whole or in part by EPIC, 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 the 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 Energy Commission may grant the Contractor a license to use, publish, translate, modify, and/or reproduce intellectual property. Such intellectual property will be identified in Attachment 1 to this Exhibit and will be designated as **"Contractor-licensed intellectual property."**

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 contractor-owned intellectual property that is patentable.

1) March-In Rights

At the Energy Commission's request, the Contractor 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 Contractor 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 Contractor 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 Contractor 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 agreement number XXX-XX-XXX. The Energy Commission has certain rights to this invention."

d. Access to and Preservation of Contractor-Owned Intellectual Property

1) Access to Intellectual Property

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

If the contractor-owned intellectual property is funded in whole or in part by EPIC, the Contractor will provide the California Public Utilities Commission with the same access rights as the Energy Commission.

2) Preservation of Intellectual Property

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

e. Intellectual Property Indemnity

The Contractor 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 Contractor 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 deliverable 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 Contractor or its employees, subcontractors, or agents in connection with or related to the deliverables or the Contractor's performance under this Agreement.

26. 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. Energy Commission rights regarding royalty payments only apply to any EPIC and PIER natural gas funded Intellectual Property.

a. The Contractor 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 Contractor receives a payment, beginning on the Agreement's effective date and extending for ten (10) years from the Agreement's end date.

b. The Contractor will make payments in annual installments due on the first day of March in the calendar year immediately following the year during which the Contractor received any payment for sales.

c. The Contractor 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 Contractor 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 Contractor 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 Contractor and/or third party funds during the Agreement and payments for sales totaled $100,000 in one year, the Contractor would owe the Energy Commission $300 for the year (1.5% of $100,000 = $1500; 80% of $1500 = $1200; $1500 - $1200 = $300).

e. The Contractor 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 Contractor 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 Contractor 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 Contractor to the Energy Commission, due upon demand and bearing interest at the maximum interest rate allowed by law.

h. The Contractor 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 Contractor will include these royalty provisions in its agreements with all subcontractors who develop or assist with the development of intellectual property.

27. 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor for patent, copyright, trademark, service mark, and/or trade secret infringement that could affect the Energy Commission's rights.

2) The Contractor 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 Contractor), it may terminate this Agreement as provided in the "Termination" section.

i. Access to Sites and Records

Energy Commission staff and representatives will have reasonable access to all project sites and records related to this Agreement. California Public Utilities Commission staff and representatives will have reasonable access to all project sites and records related to the EPIC-funded work completed under 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 Deliverables (included in Section 6, "Deliverables")
- Payment of Funds (Section 10)

- Recordkeeping, Cost Accounting, and Auditing (Section 14)
- Equipment (Section 17)
- Disputes (Section 19)
- Termination (Section 21)
- Indemnification (Section 22)
- Pre-Existing and Independently Funded Intellectual Property (Section 24)
- Intellectual Property (Section 25)
- Royalty Payments to the Commission (Section 26)
- Change in Business (see this section)
- Access to Sites and Records (see this section)

28. Certifications and Compliance

a. Federal, State, and Local Laws

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

b. General Terms and Conditions

The Contractor will comply with all state general terms and conditions incorporated by reference in Exhibit C, including the Contractor Certification Clauses (CCC 307).

29. Definitions

- ***Agreement Term*** means the length of this Agreement, as specified on the Agreement signature page (form STD 213).
- ***Budget Reallocation*** means the movement of funds between tasks identified in the budget (Exhibit B).
- ***Confidential Information*** means information that the Contractor has satisfactorily identified as confidential in Attachment 1 to this Exhibit and that the Energy Commission has agreed to designate as confidential under Title 20 California Code of Regulations Section 2505.
- ***Contractor-Licensed Intellectual Property*** means intellectual property licensed from the Energy Commission to the Contractor. Contractor-licensed intellectual property must be identified in Attachment 1 to this Exhibit.
- ***Contractor-Owned Intellectual Property*** means intellectual property that is owned by the Contractor, with the Energy Commission's permission. Contractor-owned intellectual property must be identified in Attachment 1, Section 4 of this Exhibit.
- ***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.
- ***Deliverable*** means any tangible item specified for delivery to the Energy Commission in the Scope of Work.
- ***Disabled Veteran Business Enterprise (DVBE)*** means a business that is certified by the California Department of General Services as meeting the requirements of California Military and Veterans Code Section 999(b)(7).

- ***Effective Date*** means the date on which this Agreement has been signed by the last party required to sign, provided that the Agreement has been approved by the Energy Commission at a business meeting (or by the Executive Director or his/her designee), and by the California Department of General Services.
- ***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 Contractor 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 deliverables created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices. The Commission owns such deliverables 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.
- ***Invention*** means contractor-owned 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 Contractor 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 Contractor 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.
- ***Project means th***e entire effort undertaken and planned by the Contractor and consisting of the work fun***ded by t***he 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 deliverable 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.
- ***Work Authorization*** means a contract that supplements the Scope of Work and budget of an existing contract that is broadly drafted to meet the Energy Commission's future, undetermined needs.

ATTACHMENT 1 Confidential Deliverables, Project-Relevant Pre-Existing and Independently Funded Intellectual Property, and Contractor-Owned and Licensed Intellectual Property

1. Instructions

Identification of Confidential Information

- **Prior to the effective date of the Agreement,** the Contractor must identify in **Section 2** of this attachment any deliverables (or information contained within deliverables) 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 23 (Confidentiality) of these terms and conditions.
- **During the Agreement,** if the Contractor 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 must be added to this attachment through a Letter of Agreement (see Section 7 (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 23.
- **When submitting deliverables containing confidential information,** the Contractor 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 Contractor to submit a non-confidential version of the deliverable, 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 Contractor 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 deliverable under the Agreement. This attachment must be amended by a Letter of Agreement (see Section 7 (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 deliverable 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 Contractor 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 Contractor 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 deliverables created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices. The Commission owns such deliverables 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 25 (Intellectual Property) and 26 (Royalty Payments to the Commission).

Identification of Contractor-Owned Intellectual Property

- All contractor-owned intellectual property must be identified in **Section 4** of this attachment, as specified in Section 25 (a) (Intellectual Property).
  - ***"Contractor-Owned Intellectual Property"*** means intellectual property owned by the Contractor, with the Energy Commission's permission.
- **Failure to identify contractor-owned intellectual property** in this attachment will result in the Commission's ownership of the intellectual property.

Identification of Contractor-Licensed Intellectual Property

- All contractor-licensed intellectual property must be identified in **Section 5** of this attachment, as specified in Section 25 (b) (Intellectual Property).
  - ***"Contractor-Licensed Intellectual Property"*** means intellectual property licensed from the Energy Commission to the Contractor.
- **Failure to identify contractor-licensed intellectual property** in this attachment will result in the Contractor's lack of a license to use, publish, translate, modify, and/or reproduce the intellectual property.

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

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

Deliverable name	
Task/subtask number	
Information to be kept confidential	☐ Entire deliverable
	☐ Selected information within deliverable *(describe below; be as specific as possible):*
Legal basis for confidentiality designation	☐ California Public Records Act, located in California Government Code Sections 6250 et seq. *(identify the relevant section(s) and subsections(s) below):* ☐ Other law *(identify below, including the relevant section(s) and subsections(s)):*
Term of confidentiality	MM-DD-YY to MM-DD-YY

Trade secrets only

Answer the following questions if the deliverable/information described above is considered a trade secret (i.e., confidential business information that provides the business with a competitive advantage):

1. What is the nature of the competitive advantage provided by the deliverable/information?
2. How would the competitive advantage be lost by disclosure? (generally describe the value of the deliverable/information and the ease or difficulty with which it may be legitimately acquired or duplicated by others).

Cut and paste this chart as necessary to add deliverables.

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

The Contractor has identified the following items as "project-relevant pre-existing intellectual property" and/or "project-relevant independently funded intellectual property, as defined in Sections 24 (Pre-Existing and Independently Funded Intellectual Property) and 29 (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 24.

Name/Title of Intellectual Property	
Type of Intellectual Property	☐ Project-relevant pre-existing intellectual property ☐ Project-relevant independently funded intellectual property
	☐ Invention ☐ Process ☐ Technology ☐ Technique ☐ Design ☐ Work of Authorship ☐ Drawing ☐ Trademark/ Service mark ☐ Data ☐ Logo ☐ Software ☐ Formula
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)	☐ Copyright ☐ Patent ☐ Trademark/ Service mark Name of owner: Number and date:
	For pending applications Name of applicant: Application number and date:
Unregistered Intellectual Property	☐ Copyright ☐ Trademark/ Service mark ☐ Trade Secret Name of owner:
Description of how the property will be or has been used to support a premise, postulate, or conclusion referred to or expressed in any deliverable under the Agreement	

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

4. Contractor-Owned Intellectual Property

The Commission has authorized the Contractor's ownership of the following intellectual property, as specified in Section 25(a) (Intellectual Property):

Name/Title of Intellectual Property	
Task Number(s) that Involve Development of the Intellectual Property	
Type of Intellectual Property	☐ Invention ☐ Technology ☐ Design ☐ Drawing ☐ Data ☐ Software ☐ Formula ☐ Process ☐ Technique ☐ Work of Authorship ☐ Trademark/ Service mark ☐ Logo

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

5. Contractor-Licensed Intellectual Property

The Commission has granted a license to the Contractor for the following intellectual property, as specified in Section 25(b) (Intellectual Property):

Name/Title of Intellectual Property	
Task Number(s) that Involve Development of the Intellectual Property	
Type of Intellectual Property	☐ Invention ☐ Technology ☐ Design ☐ Drawing ☐ Data ☐ Software ☐ Formula ☐ Process ☐ Technique ☐ Work of Authorship ☐ Trademark/ Service mark ☐ Logo
Scope of License	☐ No-cost ☐ Worldwide ☐ Perpetual ☐ Non-exclusive ☐ Transferable *(transfers are subject to the royalty requirements in Section 26).* **If the "No-cost," "Worldwide," and/or "Perpetual" boxes are not checked above, describe the cost terms and geographic and/or time restrictions below:**
Permitted Uses	☐ Use ☐ Publish ☐ Translate ☐ Modify ☐ Reproduce **Describe how the intellectual property will be used, published, translated, modified, and/or reproduced:**

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

ATTACHMENT 2: Sample Letter of Agreement

Changes to the Agreement must be in writing. Changes not requiring Commission business meeting approval must be documented in a Letter of Agreement signed by both parties. Contractors must request changes to the Agreement using the procedure described in Section 7 (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 [Contractor], Agreement Number [#]

[Letter of Agreement date]

The California Energy Commission (Energy Commission) and [Contractor] 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:

CONTRACTOR

BY *(Authorized Signature)* -	DATE SIGNED

PRINTED NAME AND TITLE OF PERSON SIGNING

STATE OF CALIFORNIA	
California Energy Commission (Energy Commission)	
BY *(Authorized Signature)* -	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.

Special Terms and Conditions (Exhibit D)

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

Contacts List (Exhibit E)

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