

**STANDARD AGREEMENT**

STD. 213 (NEW 02/98)

AGREEMENT NUMBER
500-02-004

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  
Regents, Office of the President (UC)
2. The term of this Agreement is: 09-01-02 to 03-31-06
3. The maximum amount of this Agreement is: \$ 20,000,000.00
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:

SEE ATTACHED DOCUMENT FOR EXHIBITS

\*View at [www.dgs.ca.gov/contracts](http://www.dgs.ca.gov/contracts)

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

<b>CONTRACTOR</b>	<b>CALIFORNIA Department of General Services Use Only</b>
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)	
Regents – Office of the President	
BY (Authorized Signature)	DATE SIGNED)
	
PRINTED NAME AND TITLE OF PERSON SIGNING	
David Mears, Director, Research Administrative Office	
ADDRESS	
1111 Franklin Street, 5 <sup>th</sup> Floor Oakland, CA 94607-5200	
<b>STATE OF CALIFORNIA</b>	
AGENCY NAME	
State Energy Resources Conservation and Development Commission	
BY (Authorized Signature)	DATE SIGNED
	
PRINTED NAME AND TITLE OF PERSON SIGNING	
Cheryl Raedel, Contract Office Manager	
ADDRESS	
1516 9 <sup>th</sup> Street, MS-18, Sacramento, CA 95814	
<input type="checkbox"/> Exempt per _____	

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## **EXHIBIT A SCOPE OF WORK**

### **PURPOSE**

The purpose of this Agreement is to fund research, development and demonstration awards for the Public Interest Energy Research (PIER) Program. The University of California Office of the President (UCOP) will assist the Commission in administering these awards. This Agreement contains the terms for awards. Awards will primarily be made to researchers within the University of California, California State University and California Community College systems, Department of Energy Laboratories, and governmental agencies and academic institutions of higher education from any state. UCOP shall be responsible for executing agreements with researchers and administering these agreements.

Work Authorizations (WA) specifying the tasks to be undertaken shall be used for all work assignments. WA for research tasks will be made on an as-needed basis. Each WA shall be approved by the Commission at a Commission Business Meeting and is subject to Department of General Services-Legal Office review. The Commission shall issue an annual WA for UC's management and administrative duties. A sample WA format is given in Exhibit F.

WA made under this Agreement shall assist the Commission with the PIER portfolio, which is intended to effectively balance the risks, benefits and time horizons of various public interest energy research investments that will provide tangible benefits for California energy ratepayers. The work shall emphasize innovative energy supply and end-use technologies, focusing on their reliability, affordability and environmental attributes. Research study topics include:

**Buildings End-Use Energy Efficiency:** research to decrease building energy by developing or improving energy-efficient technologies, strategies, tools and building performance evaluation methods.

**Industrial/Agricultural/Water End-Use Energy Efficiency:** research on energy efficiency, power quality, reliability, and energy load reduction in industrial facilities and processes, agricultural operations, and water and wastewater treatment facilities to improve process-related energy economics while reducing environmental pollution and meeting energy needs in a sustainable manner.

**Renewable Energy:** research to address the capital costs; the reliability and dispatchability; the impacts on the safety and power quality of the electricity system; the nonenergy benefits; the potential of distributed generation; and the emissions of renewable energy technologies.

**Environmentally-Preferred Advanced Generation:** research to facilitate the widespread use of non-renewable distributed generation (DG) and to improve California's air quality by developing reliable, inexpensive, emission-reduction technologies for reciprocating engines, small turbines and microturbines, fuel cells, and hybrid fuel cell-microturbine technologies.

**Energy-Related Environmental Research:** research to better understand and address the effects of the environmental impacts that occur whenever energy is extracted, collected, transported, converted, or utilized. Environmental impacts include those on air quality, aquatic resources, land use and habitat, and global climate change.

**Energy Systems Integration:** research to develop critical infrastructure changes that allow electricity transactions to be made in a more effective, efficient, reliable, and environmentally acceptable manner. The infrastructure includes generation, transmission, distribution, control, and communications technologies from generation to end use, all functioning in an integrated fashion. The infrastructure also interconnects with other critical infrastructure such as telecommunications.

## **TASK 1: MANAGEMENT AND ADMINISTRATIVE DUTIES**

- 1.1 Prepare Work Authorizations: The Commission Contract Manager shall identify the research needed in each WA. UCOP shall respond in a timely manner to requests and direction from the Commission Contract Manager to communicate with and, as appropriate, meet with designated Commission representatives to develop specific assignments. Following discussions with the Commission Contract Manager, UCOP shall prepare a draft WA that describes the objectives, scope of work, tasks, schedule and desired deliverables; identifies the key UC staff, and other key personnel who will conduct the research; and contains the budget. UCOP shall submit this draft WA to the Commission Contract Manager and make appropriate changes he/she requests. Following approval by the Commission, the final WA must be approved by the Commission Contract Manager and sent to the UCOP Contract Officer (or their designee) for signature. The fully executed WA shall be filed with the Commission Contract Office.
- 1.2 Establish agreements: The Commission Contract Manager shall send each Commission-approved WA to the UCOP Contract Officer for approval. Upon UCOP's approval of the WA, UCOP shall execute agreement(s) with the Performing Institution(s) to conduct the research.
- 1.3 Administer agreements: UCOP shall manage and monitor the progress of each research project in accordance with each WA. UCOP shall review and, when appropriate, approve invoices and provide appropriate administrative and financial accounting.

- 1.4 Prepare progress reports: UCOP shall prepare progress reports summarizing the status of all active WA.

## **TASK 2: RESEARCH TASKS**

- 2.1 Conduct Scoping Studies: The result of a scoping study is a summary report that provides sufficient information to make informed decisions about further pursuit of a proposed project. The study may include, but is not necessarily limited to, literature survey of related work to assess the current state of knowledge; energy resource assessment, energy resource and energy demand compatibility assessment; technology and market assessment; economic and financial analysis; institutional considerations; and time schedules.
- 2.2 Prepare Research Plans: These plans shall include a description of the research tasks to be performed. The tasks may include the preparation of research instruments, the development of products to be assessed, data gathering, and data analysis. As appropriate, the plan shall include a description of research instruments, a description of product development methods, a description of the data gathering procedures, a description of the data analysis procedures; a description of quality assurance procedures, and contingency measures to be considered if the initial research efforts are not successful.
- 2.3 Prepare Research Instruments: Research instruments include surveys, test plans and test apparatus. As needed, acquire, purchase and assemble these instruments in accordance with the research plan. Test plans shall include as appropriate but are not limited to: a description of the process to be tested; the rationale for why the tests are required; predicted performance based on calculations or other analyses; test objectives and technical approach; a test matrix showing the number of test conditions and replicated runs; a description of the facilities, equipment, instrumentation required to conduct the tests; a description of test procedures, including parameters to be controlled and how they will be controlled; parameters to be measured and instrumentation to measure them; calibration procedures to be used; recommended calibration interval; and maintenance of the test log.
- 2.4 Develop Product to be Assessed: Products include, software, hardware, hypotheses and systems. This phase is where the product is designed, developed, prototyped or otherwise made ready for testing.
- 2.5 Gather Data: Data shall be gathered in accordance with the research plan.
- 2.6 Analyze Data: Data shall be analyzed in accordance with the research plan.
- 2.7 Prepare Deliverables: Deliverables are products that are submitted to the Commission for review and comment, and that incorporate the knowledge and understanding gained by

performing the research tasks. UC shall consider the comments of the Commission Contract Manager and use professional judgment in revising the deliverables accordingly. Deliverables include scoping studies, progress reports; written reports that describe methods, test plans, results of testing, analysis of data, conclusions, and recommendations for future study, workshop agendas and summaries, description and photographs of equipment/product developed; summaries of advisory group meetings; computer software with written instructions for data input and use of the software; and production prototypes. The deliverables should be useful to Commission staff, researchers and other parties as appropriate. The level of detail should be sufficient to assess whether the project objectives and goals have been successfully met.

- 2.8 Develop Technology Transfer Plan: The plan shall explain how the knowledge gained in this project will be made available to the public.
- 2.9 Implement Technology Transfer Plan: Conduct technology transfer activities in accordance with the Technology Transfer Plan.
- 2.10 Prepare Production Readiness Plan: The goal of the plan is to determine the steps that will lead to the mass manufacturing of the products developed in this project. The degree of detail should be proportional to the complexity of producing the proposed product and its state of development.
- 2.11 Assemble and Work with Project Advisory Groups: Assemble individuals from relevant industries and organizations for purposes of gathering input and feedback on the project including research direction and the resulting products.

**EXHIBIT B**  
**Budget Detail and Payment Provisions**

**1. INVOICING PROCEDURES**

- A. For services rendered in accordance with the terms of this Agreement, and upon receipt and approval of the invoices, the Commission agrees to compensate UC for actual expenditures incurred in accordance with the approved budget specified in each WA, which are not attached hereto but are made a part of this Agreement.

Invoices shall be submitted in duplicate not more frequently than monthly to:

California Energy Commission  
Accounting Office, MS-2  
1516 9th Street, First Floor  
Sacramento, California 95814

B. Payment Request Format

A request for payment shall consist of, but not be limited to an invoice that references the Agreement number and the WA number being invoiced for the period.

The Commission will accept computer-generated invoices or the equivalent without backup documentation to verify the expense. Backup documentation shall be retained by UC for audit purposes.

**For each WA** being invoiced, the request shall consist of, but not be limited to the following:

1. An invoice that is a summary of actual expenses incurred during the billing period in accordance with the WA for that project as follows:
  - a) Date prepared, WA number, and billing period;
  - b) Personal services (Total labor costs including fringe benefits);
  - c) Subcontractor invoices;
  - d) Equipment;
  - e) Travel and per diem;
  - f) Miscellaneous expenses (including materials and supplies);
  - g) Indirect costs;
  - h) By Budget line item (cost component) category, list budgeted amount, amount billed to date, current billing, and balance of funds.
2. Any progress reports and products that were due during the invoice period, as detailed in the WA.

**2. BUDGET CONTINGENCY CLAUSE**

It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the work identified in Exhibit A, the Commission may either terminate the Agreement, or individual WA issued thereunder, pursuant to the Termination provision, or offer an Agreement amendment or WA amendments to UC to reflect the reduced amount(s).

**3. TRAVEL AND PER DIEM RATES**

- A. UC shall be reimbursed for travel and per diem for trips in accordance with the Regents-approved rates for UC employees. UC shall provide a copy of the current Regents-approved rates and the rates for other Performing Institutions to the Commission upon request. Travel expenses in excess of Regents-approved rates cannot be reimbursed. Origination and destination points for calculating travel expenses shall be from the office location where the employees performing on the Agreement are permanently assigned.
- B. Each WA shall identify the purpose, the amount and destination for each trip. Those trips identified in the Budget of each WA are considered approved. Travel not listed in the Budget of each WA shall require prior written (including fax or e-mail) authorization from the Commission Project Manager and the Commission Contract Manager.
- C. Any Department of Energy (DOE) authorized travel shall be reimbursed on the same basis as the DOE approved rates in effect during this Agreement.
- D. UC must document travel expenses in its financial records as follows:
  - 1) Expenses must be detailed using the current UC Regents / DOE-approved rates.
  - 2) Expenses must be listed by trip, including dates and times of departure and return.
  - 3) UC/DOE must retain receipts for travel expenses claimed for audit and verification.
- E. Travel by employees from other public and/or public educational entities shall be reimbursed in accordance with the rates approved by their governing bodies.
- F. Trips made by all other parties shall be reimbursed in accordance with the prevailing rates for Non-Represented State of California Employees. The Commission will supply a copy of these rates to UCOP upon request.

**4. RETENTION: No retention will be withheld under this Agreement.**

**5. PAYMENT TERMS AND CONDITIONS**

- A. UC shall use the salary and wage rates commensurate with approved personnel status and level of expertise.
- B. The indirect cost rate for UC shall not exceed 20% for costs incurred at all UC campuses and Office of the President. This rate shall apply to Modified Total Direct Costs as defined in OMB Circular No. A-21.
- C. An annual WA will be issued for UCOP's management and administrative duties. Up to ten percent (10%) of the annual approved budget of this Agreement will be allocated for this purpose. Actual costs will be reimbursable.
- D. Each invoice is subject to Commission Contract Manager approval. The Commission Contract Manager will not process any payment request if the following conditions have not been met:
  - 1) All required deliverables and reports have been submitted and are in accordance with the Standard of Performance clause.
  - 2) All appropriate permits or permit waivers from governmental agencies have been issued.
- E. Payments shall be made to UC for undisputed invoices. An undisputed invoice is an invoice submitted by UC for services rendered and for which additional evidence is not required to determine its validity. UC will be notified via a Dispute Notification Form, within 15 working days of receipt of an invoice, if the Commission disputes the submitted invoice. On any disputed invoice, the Commission shall withhold payment only on that portion of the invoice that is disputed.
- F. The final invoice must be received by the Commission no later than 60 calendar days after the Agreement termination date.
- G. The Commission will pay for State or local sales or use taxes on the services rendered or equipment, parts or software supplied to the Commission pursuant to this Agreement. The State of California is exempt from Federal excise taxes, and no payment will be made for any taxes levied on employee's wages.
- H. Advance Payment
  - 1) In the event that advance payments are necessary, UC shall submit the first invoice for advance payment when each WA is approved. Thereafter, UC shall submit all invoices on a calendar quarter basis.

- 2) If the estimated period of performance exceeds ninety (90) days and the estimated cost exceeds \$25,000, the Commission shall advance funds incrementally. In such a case, UC will initially invoice the Commission in an amount sufficient to permit the work to proceed for one hundred and eighty (180) days and thereafter invoice the Commission to maintain approximately a ninety (90) day period that is funded in advance.
- 3) The Commission is advancing payment to UC. UC may make advance payments to UC campuses, Federal Laboratories, California State Agencies, the California State University and Community College systems, and Federal Agencies. UC shall not provide advance payment to any other type of entity performing services without prior written approval from the Commission.
- 4) A reconciliation report, reflecting actual costs, shall be submitted every quarter after the initial advance payment. This report is due within 30 days after the end of each quarter. The reconciliation report shall include detail as provided in the Payment Request Format clause.
- 5) Other than the initial advance payment, the Commission Contract Manager will approve advance payments provided that the Commission Contract Manager has received and approved the progress reports, and any other deliverables required in the WA for the previous period.
- 6) Upon completion or termination of a WA, UC shall refund any excess funds to the Commission within sixty (60) calendar days.

**6. BUDGET DETAIL**

Each WA shall develop a line item budget to include, but not be limited to: personal services, subcontracts, equipment, travel and per diem, miscellaneous expenses (including materials and supplies) and indirect costs. (See Exhibit F for the budget format and B-1 and B-2 for supporting details.)

**7. ALLOWABLE COSTS**

Allowable costs shall be determined in accordance with Office of Management and Budget (OMB) circular No. A-21, "Cost Principles Applicable to Grants, Contracts, and Other Agreements with Institutions of Higher Education," incorporated by reference as part of this Agreement.

**BUDGET EXHIBIT B-1**  
**PERSONNEL COMPENSATION**

To be filled out by Prime Contractor and Major Subcontractors (those who receive sub-awards valued at 25% of the WA or \$100,000, whichever is less). List the names of key and important personnel, the name or job classification for other personnel, the direct hourly rate, fringe benefit rate, and fully-loaded hourly rate (hourly rate plus fringe benefits, overhead, G&A and profit, as applicable). If rates will change over the duration of the project, provide estimated rates for appropriate time periods. Use these rates to develop your task budgets. Use as many sheets as necessary.

**Organization name: University of California Office of the President, CIEE**

Rates for the period from June 30, 2002 to March 31, 2006			
Names/Job Classification-Title	Hourly Rate (\$)	Fringe Benefits (%)	Fully-Loaded Hourly Rate (\$)
<b>NOTE: these rates are estimates; actual compensation will be used for personnel to be identified at the time individual WA are developed</b>			
CIEE Project Manager	\$57	24%	\$85
Administrative Support	\$28	24%	\$42

Rates for the period from _____ to _____			
Names/Job Classification-Title	Hourly Rate (\$)	Fringe Benefits (%)	Fully-Loaded Hourly Rate (\$)

**BUDGET EXHIBIT B-2**

**CALCULATION OF FRINGE BENEFITS, OVERHEAD,  
GENERAL & ADMINISTRATIVE EXPENSES, AND PROFIT RATES**

To be filled out by Prime Contractor and Major Subcontractors (those who receive sub-awards valued at 25% of the WA or \$100,000, whichever is less).

**Organization name: University of California Office of the President, CIEE**

<b>Rates (percentages) for time intervals covering the duration of the project</b>	<b>Fringe Benefits (FB)</b>	<b>Overhead (OH)</b>	<b>General &amp; Administrative (GA)</b>	<b>Profit (P)</b>
Rates from June 30, 2002 to March 31, 2006 (Estimate)	24%	20%	NA	NA

<b>Instructions</b>	<b>Fringe Benefits</b>	<b>Overhead (OH)</b>	<b>General &amp; Administrative</b>
List items included in fringe benefits, overhead and G&A, e.g., vacation, retirement plan, telephone secretarial rent/lease, insurance, etc.	<b>For example: OASDI, Medicare, Workers' compensation, disability, unemployment insurance, retirement, life/health insurance, vacation, student fee remission (if applicable)</b>	<b>Institutional indirect costs are charged on Modified Total Direct Costs in accordance with allowable expenditures as defined in OMB Circular A-21</b>	N/A

<b>Expense Items in the Budget Spreadsheets</b>	<b>Provide Formulas for Calculating Fully-Burdened Invoicing * e.g., <math>DL \times (1 + OH + GA + P)</math></b>
Direct labor (DL)	$(DL \times (1+FB)) \times (1+OH)$
Fringe benefits (FB)	Included in Direct labor formula
Travel and per diem (TR)	$TR \times (1+OH)$
Equipment (EQ)	No burdens applied
Miscellaneous (MIS), includes materials and supplies)	$MIS \times (1+OH)$
Subcontractors (SUB) **	No burdens applied if executed by UCOP/CIEE. SUB (1+OH) on 1 <sup>st</sup> \$25,000 of each subcontract if executed by the other Performing Institutions.

\* Provide additional formulas for each expense item if they will change over the duration of the project.

\*\* Prime Contractor profit not allowed on Subcontractor invoices.

**EXHIBIT C**  
**Interagency Provisions**

1. APPROVAL: This Agreement is not valid until signed by both parties and approved by the Department of General Services, if required.
2. AUDIT: The agency performing work under this Agreement agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement if it exceeds \$10,000. The agency performing work agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated.
3. PAYMENT: Costs for this Agreement shall be computed in accordance with State Administrative Manual Section 8752 and 8752.1.
4. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties, and approved as required. No oral understanding or agreement not incorporated in the Agreement is binding on any of the parties.
5. SUBCONTRACTING: All subcontracting must comply with the requirements of the State Contracting Manual, Section 3.06.
6. ADVANCE PAYMENT: The parties to this interagency agreement may agree to the advancing of funds as provided in Government Code Sections 11257 through 11263.
7. DISPUTES: The agency performing work under this Agreement shall continue with the responsibilities under this Agreement during any dispute.
8. TIMELINESS: Time is of the essence in this Agreement

**EXHIBIT D**  
**Special Terms and Conditions**

**1. CONTRACT MANAGEMENT**

- A. The individuals managing this Agreement, for both parties, are listed in Exhibit G. Any changes in personnel identified in Exhibit G shall be communicated in writing by either party. UC Project Manager cannot be replaced or substituted without prior written approval of the Commission Contract Manager, such approval will not be unreasonably withheld.
- B. The UC Project Manager and the Commission Contract Manager are responsible for the day to day project status, decisions and communications with each other. The Commission Contract Manager reviews all project deliverables, reports and invoices.

**2. STANDARD OF PERFORMANCE**

- A. UC and non-UC personnel performing work under this Agreement shall be responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures.
- B. In the event that UC or non-UC personnel fail to perform in accordance with the foregoing standard of performance, the Commission Contract Manager and UC Project Manager shall seek to negotiate in good faith an equitable resolution satisfactory to both parties. If such a resolution cannot be reached, the parties shall work through the Commission's dispute resolution process described in the "DISPUTES" clause of this Agreement.
- C. Nothing contained in the section is intended to limit any of the rights or remedies, which the Commission may have under law.

**3. REPORT STANDARDS**

- A. Progress reports shall summarize the activities in each WA. Final reports, if required, will be identified under individual WA. Progress Reports and Final Reports shall be submitted in accordance with Exhibit F.
- B. All documents that will be released to the public, including reports, deliverables, and articles submitted for publication and all reprints, shall include the following legend:

**"LEGAL NOTICE"**

**"This report was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of**

**California. The Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this report; nor does any party represent that the use of this information will not infringe upon privately owned rights."**

**4. DISPUTES**

In the event of a contract dispute or grievance between the Commission Contract Manager and UC, both parties shall follow the following procedure:

**A. Commission Dispute Resolution**

If a problem cannot be resolved within ten (10) working days, between the Commission Contract Manager and the UC Contract Manager, UC shall prepare a package in writing stating the issues in the dispute, the legal authority or other basis for UC's position and the remedy sought. The package must be submitted to the Commission Dispute Resolution Committee. The Committee shall make a determination on the problem within ten (10) working days after receipt of UC's package. Should UC disagree with the Committee's decision, UC may appeal to the full Commission at a regularly scheduled business meeting. The Committee will provide UC with the current procedures for placing the appeal on a Commission Business Meeting Agenda.

UC shall continue with the responsibilities under this Agreement during any dispute.

**B. Binding Arbitration**

Should the Commission's Dispute Resolution procedure identified in paragraph A. above fail to resolve a contract dispute or grievance to the satisfaction of the UC, the UC may elect to have the dispute or grievance resolved through binding arbitration. The Commission may also elect to have any contract dispute or grievance resolved through binding arbitration. Both parties must agree to submit the dispute or grievance to arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules. The decision rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof. The demand for arbitration shall be made no later than six (6) months after the date of the contract's termination, irrespective of when the dispute or grievance arose, and irrespective of the applicable statute of limitations for a suit based on the dispute or grievance. If the parties do not mutually agree to arbitration, the parties agree that the

forum to resolve a dispute is State court or Federal court, with the exception of Federal bankruptcy court.

The cost of arbitration shall be borne by the parties as follows:

- 1) The AAA's administrative fees shall be borne equally by the parties;
- 2) The expense of a stenographer shall be borne by the party requesting a stenographic record;
- 3) Witness expenses for either side shall be paid by the party producing the witness;
- 4) Each party shall bear the cost of its own travel expenses;
- 5) All other expenses shall be born equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of contract funds. Both parties must agree, in writing, to utilize contract funds to pay for arbitration costs.

## **5. TERMINATION**

### **A. Default**

In the event of any default of this Agreement or any individual Work Authorization, the Commission may, without prejudice to any of its other legal remedies, terminate this Agreement upon five (5)-days written notice to UC.

### **B. For Cause**

The Commission may, for cause, and at its option, terminate this Agreement or any individual Work Authorization upon giving thirty (30)-days' advance written notice to UC. In such event, UC agrees to use all reasonable efforts to mitigate its expenses and obligations.

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

- 1) Loss or redirection of State or Federal funding for this Agreement;
- 2) Significant change in State or Commission policy such that the work or product being funded would not be supported by the Commission;
- 3) Change in Commission's staffing such that the work or product being funded can be done by staff of the Commission.

### **C. Allowable Costs**

OMB Circular No. A-21, Section J.49, shall be used to determine allowable termination costs, but not in excess of the total amount of the Agreement or an individual Work Authorization, as applicable.

**6. WAIVER**

No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of the Commission to enforce at any time any of the provisions of this Contract, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Contract or any part of it or the right of the Commission to thereafter enforce each and every such provision.

**7. NOTICE**

Legal notice to either party may be given using the following delivery methods, certified mail, Federal Express, United Parcel Service, or personal delivery, providing evidence of receipt, to the respective parties identified in Exhibit G.

Delivery by fax or e-mail is not considered notice for the purpose of this Agreement. Legal notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In which case, the effective date shall be postponed 24 hours, or whenever the next business day occurs.

**8. STOP WORK**

The Commission Contract Officer may, at any time, by written notice to UC, to require UC to stop or suspend work on any or all WA in this Agreement. Stop Work Orders may be issued for reasons such as a project exceeding budget, standard of performance, out of scope work, delay in project schedule, misrepresentations and the like.

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

**9. INDEPENDENT CONTRACTOR**

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

**EXHIBIT E**  
**Additional Provisions**

**1. WORK AUTHORIZATION**

- A. UC shall begin work only upon receipt of a written Work Authorization (WA), prepared by the Commission Contract Manager and signed by both the UC Contract Officer (or their designee) and the Commission Contract Manager. Each WA shall be approved by the Commission at a Commission Business Meeting and is subject to Department of General Services-Legal Office review. The Commission Contract Manager shall file all WA with the Commission Contracts Office before the payment of any invoice.
- B. Each WA shall be numbered sequentially and contain the information identified in the Sample WA Format in Exhibit F.
- C. The Commission reserves the right to require UC to stop or suspend work on any or all WA in accordance with the STOP WORK clause.
- D. Payment for each WA is based upon an approved budget in each WA. Budgets may be cost-reimbursable or deliverables-based (fixed price). The costs of a completed, approved WA shall not exceed the authorized total amount of the WA, except under the following conditions:

If, in the performance of the WA, UC determines that the total costs will exceed the estimated costs, UC shall immediately notify the Commission Contract Manager. Upon such notification, the Commission Contract Manager may amend the WA by:

- 1) Altering the scope of the WA to accomplish the work within the estimated costs; or
  - 2) Augmenting the dollar amount for deliverables in the WA; or
  - 3) Stop work in the WA in accordance with the “STOP WORK” paragraph.
- E. UC may reallocate up to a cumulative amount of fifteen percent (15%) of the total amount of each WA or \$5,000 (whichever is greater). Written notification of any such changes must be provided in the current progress report. Proposed budget changes that exceed the cumulative total of more than fifteen percent (15%) of the total WA or \$5,000 (whichever is greater) require prior written approval of the Commission Project Manager, the PIER Team Lead and the Commission Contract Manager.
- F. If there are significant variances in the performance of the WA in relation to what was estimated at the outset, the UC Project Manager will report them along with recommended mitigating actions for consideration by the Commission Project Manager. UC Contract Manager has a continuing obligation to report in a timely fashion any significant variances affecting performance of the WA. Examples of significant variances include inability to deliver products by key WA dates; unavailability of key personnel that will effect timely submittal of deliverables; and

key technical issues that would require change in scope, redirection of the effort, or discontinuation of the project.

- G. Each WA shall identify the key personnel and key subcontractors who have primary responsibility for producing or managing the substantive work in the WA. These individuals or entities cannot be replaced or substituted without prior written approval of the Commission Contract Manager, and such approval shall not be unreasonably withheld.
- H. Each WA shall be incorporated into this Agreement. However, it is understood and agreed by both parties to this Agreement that all of the terms and conditions of the Agreement shall remain in force with the inclusion of any such WA. A WA shall not constitute an independent agreement, and shall not amend or supersede any of the other provisions of this Agreement.

## 2. **SUBCONTRACTS**

- A. UC shall be responsible for establishing and maintaining written agreements with and making payments to subawardees for work performed in accordance with the terms of this Agreement.
- B. In accordance with the PIER Program Subcontracting Policy, dated January 12, 2001, between the Commission and the Department of General Services-Office of Legal Services, UC is exempt from paragraph 5. SUBCONTRACTING in Exhibit C of this Agreement. The Commission will send a copy of the current policy upon request.
- C. In subawards to UC-managed DOE laboratories, UC shall use terms negotiated between DOE and UC. Sub-awards to other DOE laboratories shall use the terms and conditions negotiated between DOE and the Energy Commission.

## 3. **PURCHASE OF EQUIPMENT**

Title to equipment acquired by UC and subawardees shall vest in UC. UC shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Commission funds, and shall not encumber the property without Commission Contract Manager approval. When equipment is no longer needed for the original project or program, UC shall contact the Commission Contract Manager for disposition instructions. If disposition instructions are not provided within 120 days after completion of the WA, UC shall have no further obligation to the Commission regarding such equipment.

UC shall refer to applicable OMB circular A-21 for additional equipment requirements and allowable costs.

#### **4. ROYALTY PAYMENTS TO THE COMMISSION**

Royalty provisions apply for each project funded under this Agreement. These terms apply to both UC and non-UC personnel and performing institutions. For DOE projects, royalty provisions are included in Exhibit H-2 (A, B and C). These royalty provisions only apply to intellectual property developed under this Agreement.

- A. In consideration of the Commission providing funding to the UC, UC agrees to pay the Commission a portion of either Net Revenues or Net Royalties under the terms and conditions hereinafter set forth.
- B. Net Royalties. If the Performing Institution licenses to a Licensee, the UC's obligation to make payments to the Commission shall commence from the date that the Net Royalties calculation is positive. Payments are payable in annual installments and are due the first day of March for Net Royalties calculation made for the UC's prior fiscal year. UC agrees to pay to Commission an amount equivalent to 10% of the total cumulative Net Royalties for each and all Performing Institutions, less payments made by UC to Commission in previous years when Net Royalties per Performing Institution were positive. Payments shall be made by check, made payable to the California Energy Commission, PIER Fund.
- C. Net Revenues. If the Performing Institution is the Licensee, the UC's obligation to make payments to the Commission shall commence upon the first sale of the Licensed Product. Payments are payable in annual installments and are due the first day of March for the prior fiscal year of the UC. UC agrees to pay an amount equivalent to 1.5% of the Net Revenues by check made payable to the California Energy Commission, PIER Fund.
- D. UC agrees to and shall require each Performing Institution to agree not to make any sale, license, lease, gift or other transfer of any Subject Invention, Copyrightable Work or Project-Related Product (PRP) with the intent of, or for the purpose of, depriving Commission of Net Royalties or Net Revenues hereunder. Generally, this means that the Performing Institution will not make any sale, license, lease or other transfer of PRP for consideration other than fair market value except for research, educational, or other mutually agreed to purposes intended to serve the public benefit.
- E. UC and Performing Institutions shall maintain separate accounts within their financial and other records for purposes of tracking royalties and revenues due to the Commission under this Agreement.
- F. Audits on Payments to Commission. Payments to the Commission are subject to the Audit clause.
- G. Defaults. In the event of default hereunder, the Commission shall be free to exercise all rights and remedies available to it herein, and under law and at equity. UC's or a

non-UC Performing Institution's failure to pay when due, any amount due and payable under the terms of this contract constitutes a default under this Agreement.

- H. UC acknowledges that a late payment of royalties/revenues owed to the Commission will cause the Commission to incur costs not contemplated by the parties. If a royalty/revenue payment is not paid when due, UC agrees to pay the Commission a late fee equal to two percent (2%) of the payment due. Additionally, UC agrees that royalty/revenue payments not paid within fifteen (15) days of the due date shall thereupon become debt obligations of UC to the Commission, due upon demand and bearing interest at the maximum interest rate allowed by law.
- I. The parties agree that UC does not guarantee compliance with payments under this clause in the event of default by a non-UC Performing Institution. Amounts in default and not paid by a non-UC Performing Institution will not be paid by UC under this clause and the fees and obligations of this clause pursuant to such default and non-payment shall not be a responsibility of UC. However, UC has an affirmative duty to monitor non-UC Performing Institutions' compliance and take reasonable enforcement measures calculated to obtain non-UC Performing Institutions' performance of their payment obligations under this clause.

**5. INTELLECTUAL PROPERTY ITEMS DEVELOPED PRIOR TO THIS AGREEMENT**

The Commission makes no claim to intellectual property that existed prior to this agreement and was developed without Commission funding. Each WA shall identify any applicable pre-existing intellectual property.

**6. RIGHTS OF THE PARTIES REGARDING INTELLECTUAL PROPERTY**

Exhibit H-1 shall be used by UC in contractual agreements executed for work under this Agreement with all Performing Institutions except DOE Laboratories. Exhibit H-2 (A, B, and C) shall be used with DOE Laboratories except those managed by UC.

**7. CONFIDENTIALITY**

No confidential deliverables are anticipated under this Agreement. Any desire for confidential deliverables shall be addressed in each WA in accordance with the following:

A. Determination

The Commission Executive Director makes the final determination of confidentiality. In the event there is a disagreement over the items to be delivered under the Agreement, the parties shall use the Disputes clause. Those items to be delivered as confidential shall be subject to the Commission Executive Director's determination of confidentiality. If UC wishes to appeal the Executive Director's determination, the

appeal shall be made to the full Commission. If UC disagrees with this determination, the UC may seek judicial review as per Title 20 CCR 2501, et seq.

**B. Public and Confidential Products**

Only those products/items specifically listed in each WA or in a subsequent determination of confidentiality qualify as confidential products. All products including, but not limited to, progress reports, task products and the Final Report shall not contain confidential information except when the Commission Contract Manager and UC deem it necessary to include confidential information in a product. In such event, UC shall prepare the deliverable in two separate volumes, one for public distribution and one to be maintained in the Commission's confidential records.

**C. Future Confidential Information**

During this Agreement, it is possible that a UC or a non-UC Performing Institution may develop additional data or information that UC considers being protectable as confidential information. In this event, the Commission Contract Manager shall provide a copy of the Commission Application for Confidential Designation to UC. UC must list all items and information along with justification for confidentiality and submit the application to the Commission Contract Manager. The Commission Executive Director makes the final determination of confidentiality. Such subsequent determinations will be added to the applicable WA.

**D. Identifying and Submitting Confidential Information**

Each document containing confidential information submitted by UC shall be marked "Confidential" and delivered in a sealed package to the Commission Contract Officer identified in Exhibit G. The Commission Contract Officer will notify the Commission Contract Manager that the confidential information has been received and is in the Contracts Office for review. The confidential information will only be available to those persons authorized by the Executive Director.

**8. INDEMNIFICATION**

- A. UC shall defend, indemnify and hold the State of California and its agencies, their respective officers, employees and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of UC, its officers, agents or employees.
- B. The Commission shall defend, indemnify and hold UC, its officers, employees and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss,

expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the State of California, its officers, agents or employees.

**EXHIBIT F**  
**SAMPLE WORK AUTHORIZATION**  
**Contract #500-02-004**

Work Authorization #: UC Research Agreement-WA-**XXX**

Amount: **\$xxx,xxx**

Project Name: **Insert project title here.**

Term: **Insert the start and end dates of this WA here.**

Performing Institution Project Manager: **name**

Address: **address, city, state zip**

Telephone Number: **xxx-xxx-xxx, ext. xxxx**

E-mail Address: **xxx@xxxx.xxx**

Commission Project Manager: **name**

Address: **address, city, state zip**

Telephone Number: **xxx-xxx-xxx, ext. xxxx**

E-mail Address: **xxx@xxxx.xxx**

The project described in this work authorization falls primarily within **Tasks x.x, x.x and x.x** (*Select from the list in the Agreement.*) of the Commission-UC Research Agreement.

This WA contains information on:

- |  |           |          |
|--|-----------|----------|
| 1. Confidential Deliverables             | _____ Yes | _____ No |
| 2. Pre-existing Intellectual Property    | _____ Yes | _____ No |
| 3. Pre-approved Travel                   | _____ Yes | _____ No |
| 4. Equipment (and if known, disposition) | _____ Yes | _____ No |
| 5. UC-DOE Provisions                     | _____ Yes | _____ No |

**APPROVAL:**

\_\_\_\_\_  
Commission Project Manager      Date

\_\_\_\_\_  
Commission Contract Manager      Date

\_\_\_\_\_  
PIER Team Lead      Date

\_\_\_\_\_  
UC Contract Manager      Date

**EXHIBIT F**  
**SAMPLE WORK STATEMENT**

**GLOSSARY**

*Specific terms and acronyms used throughout this work statement are defined as follows:*

<i>Acronym</i>	<i>Definition</i>
	(Insert additional rows as needed.)

**Problem Statement**

Describe the problem that this research will address.

**Goals and Objectives**

The goal of this project is to...*(Complete the sentence with a brief description of the goal(s). Goals can be technical, economic or social. Please be brief, two to three sentences maximum.)*

This project meets the PIER Goal of <pick one from the list below> by <fill in the blank>. (If applicable, this project also meets the secondary goal of <pick one from the list below> by <fill in the blank>.)

**PIER Goals**

1. Improving the Energy Cost/Value of California’s Electricity
2. Improving the Environmental and Public Health Costs/Risk of California’s Electricity
3. Improving the Reliability/Quality of California’s Electricity
4. Improving the Safety of California’s Electricity

The objectives of this project are to...*(Complete this sentence with the objectives, which are things that will be measurable or knowable at the end of this project.)*

**Examples of Performance Measures:**

- . . .reduce the cost of electricity generation (or supply) by \_\_\_\_%.
- . . .increase the number of new technologies that are market-ready by \_\_\_\_<fill in the number>.
- . . . increase the adoption by the market of specific technologies by \_\_\_\_%.
- . . . increase the renewable technologies that are cost competitive by \_\_\_\_%.
- . . . increase the new energy systems that can use multiple fuels by \_\_\_\_%.
- . . . decrease end-use consumption in specific energy sectors.
- . . . decrease the system impacts over current best practices by \_\_\_\_%.
- . . .increase the number of market-ready technologies that contribute to reduced risks of increased environmental/health impacts by \_\_\_\_<fill in the number>.
- . . .reduce the interruption frequency and duration per customer type per year by \_\_\_\_<fill in the number>.

- . . .increase the expected number of new technologies providing increased reliability/quality choices to consumers by \_\_\_\_<fill in the number>.
- . . .decrease the rates of injury and fatality associated with electricity generation/supply and usage by \_\_\_\_<fill in the number>.
- . . .determine the effectiveness of the XYZ process.

## **TASK 1: PROJECT START-UP**

### **Subtask 1.1 Attend Kick off Meeting**

The objective of this task is to identify procedures for communication and reporting project status during the project.

#### **The Performing Institution shall:**

- Attend a “kick off” meeting with the Commission Project Manager and the Commission Contract Manager . The technical and administrative aspects of contact startup will be discussed at the meeting, which may be two separate meetings at the discretion of the Commission Project Manager. Prior to the kick off meeting, the Commission Project Manager will provide an agenda to all potential meeting participants.

The administrative portion of the meeting shall include, but not be limited to, the following:

- Terms and conditions of the contract;
  - Roles and responsibilities of the parties
  - Budget changes
  - Invoicing
  - Prior approvals for travel and equipment
  - Confidential deliverables
  - Intellectual property, basis for royalties
  - Permit documentation (Subtask 1.2)

The technical portion of the meeting shall include, but not be limited to, the following:

- The Commission Project Manager’s expectations for accomplishing tasks described in the Work Statement;
- Critical Project Reviews
- An updated schedule of deliverables
- An updated Gantt chart
- Progress reports
- Technical deliverables
- Final report

The Commission Project Manager shall designate the location of this meeting.

#### **Deliverables:**

- Attend kick-off meeting
- An Updated Schedule of Deliverables
- An Updated Gantt Chart

#### **Key Personnel:**

<fill in the name(s)>

*(Name of key person for this task that works for the Performing Institution. If none, state none.)*

**Key Subcontractors:**

<fill in the name(s) and/or company(ies)>

*(Name of key company or name of key person at key company for this task. If none, state none.)*

**Task 1.2 Identify and Obtain Required Permits**

The goal of this task is to obtain all permits required for work completed under this project in advance of the date they are needed to keep the project schedule on track.

**The Performing Institution shall:**

- If no permits are required to conduct this project, the Performing Institution shall state this finding in writing to the Commission Project Manager.
  
- Provide the following information about permits required for this project:
  - Type of permit
  - Name, address and telephone number of the permitting jurisdictions or lead agencies
  - Schedule the Performing Institution will follow in applying for and obtaining these permits
  - A copy of each approved permit
  
- Submit this information to the Commission Project Manager at the kick-off meeting. The schedule for obtaining permit(s) will be discussed at the kick-off meeting, and a timetable for submitting the updated lists and the copies of the permit(s) will be developed.
  
- In all cases, permits must be identified in writing and obtained before any costs related to the use of the permit(s) are incurred for which PIER reimbursement will be requested under this project.
  
- Permit expenses are not reimbursable through the project; therefore, the PIER budget for this task will be zero dollars.

**Deliverables:**

- A statement that no permits are required or
- A list of all permits required for this project
- Updated list of permits as they change during the project term.
- A copy of each approved permit.

**Key Personnel:**

<fill in the name(s)>

*(Name of key person for this task that works for the Performing Institution. If none, state none.)*

**Key Subcontractor:**

<fill in the name(s) and/or company(ies)>

*(Name of key company or name of key person at key company for this task. If none, state none.)*

**List of Different Types of Technical Deliverables** *(These are examples, which you may modify for use in your project. You may create other deliverables as needed, but please adhere to the patterns shown. Please use this list to assist in creating the deliverables in the following Technical Tasks section. Upon completion of the Work Statement this Example List should be removed from the document.)*

## 1. Notification Letters

- Provide a Notification Letter regarding \_\_\_\_\_, to the CEC Project Manager. *(Give it a unique name based on the content and the project.)* The letter shall include but not be limited to written documentation that the \_\_\_\_\_ is ready for *(testing, viewing, submission for certification, etc.)* and the date such *(testing, viewing, submission for certification, etc.)* shall begin, and shall include photographs.

### Deliverables:

- Notification Letter regarding \_\_\_\_\_

## 2. Test Plans

- Prepare the draft \_\_\_\_\_ Test Plan. *(Give it a unique name, such as the Project Title Test Plan. Test plans and testing procedures should be described in detail including factors such as instrumentation, data collection, data analysis, statistical analyses, and performance curves. Test results shall include relationships among performance, efficiency, emissions, temperature, pressure and all other parameters that qualify and quantify the subject technology.)* The draft test plan shall include, but not be limited to:
  - a description of the process to be tested
  - the rationale for why the tests are required
  - predicted performance based on calculations or other analyses
  - test objectives and technical approach
  - a test matrix showing the number of test conditions and replicated runs
  - a description of the facilities, equipment, instrumentation required to conduct the tests
  - a description of test procedures, including parameters to be controlled and how they will be controlled; parameters to be measured and instrumentation to measure them; calibration procedures to be used; recommended calibration interval; and maintenance of the test log
  - a description of the data analysis procedures
  - a description of quality assurance procedures
  - contingency measures to be considered if the test objectives are not met
- Submit the draft test plan to the Commission Project Manager for review and comment. Once agreement on the draft test plan has been reached the final test plan shall be submitted to the Commission Project Manager for written approval, which shall be provided within 5 working days of receipt of the final test plan. Key elements from the test plan shall be included in the Final Report for this project.

### Deliverables:

- Draft \_\_\_\_\_ Test Plan
- Final \_\_\_\_\_ Test Plan

## 3. Interim Reports *(This applies to all deliverable reports. Examples include task and subtask reports, test reports, data sets, databases and computer model development or application. Monthly reports and the final report are treated separately as shown in the Work Statement.)*

- Prepare the draft \_\_\_\_\_ Report *(Give it a unique name, such as the ABC Test Report or 123 Database. If an interim report is based on earlier work in this project, then the titles should relate to each other. After the title insert a description of the deliverable.)* This report shall include, but not be limited to, the following: *(List the elements of the report in separate bullets.)*

For example, if the Interim Report is a Test Report, use the following description:

The Test Report shall include, but not be limited to, the following:

- the test plan
- test results
- analysis
- conclusions
- recommendations
- photographs as appropriate.
- (add additional bullets specific to the project)

For example, if the Interim Report is a Task or Subtask Report, use the following description:

The Task or Subtask Report shall include, but not be limited to, the following:

- the goal of the task or subtask;
- the description of the approach used;
- list of activities performed;
- description of the results and to what degree the goal was achieved;
- significant issues encountered and how they were addressed;
- a discussion of the implications regarding the success or failure of the results, and the effect on the budget and the overall objectives of the project.
- photographs as appropriate.
- (add additional bullets specific to the project)

- Submit this draft \_\_\_\_\_ Report to the Commission Project Manager for review and comment. Once agreement on this draft report has been reached, the final version shall be submitted to the Commission Project Manager for written approval, which shall be provided within 5 working days of receipt of the final version. Key elements from the final version of this report shall be included in the Final Report for this project.

**Deliverables:**

- Draft \_\_\_\_\_ Test (Task, Database, etc.) Report
- Final \_\_\_\_\_ Test (Task, Database, etc.) Report

**4. Use this pattern for reports that will be discussed at a Critical Project Review.**

- Prepare the Draft \_\_\_\_\_(Report, Test Plan, etc). This document shall be submitted to the Commission Project Manager for review at least 15 working days prior to the (first, second, etc) Critical Project Review. This document will be one of the main topics for discussion at the Critical Project Review. This document shall include, but not be limited to the following: (Insert the appropriate bulleted items for either Test Plans in number 2 above or Reports in number 3 above.)
- Participate in the (1<sup>st</sup>, 2<sup>nd</sup>, etc) Critical Project Review.
- Modify this draft document in accordance with comments received during the Critical Project Review. The final version of this document shall be submitted to the Commission Project Manager within 10 working days after the Critical Project Review. The Commission Project Manager shall send written notification of approval to the Performing Institution within 2 working days after receipt. Key elements from this document shall be included in the Final Report for this project.

**Deliverables:**

- Draft \_\_\_\_\_ (Report, Test Plan, etc)
- Final \_\_\_\_\_ (Report, Test Plan, etc)

**5. Bills of Materials or Equipment Lists**

- Prepare a Bill of Materials (or Equipment List) for \_\_\_\_\_. *(Give it a unique name.)*  
This document shall include but not be limited to:
  - a description of each item
  - test protocols and codes applicable to each item
  - cost estimates or bids for each item

**Deliverables:**

- Bill of Materials (or Equipment List) for \_\_\_\_\_

## **TASK 2.0      TECHNICAL TASKS**

The project's work scope involves the following technical tasks:

**Task 2.1** *(Insert Task Name)*

**Task 2.2 – 2.n-2** *(Insert Task Name)*

**Task 2.n-1 Technology Transfer Activities** *(If applicable)*

**Task 2.n Production Readiness Plan** *(If applicable)*

### **Critical Project Reviews**

Critical Project Reviews shall take place at key points in a given project. These generally occur at predetermined points to see if the overall project goal is being achieved. The Commission will conduct Critical Project Reviews during and/or at the conclusion of the following tasks:

**Task 2.1** *(Insert Task Name)*

**Task 2.n** *(Insert Task Name)*

Critical Project Reviews are meetings between the Performing Institution, the Commission Project Manager and other individuals selected by the Commission Project Manager to provide objective, technical support to the Commission. Meeting participants may include PIER Program Team Lead, Contracts Officer, Commission Technical Staff and Management. The purpose of these meetings is to discuss with the Performing Institution the status of the project and its progress toward achieving its goals and objectives. These meetings may take place either at the Energy Commission offices in Sacramento, or at another reasonable location determined by the Commission Project Manager and the Performing Institution.

Before each Critical Project Review meeting, the Performing Institution shall provide the relevant task deliverable(s) to the Commission Project Manager and any other designated reviewers sufficiently in advance to permit review of the deliverable document(s) before the review meeting. If not already defined in the Work Statement, the Commission Project Manager shall specify the contents of the deliverable document(s).

At the Critical Project Review meeting, the Performing Institution shall present the required technical information and participate in a discussion about the project with the Commission Project Manager and other meeting attendees, if any.

Following the Critical Project Review meeting, the Commission Project Manager will determine whether the Performing Institution is complying satisfactorily with the Work Statement and whether the project is demonstrating sufficient progress toward achieving its goals and objectives to warrant continued PIER financial support for the project.

As an outcome of each Critical Project Review, the Commission Project Manager will provide a written response within 10 working days to the Performing Institution indicating his or her conclusions about the project to date. The written response may include a requirement for the Performing Institution to revise one or more deliverables that were included in the Critical Project Review. After each review, the Commission Project Manager may reassess and reallocate the tasks, schedule, deliverables and budget for the remainder of the work including not proceeding with one or more tasks.

If the Commission Project Manager concludes that satisfactory progress is not being made, this conclusion will be referred to the Commission’s Research, Development and Demonstration Policy Committee for its concurrence.

### Technical Task Descriptions

The work effort should be divided into a series of logical, discrete and sequential tasks. Technical tasks start with the number **2.1**. Please use the following pattern for each technical task.

#### Task 2.1 *(Insert Task Name)*

The goal of this task is to . . . *(Complete the sentence by inserting a **brief** description that identifies the expected result(s) and accomplishments for this task. The description should be 2 to 3 sentences maximum. Use a consistent naming convention throughout the work statement. For example, the name “photovoltaic system” is not the same as the name “solar electric generation alternative.” Pick one name and stick with it throughout.)*

Successful completion of this task will be measured by... *(Complete the sentence by listing the performance measure(s) or other criteria that will be used to evaluate the results and to determine to what degree the goal was achieved.)*

Meeting this goal helps to achieve the project objectives by... *(Complete the sentence.)*

#### The Performing Institution shall:

- *(Insert verb in active tense) . . . (Complete the sentence.)*
- *(Insert verb in active tense) . . . (Complete the sentence.)*

*(List each individual **activity** with a separate bullet and begin each bullet with a verb to continue the sentence beginning with "The Performing Institution shall." Organize activities in the order in which they will occur. A bullet needs to appear before each activity. Use this section to describe the essential elements of **the process** you will use to complete the project..*

*The contents of each **deliverable** shall also be described in this section. Only the **names** of each deliverable shall appear in the “Deliverables” section. Use exactly the same name to identify a deliverable (report, data set, project plan, etc.) in the activity and in the list of deliverables. A bullet needs to appear before each deliverable.*

*Deliverables are products that incorporate the knowledge and understanding gained by performing the activities and that are submitted to the Commission for review, comment and approval. Deliverables include, but are not limited to, written reports that describe methods, test plans, results of testing, analysis of data, conclusions, and recommendations for future study, workshop agendas and summaries, description and photographs of equipment/product developed, summaries of advisory group meetings, computer software with written instructions for data input and use of the software, if intended for public or Commission use, and production prototypes. The sum of the deliverables should be sufficiently detailed to be of use to stakeholders and other researchers. The level of detail should be sufficient for an observer to assess whether the project objectives and goals have been successfully met.*

#### Deliverables:

- 1<sup>st</sup> deliverable (name only)
- 2<sup>nd</sup> deliverable (name only)

*(List deliverables using the same name and in the order that they appear in “The Performing Institution shall” section. Only the deliverable name should be listed here. The contents of each deliverable shall be described in “The Performing Institution shall” section.)*

**Key Personnel:**

<fill in the name(s)>

*(Name of key person for this task that works for the Performing Institution. If none, state none.)*

**Key Subcontractors:**

<fill in the name(s) and/or company(ies)>

*(Name of key company or name of key person at key company for this task. If none, state none.)*

**Task 2.2 – 2.n-2**

*(Repeat the process as shown above)*

**Task 2.n-1 Technology Transfer Activities *(If applicable)***

The goal of this task is to develop a plan to make the knowledge gained, experimental results and lessons learned available to decision-makers in industry and government.

**The Performing Institution shall:**

- Prepare a Technology Transfer Plan. The plan shall explain how the knowledge gained in this project will be made available to the public. The level of detail expected is least for research-related projects and highest for demonstration projects. Key elements from this report shall be included in the Final Report for this project.
- Submit the draft Technology Transfer Plan to the Commission Project Manager for review and comment. Once agreement on the draft plan has been reached, the final plan shall be submitted to the Commission Project Manager for written approval, which shall be provided within 5 working days of receipt.
- Conduct technology transfer activities in accordance with the Technology Transfer Plan. These activities shall be reported in the Monthly Progress Reports.

***Deliverables:***

- Draft Technology Transfer Plan
- Final Technology Transfer Plan

**Key Personnel:**

<fill in the name(s)>

*(Name of key person for this task that works for the Performing Institution. If none, state none.)*

**Key Subcontractors:**

<fill in the name(s) and/or company(ies)>

*(Name of key company or name of key person at key company for this task. If none, state none.)*

**Task 2.n Production Readiness Plan *(If applicable)***

The goal of the plan is to determine the steps that will lead to the mass manufacturing of the technologies developed in this project.

**The Performing Institution shall:**

- Prepare a Production Readiness Plan. The degree of detail in the Production Readiness Plan discussion should be proportional to the complexity of producing the proposed product and its state of development. The plan shall include as appropriate but not be limited to:
  - Identification of critical production processes, equipment, facilities, personnel resources, and support systems that will be needed to produce a commercially viable product;
  - Internal manufacturing facilities, as well as supplier technologies, capacity constraints imposed by the design under consideration, identification of design critical elements and the use of hazardous or non-recyclable materials. The product manufacturing effort may include “proof of production processes”;
  - A projected “should cost” for the product when in production;
  - The expected investment threshold to launch the commercial product;
  - An implementation plan to ramp up to full production.
- 
- Submit the draft Production Readiness Plan to the Commission Project Manager for review and comment. Once agreement on the draft plan has been reached the final plan shall be submitted to the Commission Project Manager for written approval, which shall be provided within 5 working days of receipt.

**Deliverables:**

- Draft Production Readiness Plan
- Final Production Readiness Plan

**Key Personnel:**

<fill in the name(s)>

*(Name of key person for this task that works for the Performing Institution. If none, state none.)*

**Key Subcontractors:**

<fill in the name(s) and/or company(ies)>

*(Name of key company or name of key person at key company for this task. If none, state none.)*

**Task 3.0 Reporting Tasks**

All **public** reports shall be delivered to the Accounting Office address listed on Exhibit D.

All **confidential** reports shall be sealed and marked “Confidential Deliverable” and submitted to the Contracts Officer listed on Exhibit D.

**Task 3.1 Progress Reports** *(Determine if Monthly or Quarterly when preparing the WA)*

The objective of this task is to periodically verify that satisfactory and continued progress is made towards achieving the research objectives of this program.

The Performing Institution shall submit a written Progress Report to the Commission Project Manager by the 30th of each reporting period, starting after project execution and shall continue each following reporting period until the Final Report has been accepted by the Commission Project Manager. Attachment 1 provides the sample format and content requirements for these reports.

**Deliverables:**

- Progress reports

**Key Personnel:**

<fill in the name(s)>

*(Name of key person for this task that works for the Performing Institution. If none, state none.)*

**Key Subcontractors:**

<fill in the name(s) and/or company(ies)>

*(Name of key company or name of key person at key company for this task. If none, state none.)*

**Task 3.2 Final Report**

The Final Report shall be a public document. If the Performing Institution has obtained confidential status from the Commission and will be preparing a confidential version of the Final Report as well, the Performing Institution shall perform the following tasks for both the public and confidential versions of the Final report. Attachment 2 provides the format and content requirements.

**Subtask 3.2.1 Final Report Outline**

**The Performing Institution shall:**

- Prepare an outline of the Final Report describing the original purpose, approach and results of the project. The Commission Project Manager shall provide the suggested format for this outline.
- Submit the final report outline to the Commission Project Manager for review and approval. Once agreement on the outline has been reached, it shall be submitted to the Commission Project Manager within 5 working days. The Commission Project Manager shall provide written approval within 5 working days of receipt.

**Deliverables:**

- Final Report Outline

**Subtask 3.2.2 Draft Final Report**

**The Performing Institution shall:**

- Prepare the Draft Final Report for the project. The format of the report shall follow the approved outline.
- Submit the draft final report to the Commission Project Manager for review and comment. The Commission Project Manager will provide written comments within 20 working days of receipt. The Performing Institution shall revise the draft final report incorporating the Commission Project Manager's corrections and required changes. Once agreement on the draft final report has been reached, the Commission Project Manager shall provide written approval within 5 working days.

**Deliverables:**

- Draft Final Report

### **Subtask 3.2.3 Final Report**

#### **The Performing Institution shall:**

Submit the final report within 10 working days of receipt of the approval letter. The Performing Institution shall submit two unbound copies and one electronic copy of the Final Report to the Commission Project Manager.

#### **Deliverables:**

- Final Report

#### **Key Personnel:**

<fill in the name(s)>

*(Name of key person for this task that works for the Performing Institution. If none, state none.)*

#### **Key Subcontractors:**

<fill in the name(s) and/or company(ies)>

*(Name of key company or name of key person at key company for this task. If none, state none.)*

### **Task 3.3 Final Meeting**

A final meeting for project closeout will be attended by, at a minimum, the Performing Institution and the Commission Project Manager. The technical and administrative aspects of project closeout will be discussed at the meeting, which may be two separate meetings at the discretion of the Commission Project Manager.

The technical portion of the meeting shall present findings, conclusions, and recommended next steps (if any) for the project. The Commission Project Manager will determine the appropriate meeting participants.

The administrative portion of the meeting shall be a discussion with the Commission Project Manager and the Contracts Officer about the following project closeout items:

- What to do with equipment (Commission directions for disposition)
- Commission's request for specific "generated" data (not already provided in the deliverables)
- Need to document Performing Institution's disclosure of "subject inventions" developed under the project
- "Surviving" contract provisions, such as repayment provisions and record retention
- Final invoicing

#### **Deliverables:**

- Meeting participation
- Written documentation of meeting agreements and all pertinent information.

#### **Key Personnel:**

<fill in the name(s)>

*(Name of key person for this task that works for the Performing Institution. If none, state none.)*

#### **Key Subcontractors:**

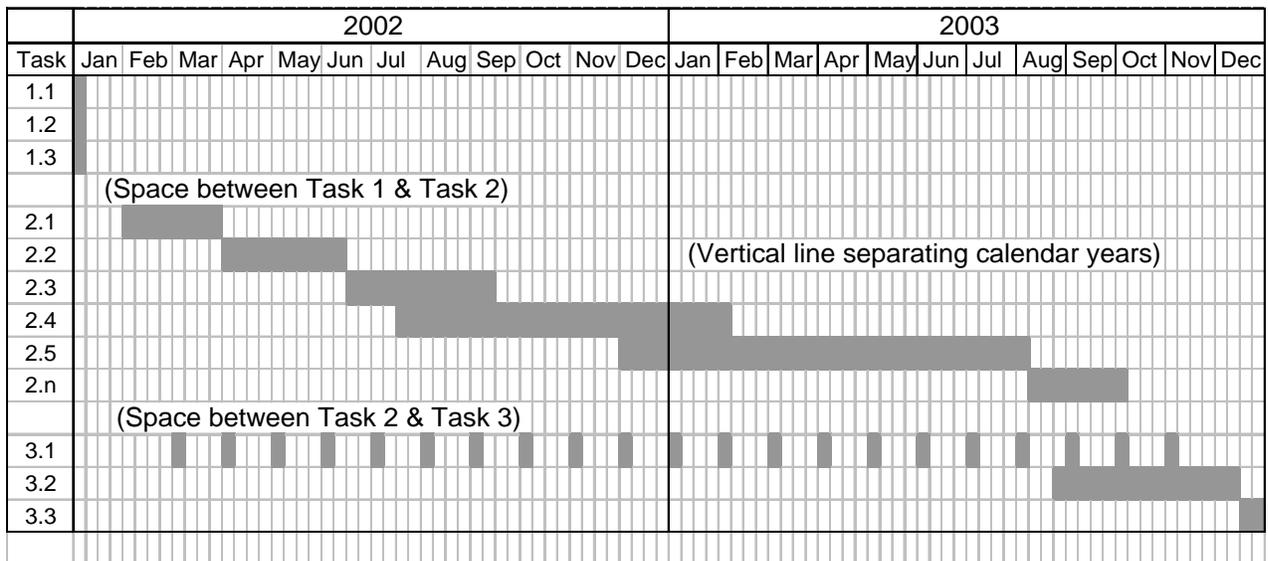
<fill in the name(s) and/or company(ies)>

*(Name of key company or name of key person at key company for this task. If none, state none.)*

**Deliverables, Due Dates and Gantt Chart**

Name of Company or Organization				
Task Number	Task Name	Deliverable(s)	Planned Start Date	Planned Completion Date
<b>1.0</b>	<b>Project Start-Up Tasks</b>			
1.1	Attend Kick-off Meeting	Kick-Off Meeting		
1.2	Document Match Funding	Cash/In-kind lists, commitment letters		
1.3	Identify and Obtain Permits	Permit plan or no permits required letter		
<b>2.0</b>	<b>Technical Tasks</b>			
2.1	Name of Task 2.1	1. Name of Deliverable for Task 2.1		
2.2	Name of Task 2.2	1. Name of Deliverable for Task 2.2		
2.3	Name of Task 2.3	1. Draft of Deliverable for Task 2.3		
	<b>Critical Project Review</b>			
		2. Final of Deliverable for Task 2.3		
2.4	Name of Task 2.4	1. Name of Deliverable for Task 2.4		
2.5	Name of Task 2.5	1. Name of Deliverable for Task 2.5		
2.6	Name of Task 2.6	1. Name of Deliverable for Task 2.6		
2.7	Name of Task 2.7	1. Draft of Deliverable for Task 2.7		
	<b>Critical Project Review</b>			
		2. Final of Deliverable for Task 2.7		
2.8	Name of Task 2.8	1. Name of Deliverable for Task 2.8		
2.9	Name of Task 2.9	1. Name of Deliverable for Task 2.9		
2.10	Name of Task 2.10	1. Name of Deliverable for Task 2.10		
<b>3.0</b>	<b>Reporting Tasks</b>			
3.1	Monthly Progress Reports	Monthly Progress Reports		
3.2	Final Report			
3.2.1	Final Report Outline	Final Report Outline		
3.2.2	Draft Final Report	Draft Final Report		
3.2.3	Final Report	Final Report		
3.3	Final Meeting	Meeting Participation		
		Written Documentation of Meeting Agreements		

An example Gantt Chart follows:



**Note:** It does not matter whether the Gantt Chart is created in Microsoft Excel or Microsoft Project. However, it must fit on one 8 1/2 x 11 page.

**Budget**

Work Authorization #: UC Research Agreement WA-XXX

Title: Input

Term: Input

			<b>Total Cost</b>
A. UC SALARIES and FRINGE	MM	Rate	
Key Personnel:			
PI: Input	0.00	0	0
Other Personnel:			
TBD	0.00	0	0
SUBTOTAL, UC Personnel	0.00		0
B. SUBCONTRACTS (non-UC)*			0
C. EQUIPMENT			0
D. TRAVEL †			0
E. MISCELLANEOUS EXPENSES			0
F. SUBTOTAL, Direct Costs			0
G. INDIRECT COSTS	Rate	MTDC	
(Identify MTDC** & exclusions)	20.0%	0	0
H. TOTAL WORK AUTHORIZATION BUDGET (F + G)			\$0

\* Provide same level of budget detail for each non-UC subcontractor, using attachments if needed.

† Explain basis on which travel estimate is made, e.g., number of trips, destinations, air fare, lodging, reg fees, etc.

\*\* Modified Total Direct Costs

**EXHIBIT G  
LIST OF CONTACTS AND ADDRESSES**

**Commission Contract Manager:**

Gary Klein  
California Energy Commission  
1516 Ninth Street, 1st Floor  
Sacramento, CA 95814  
Phone: (916) 653-8555  
Fax: (916) 653-6010  
e-mail: gklein@energy.state.ca.us

**Contractor Project Manager:**

Carl Blumstein  
University of California, Office of the President/CIEE  
1333 Broadway, Suite 240  
Oakland, CA 94612-1918  
Phone: (510) 287-3320  
Fax: (510) 287-3328  
e-mail carl.blumstein@ucop.edu

**Commission Contract Officer:**

Judith Efhan, MS-18  
California Energy Commission  
1516 Ninth Street, 1st Floor  
Sacramento, CA 95814  
Phone: (916) 654-4397  
Fax: 916-654-4423  
e-mail: jefhan@energy.state.ca.us

**Contractor Contract Officer:**

Lourdes DeMattos  
University of California, Office of the President/CIEE  
1111 Franklin St., 5th Floor  
Oakland, CA 94607-5200  
Phone: (510) 987-9850  
Fax: (510) 835-3705  
e-mail Lourdes.DeMattos@ucop.edu

***Deliver confidential deliverables to this location only.***

**Invoices, Progress Reports and  
Non-Confidential Deliverables to:**

Accounting Office, MS-2  
California Energy Commission  
1516 Ninth Street, 1st Floor  
Sacramento, CA 95814  
Phone: (916) 654-3906  
Fax: (916) 653-1435  
e-mail: ftaniguc@energy.state.ca.us

**Contractor Accounting  
Invoicing Contact:**

Cindy Polansky  
University of California, Office of the President/CIEE  
1333 Broadway, Suite 240  
Oakland, CA 94612-1918  
Phone: (510) 987-9850  
Fax: (510) 835-3705  
e-mail: Lourdes.DeMattos@ucop.edu

**Legal Notices:**

Cheryl Raedel, MS-18  
Manager, Contracts Office  
California Energy Commission  
1516 Ninth Street, 1st Floor  
Sacramento, CA 95814  
Phone: 916-654-4392  
Fax: 916-654-4423  
e-mail: craedel@energy.state.ca.us

**Contractor Legal Person:**

Lourdes DeMattos  
Contract & Grant Officer  
University of California, Office of the President/CIEE  
1111 Franklin St., 5th Floor  
Oakland, CA 94607-5200  
Phone: (510) 987-9850  
Fax: (510) 835-3705  
e-mail Lourdes.DeMattos@ucop.edu

**Contractor's Key Personnel:**

To Be Determined in each Work Authorization

**Key Subcontractors:**

To Be Determined in each Work Authorization

**EXHIBIT H-1**  
**RIGHTS OF PARTIES REGARDING INTELLECTUAL PROPERTY**

Note: This exhibit shall be used by UC in contractual agreements executed for work under this Agreement with all Performing Institutions except DOE Laboratories. Exhibit H-2 (A, B, and C) shall be used with DOE Laboratories except those managed by UC.

A. Commission's Rights in Deliverables

Deliverables and reports specified for delivery to the Commission under this Agreement shall become the property of the Commission. The Commission may use, publish, and reproduce the deliverables and reports subject to the provisions of subparagraph C.

B. Rights in Technical, Generated, and Deliverable Data

1) UC's Rights

Data (Technical, Generated and Deliverable) produced under this Agreement shall be the property of the UC, limited by the license retained by the Commission in 2) below, and the rights the Commission has in deliverables specified above in A).

2) Commission's Rights

UC shall provide the Commission Contract Manager and any designated reviewer(s) with a copy of all Technical, Generated and Deliverable Data produced under the Agreement, when requested.

UC is not required to copy and submit data that the Commission Contract Manager has identified as being unusable to the Commission and the PIER program.

For instance, some data may not warrant routine copying and shipping because this raw data is too disaggregated or voluminous for practical application. Retention of such data at UC's or Performing Institution's facility for inspection, review and possible copying by the Commission Contract Manager is expected to be a more efficient use of Commission staff and UC's time and efforts.

However, upon request by the Commission Contract Manager, UC or the Performing Institution shall provide the Commission Contract Manager and any designated reviewer(s) access to review Technical and Generated Data produced in

the course of this Agreement that is not requested to be delivered to the Commission

For all Data (Technical, Generated and Deliverable) produced under this Agreement, the Commission retains a no-cost, non-exclusive, non-transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, produce and to authorize others to produce, translate, publish and use the Data, subject to the provisions of subparagraph C.

C. Limitations on Commission Disclosure of Information UC Considers Confidential

- 1) Data provided to the Commission by UC, which Data the Commission has not already designated as confidential information and which UC seeks to have designated as confidential, or is the subject of a pending application of confidentiality, shall not be disclosed by the Commission except as provided in Title 20 CCR Sections 2505 and following (and amendments), unless disclosure is ordered by a Court of competent jurisdiction.
- 2) It is the Commission's intent to use and release project results such as deliverables and Data in a manner calculated to further PIER while protecting proprietary or patentable interests of the parties. Therefore, the Commission agrees not to disclose information that UC considers confidential without first providing a copy of the disclosure document for review and comment by UC. UC shall have no less than 10 working days for review and comment and, if appropriate, to make an application for confidential designation pursuant to Title 20 CCR Sections 2505 and following (and amendments) on some or all of the information. The Commission shall consider the comments of UC and use professional judgment in revising the disclosure document accordingly.

D. Exclusive Remedy

In the event the Commission intends to publish or has disclosed data the UC considers confidential, the UC's exclusive remedy is a civil court action for injunctive relief. Such court action shall be filed in Sacramento County, Sacramento, California.

E. Waiver of Consequential Damages

**IN NO EVENT WILL THE ENERGY COMMISSION 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 CONFIDENTIAL INFORMATION OR INFORMATION THAT UC CONSIDERS CONFIDENTIAL, EVEN IF THE ENERGY COMMISSION HAS BEEN ADVISED**

**OF THE POSSIBILITY OF SUCH DAMAGE. DAMAGES THAT THE ENERGY COMMISSION WILL NOT BE RESPONSIBLE FOR INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFIT; LOSS OF SAVINGS OR REVENUE; LOSS OF GOODWILL; LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT; COST OF CAPITAL; COST OF ANY SUBSTITUTE EQUIPMENT, FACILITIES, OR SERVICES; DOWNTIME; THE CLAIMS OF THIRD PARTIES INCLUDING CUSTOMERS; AND INJURY TO PROPERTY.**

F. Limitations on UC's Disclosure of Agreement Data, Information, Reports and Records

- 1) UC will not disclose the contents of the final or any preliminary deliverable or report without first providing a copy of the disclosure document for review and comment to the Commission Contract Manager. The UC shall consider the comments of the Commission Contract Manager and use professional judgment in revising the deliverable or report accordingly.
- 2) After any document submitted has become a part of the public records of the State, UC may, if it wishes to do so at its own expense, publish or utilize the same, but shall include the legal notice and copyright information as applicable.
- 3) Notwithstanding the foregoing, in the event any public statement is made by the Commission as to the role of UC or the content of any preliminary or Final Report of UC hereunder, UC may, if it believes such statement to be incorrect, state publicly what it believes is correct.
- 4) No record that is provided by the Commission to UC for UC's use in executing this Agreement and which has been designated as confidential, or is the subject of a pending Application for Confidential Designation, except as provided in Title 20, California Code of Regulations (CCR), section 2505 and following (and amendments), shall be disclosed, unless disclosure is ordered by a court of competent jurisdiction. At the election of the Commission Contract Manager, UC, UC's employees and any subcontractor shall execute a "Confidentiality Agreement," supplied by the Commission Contract Manager.
- 5) UC acknowledges that each of its officers, employees, and subcontractors who are involved in the performance of this Agreement will be informed about the restrictions contained herein and to abide by the above terms.

G. Proprietary Data

Proprietary Data owned by the Performing Institution shall remain with the Performing Institution throughout the term of this Agreement and thereafter. The extent of Commission access to the same and the testimony available regarding the same shall be

limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable hereunder or to establish a baseline for repayment purposes.

#### H. Preservation of Data

Any Data which is reserved to the Performing Institution by the express terms hereof, and pre-existing Proprietary Data and Trade Secrets which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, shall be preserved by the Performing Institution at the Performing Institution's own expense for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated.

#### I. Destruction of Data

Before the expiration of three years and before changing the form of or destroying any Data (including Technical, Generate, Deliverable, Proprietary Data and Trade Secrets), the UC shall notify Commission of any such contemplated action and Commission may, within thirty (30) days after said notification, determine whether it desires said data to be further preserved. If Commission so elects, the expense of further preserving said data shall be paid for by the Commission. UC agrees that Commission may at its own expense, have reasonable access to said Data throughout the time during which said data is preserved. UC agrees to use its best efforts to identify competent witnesses to testify in any court of law regarding said data or, at Commission's expense, to furnish such competent witnesses.

#### J. Patent Rights

- 1) Patent rights for any Subject Invention, whether actually patented or unpatented, will be the property of the Performing Institution whose employees or researchers are inventors of such invention pursuant to U.S. patent law, subject to the Commission obtaining a no-cost, nonexclusive, nontransferable, irrevocable, perpetual, royalty-free, worldwide license to use or have practiced such rights for or on behalf of the State of California for governmental purposes. Commission shall not purposefully enter into competition with a Licensee or take affirmative actions intended to effectively destroy the commercial market where a Licensee has introduced a Licensed Product. UC must obtain agreements to effectuate this clause with all persons or entities (except for the U.S. Department of Energy (DOE), as other terms apply), obtaining ownership interest in such patent rights. Previously documented (whether patented or unpatented under the patent laws of the United States of America or any foreign country) inventions are exempt from this provision.

- 2) UC will disclose to Commission, on a confidential basis, all Subject Inventions from each Performing Institution. The Commission may provide any suggestions to the UC concerning commercialization strategies and/or potential licensees for such invention within sixty (60) days of receiving the disclosure from the UC. UC shall send, by March 1 of each year, a report to the Commission that provides non-proprietary information on the status of any patents and/or licensing agreements executed or under negotiation for Subject Inventions and/or activities by the Performing Institution(s) and Licensee(s) related to the development and testing of Licensed Product.
- 3) March-in Rights. With respect to any Subject Invention in which the UC has acquired title, to the extent permissible under Federal laws and regulations, the Commission shall have the right to require the UC, an assignee or Licensee of such patent rights to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant, upon terms that are reasonable under the circumstances, and if the UC, assignee, or Licensee refuses such request, to grant such a license itself, if the Commission determines that such:
  - a) Action is necessary because the UC, Licensee, or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the patent rights in such field of use; or
  - b) Action is necessary to alleviate health or safety needs that are not reasonably satisfied by the UC, assignees, or their Licensees.

Final resolution, if not resolved under the “DISPUTES” paragraph, will be settled in the courts of the State of California. The parties may refer to the Federal Government’s procedures for handling march-in rights.

- 4) Future Reductions. The UC will submit in confidence within ninety (90) days after termination or expiration of the WA, a report listing inventions that are conceived, but not actually reduced to practice, in the performance of this Agreement. The Commission will identify in writing within sixty (60) days to the UC those conceptions that it desires to reserve rights to should the Performing Institution desire to actually reduce to practice those identified conceptions within forty-two (42) months after the termination or expiration of the WA. UC has an affirmative duty to report to the Commission those conceptions reduced to practice within the forty-two (42) month period.

K. Commission's Rights to Invention

UC, the Performing Institution and all persons and/or entities obtaining an ownership interest in Subject Invention(s) shall include within the specification of any United States patent application, and any patent issuing thereon covering a Subject Invention, the following statement:

“THIS INVENTION WAS MADE WITH STATE OF CALIFORNIA SUPPORT UNDER CALIFORNIA ENERGY COMMISSION CONTRACT NUMBER 500-02-004. THE ENERGY COMMISSION HAS CERTAIN RIGHTS TO THIS INVENTION.”

L. Commission’s Interest in Inventions

Upon the perfecting of a patent application on any Subject Invention, UC will fill out and sign a Uniform Commercial Code (UCC.1) Financing Statement and submit it the Commission Contract Officer for complete processing. The Commission Contract Officer will review the UCC.1 for complete information and file the completed UCC.1 with the Secretary of State’s Office.

M. Copyrights

- 1) Copyrightable Work first produced under this Agreement shall be owned by the UC, limited by the license granted to the Commission in 2) below.
- 2) UC agrees to grant, the Commission a royalty-free, no-cost nonexclusive, irrevocable, nontransferable worldwide, perpetual license to produce, translate, publish, use and dispose of, and to authorize others to produce, translate, publish, use and dispose of all Copyrightable Work first produced or composed in the performance of this Agreement.
- 3) UC will apply copyright notices to all deliverables using the following form or such other form as may be reasonably specified by Commission.

“©[Year of first publication of deliverable], [copyright holder]. All Rights Reserved.”

- 4) Software

In the event software that is not a deliverable is developed under the WA, UC shall have the right to copyright and/or patent such software and grants the Commission a royalty-free, no-cost, non-exclusive, irrevocable, non-transferable, world-wide, perpetual license to produce and use for governmental purposes the

software, and its derivatives and upgrades that may be developed by the authors within 42 months following the termination or expiration of the WA. The Commission shall not purposefully enter into competition with a Licensee or take affirmative actions intended to effectively destroy the commercial market where a Licensee has introduced a licensed product.

N. Intellectual Property Indemnity

UC will defend and indemnify 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 any third party claim solely arising out of the negligent or other tortious act(s) or omission(s) by the UC, its employees, or agents, in connection with intellectual property claims against either deliverables or the UC's performance thereof under this Agreement.

**EXHIBIT H-2-A**  
**RIGHTS OF PARTIES REGARDING INTELLECTUAL PROPERTY FOR DOE**  
**General IP Terms**<sup>1</sup>

Note: This exhibit shall be used by UC in contractual agreements executed for work under this Agreement with all DOE Laboratories except those managed by UC.

- A. The Parties to this Agreement are the California Energy Resources Conservation and Development Commission (California Energy Commission or Sponsor), and the U.S. Department of Energy.
- B. The U.S. Department of Energy has directed the Management and Operating <(M&O) Contractor of National Laboratory> hereinafter referred to as the "Facility Operator," to perform the work set forth in the Statement of Work for the Sponsor.
- C. It is understood by the Parties that the Facility Operator is obligated to comply with the terms and conditions of its M&O Contract No. \_\_\_\_\_ with the United States Government (hereinafter called the "Government") represented by the U.S. Department of Energy (hereinafter called the "Department" or "DOE") when providing goods, services, products, processes, materials, or information to the Sponsor under this Agreement. The obligations of the Facility Operator shall apply to any successor to the Facility Operator continuing the operation of the DOE facility involved in this Agreement.

**Paragraph A. of the following Article II is to be deleted if the Sponsor will not be involved, in any manner, in the licensing of products or technologies arising from the work performed under this Agreement. For purposes of this determination, "involved" in the foregoing sentence includes actively marketing the use of products or technologies arising from the work performed under this Agreement. The determination to delete paragraph A may be supported by the Sponsor certifying that Sponsor will not be involved, in any manner (including the active marketing for the use of products), in the licensing of products or technologies arising from the work performed under this Agreement.**

**II. Product Liability Indemnity**

- A. To the extent permitted by California state law and except for any liability resulting from any negligent acts or omissions of the Government or the Facility Operator, the Sponsor agrees to indemnify the Government and the Facility

<sup>1</sup> The provisions in this Exhibit H-2-A are taken directly from the modified Terms and Conditions for the California Energy Commission from the DOE Funds – In Agreement for Research and Development. Only minor clarifying changes have been made for the purpose of the Agreement between the California Energy Commission and UC. The provisions in Exhibit H-2-A are the same as the following articles in the Modified Terms and Conditions from the Funds – In Agreement for Research and Development: IA-C; XI; XII; XIII; and XX-B.

Operator for all damages, costs, and expenses, including attorney's fees, arising from personal injury or property damage occurring as a result of the making, using, or selling of a product, process, or service by or on behalf of the Sponsor, its assignees, or licensees, which was derived from the work performed under this Work for Others Agreement. In respect to this Article, neither the Government nor the Facility Operator shall be considered assignees or licensees of the Sponsor, as a result of reserved Government and Facility Operator rights. The indemnity set forth in the paragraph shall apply only if the Sponsor shall have been informed as soon as completely as practical by the Facility Operator and/or the Government of the action alleging such claim and shall have been given an opportunity, to the maximum extent afforded by applicable laws, rules, or regulations, to participate in and control its defense, and the Facility Operator and/or Government shall have provided all reasonably available information and reasonable assistance requested by the Sponsor. No settlement for which the Sponsor would be responsible shall be made without the Sponsor's consent unless required by final decree of a court of competent jurisdiction. Nothing herein shall preclude the Facility Operator from entering into agreements to indemnify the Sponsor and the Government from the liability, costs and expenses addressed in this clause provided that any such agreement shall not result in costs allocable or liabilities chargeable to the Government.

- B. The Department of Energy shall require that Facility Operators of each National Laboratory conducting projects under this Agreement include in negotiated contracts with all of its licensees or transferees, if any, product liability indemnity for the Facility Operator, the Government, and the Sponsor. Additionally, the Sponsor shall include in negotiated agreements with all of its licensees or transferees, if any, product liability indemnity for the Government and the Facility Operator. When required, appropriate text for such provisions may be obtained from the DOE Patent Counsel.

### **III. Intellectual Property – Limited**

To the extent permitted by California State law, the Sponsor shall indemnify the Government and the Facility Operator and their officers, agents, and employees against liability, including costs, for infringement of any United States patent, copyright, or other intellectual property arising out of any acts required or directed by the Sponsor to be performed under this Agreement to the extent such acts are not already performed at the facility. Such indemnity shall not apply to a claimed infringement that is settled without the consent of the Sponsor unless required by a court of competent jurisdiction. Nothing herein shall preclude the Facility Operator from entering into agreements to indemnify the Sponsor and the Government from the liability, costs and expenses addressed in this clause provided that any such agreement shall not result in costs allocable or liabilities chargeable to the Government.

#### **IV. Notice and Assistance Regarding Patent and Copyright Infringement**

- A. The Sponsor shall report to the Department and the Facility Operator, promptly and in reasonable written detail, each claim of patent or copyright infringement based on the performance of this Agreement of which the Sponsor has knowledge. The Sponsor shall furnish to the Department and the Facility Operator, when requested by the Department or the Facility Operator, all evidence and information in the possession of the Sponsor pertaining to such claim.
- B. The Facility Operator will not, in its supplying of the work under this Agreement's work statement, knowingly infringe or misappropriate any copyrighted material of a third party.

#### **V. Termination**

It is agreed that any obligations of the Parties and the Facility Operator regarding Proprietary Information or other intellectual property and payment of royalties will remain in effect, despite early termination of the Agreement.<sup>2</sup>

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<sup>2</sup> This paragraph is the last sentence from Article XX.B of the Funds – In Agreement for Research and Development, Modified Terms and Conditions for the California Energy Commission.

**EXHIBIT H-2-B**  
**RIGHTS OF PARTIES REGARDING INTELLECTUAL PROPERTY**  
**FOR DOE**  
**Patent Rights—Use of Facilities**<sup>1</sup>

Note: This exhibit shall be used by UC in contractual agreements executed for work under this Agreement with all DOE Laboratories except those managed by UC.

A. Definitions

1. “Subject Invention” means any invention or discovery of the DOE or Facility Operator which is conceived in the course of or under this Agreement or, to the extent the Sponsor is performing any work under this Agreement, of the Sponsor, conceived or first actually reduced to practice in the course of or under this Agreement. “Subject Invention” includes any art, method, process, machine, manufacture, design or composition of matter, or any new and useful improvement thereof, or any variety of plant, whether patented under the Patent Laws of the United States of America or any foreign country, or unpatented.
2. “Patent Counsel” means the DOE Patent Counsel assisting the procuring activity who has the administrative responsibility for the facility where the work under this Agreement is to be performed.
3. “Background Intellectual Property” means the separately developed intellectual property items identified by the Facility Operator in Paragraph I of this Article, which were conceived or in existence prior to or first produced outside of this Agreement.

B. Rights of the Sponsor – Election to Retain Rights

1. Subject to the provisions of paragraph F, with respect to any Subject Invention reported and elected in accordance with paragraph G (1) of this Article, the Sponsor may elect to obtain the entire right, title and interest throughout the world to each Subject Invention made by the Sponsor's employees and any patent application filed in any country on that Subject Invention and in any resulting patent secured by the Sponsor. Where appropriate, the filing of patent applications by the Sponsor is subject to DOE and other U.S. Government security regulations and requirements.

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<sup>1</sup> The provisions of this Exhibit H-2-B are taken directly from Appendix B (California Energy Commission – Patent Rights – Use of Facilities) from the DOE Funds-In Agreement for Research and Development.

2. With respect to any Subject Invention in which the Facility Operator or the Government obtains title, the Facility Operator or the Government grants to the Sponsor a non-exclusive, non-transferable, irrevocable, paid-up, license to practice or have practiced by or on behalf of the State of California, for State governmental purposes, the Subject Invention throughout the world. The Facility Operator and/or Government will obtain agreements to effectuate this clause with all persons or entities obtaining ownership interest in patented Subject Inventions.

C. Rights of the Facility Operator – Election to Retain Rights

With respect to any Subject Invention reported in accordance with paragraph G(2) of this Article, the Facility Operator may elect to obtain title to each Subject Invention made by the Facility Operator's employees subject to the terms of its M&O Contract with the U.S. Department of Energy. Once title has been elected by the Facility Operator, a Facility Operator's Subject Invention may subsequently be assigned to the Sponsor, subject to the provisions of paragraphs D and F hereunder, for continuation of patent prosecution, the payment of maintenance fees, or other good cause as mutually agreed to by the DOE, Facility Operator and the Sponsor. In the case of a nonprofit management and operations Facility Operator, the above arrangement has been approved by the Department under 35 USC 202 (c) (7).

D. Rights of Facility Operator and Government

Assignment to the Facility Operator or the Government

The Sponsor agrees to assign to either the Facility Operator or the Government, as requested by the DOE, the entire right, title, and interest in any country to each Subject Invention of the Sponsor, where the Sponsor:

1. Does not elect pursuant to this Article to retain such rights;
2. Elects or is assigned title to a Subject Invention pursuant to paragraph B or C, but fails to have a patent application filed in that country on the Subject Invention or decides not to continue prosecution or decides not to pay any maintenance fees covering such Subject Invention; or
3. Elects to retain title but, at any time, no longer desires to retain title.

E. Unelected Interested

Placement in the Public Domain

The Parties and the Facility Operator each agree that either may place any Subject Invention disclosures in the public domain (by inclusion in the final report of this project) which:

1. Are not elected by either Party or the Facility Operator pursuant to this Article;
2. Each Party and the Facility Operator fails to have a patent application filed in that country on a Subject Invention or decides not to pay any maintenance fees covering such Subject Invention; or
3. Title, at any time, neither Party nor the Facility Operator desires to retain.

F. Terms and Conditions of Waived Rights

1. To preserve the Facility Operator's and the Government's residual rights to Sponsor's Subject Inventions, and in patent applications and patents on Sponsor's Subject Inventions, the Sponsor will take all actions in reporting, electing, filing on, prosecuting, and maintaining invention rights promptly, but in any event, in sufficient time to satisfy domestic and foreign statutory and regulatory time requirements; or, if the Sponsor decides not to take appropriate steps to protect the invention rights, it will notify the Facility Operator or DOE Patent Counsel in sufficient time to permit either the Facility Operator or the Government to file, prosecute, and maintain patent applications and any resulting patents prior to the end of such domestic or foreign statutory or regulatory time requirements.
2. The Sponsor will convey or ensure the conveyance of any executed instruments necessary to vest in either the Facility Operator or the Government the rights set forth in this Article.
3. With respect to any Subject Invention in which the Sponsor obtains title, the Sponsor hereby grants to the Government a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced by or on behalf of the United States Government the Subject Invention throughout the world.

4. The Sponsor will provide the Government a copy of any patent application which it files on a Subject Invention within six (6) months after such application is filed, including its serial number and filing date.
5. The Sponsor agrees to include, within the specification of any U.S. patent application and any patent issuing thereon covering a Subject Invention in which the Sponsor obtains title, the following statement: “The Government has rights in this invention pursuant to (specify this underlying Agreement).”
6. Preference for U.S. Industry. Notwithstanding any other provision of this Article, the Sponsor agrees that neither it nor any assignee, will grant to any person the exclusive right to use or sell any Subject Invention in the U.S. unless such person agrees that any products embodying the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the U.S. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Sponsor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the U.S. or that under the circumstances domestic manufacture is not commercially feasible.
7. March-In-Rights. The Sponsor agrees that with respect to any Subject Invention in which it has acquired title, the DOE will retain the right to require the Sponsor to grant a responsible applicant a non-exclusive, partially exclusive, or exclusive license to use the Subject Invention in any field of use, on terms that are reasonable under the circumstances, or if the Sponsor fails to grant such a license, to grant the license itself. DOE may exercise this right only in exceptional circumstances and only if DOE determines that:
  - a. The action is necessary to meet health or safety needs that are not reasonably satisfied by the Sponsor; or
  - b. The action is necessary to meet the requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Sponsor; or
  - c. Such action is necessary because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of the agreement required by paragraph F (6).

8. The Sponsor agrees to refund any amounts received as royalty charges on any Subject Invention to which the Sponsor obtains title in procurement by or on behalf of the Government and to provide for that refund in any instrument transferring rights to any party in the Subject Invention.

G. Invention Identification, Disclosures and Reports

1. The Sponsor will furnish the DOE Patent Counsel a written report containing full and complete technical information concerning each Subject Invention it makes within six (6) months after conception or first actual reduction to practice, whichever occurs first, in the course of or under this Agreement, but in any event prior to any on sale, public use, or public disclosure of such invention known to the Sponsor. The report will identify the contract and inventor(s) and will be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding to the extent known at the time of disclosure, of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention. The report should also include any election of invention rights under this Article. When a Subject Invention is reported under this paragraph G(1), it will be presumed to have been made in the manner specified in Section (a)(1) and (2) of 42 U.S.C. 5908.
2. The Facility Operator shall report Subject Inventions it makes in accordance with the terms and conditions set forth in its M&O Contract with the U.S. Department of Energy. In addition, the Facility Operator shall disclose to the Sponsor at the same time as disclosure to the Department any Subject Inventions made by the Facility Operator under this Agreement.

The Facility Operator agrees to include, within the specification of any U.S. patent application and any patent issuing thereon covering a Subject Invention in which the Facility Operator obtains title, the following statement:

“This invention was made with support from the US Dept of Energy under Contract No. <enter contract number> and the State of California under California Energy Commission Contract No. 500-02-004. Both the U.S. Government and the California Energy Commission have certain rights in this invention.”

3. Requests for extension of time for election under paragraphs 1. and 2. above may be granted by DOE Patent Counsel for good cause shown in writing.

H. Facilities License

In addition to the rights of the Parties and the Facility Operator with respect to Subject Inventions, the Sponsor hereby grants to the Government an irrevocable, non-exclusive, paid-up license to (1 ) practice or to have practiced by or for the Government at the facility, and (2) transfer such license with the transfer of the facility any inventions or discoveries regardless of when conceived or first actually reduced to practice or acquired by the Sponsor, which at any time, through completion of this Agreement, are owned or controlled by the Sponsor and are incorporated in the facility as a result of this Agreement to such an extent that the facility is not restored to the condition existing prior to the Agreement. The acceptance or exercise by the Government of the aforesaid rights and license will not prevent the Government at any time from contesting the enforceability, validity, scope of, or title to, any rights or patents herein licensed.

I. Background Intellectual Property

1. The Facility Operator will not knowingly use Background Intellectual Property in performing work under this Agreement unless such Background Intellectual Property, if any, is identified herein below. The Sponsor is not granted any license rights, either express or implied, to this Background Intellectual Property under this Agreement. Facility Operator provides this information to comply with its M&O Contract and to notify the Sponsor that licenses to Background Intellectual Property may be necessary to practice Subject Inventions made under this Agreement. Neither the Government nor the Facility Operator shall be liable for failing to bring Background Intellectual Property to the Sponsor's attention or for infringement of others' rights or damages incurred through the use of such intellectual property.

<Select ONE of the following>

2. No Background Intellectual Property will be used in performing work under this Agreement.
3. The Background Intellectual Property (BIP) listed below will be used in performing work under this Agreement. (Where possible, designate any BIP by disclosure or docket number.)

- a.
- b.
- c.

J. Limitation of Rights

Nothing contained in this patent rights Article shall be deemed to give the Government any rights with respect to any invention other than a Subject Invention except as set forth in Facilities License of paragraph H.

K. Early Termination of Agreement

If the Agreement is terminated before completion of the Statement of Work, then the terms and conditions of this Article will survive the Agreement.

**EXHIBIT H-2-C**  
**RIGHTS OF PARTIES REGARDING INTELLECTUAL PROPERTY**  
**FOR DOE**  
**Rights in Technical Data-Use of Facility**<sup>1</sup>

Note: This exhibit shall be used by UC in contractual agreements executed for work under this Agreement with all DOE Laboratories except those managed by UC

A. The following definitions shall be used:

1. “Technical Data” as used throughout this Agreement means recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research; document experimental, developmental, demonstrations, or engineering work; or be usable or used to define a design or process; or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, test specifications or related performance or design type documents or computer software (including computer programs, computer software data bases, and computer software documentation).
2. “Generated Information” means information first produced in the performance of this Agreement.
3. “Proprietary Information” means information which is developed outside of this Agreement at private expense, is marked as Proprietary Information, and embodies (1) trade secrets or (2) commercial or financial information which is privileged or confidential under the Freedom of Information Act (5 U.S.C. 552 (b)(4)).
  - a. A trade secret is any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented and which is generally known only to certain individuals with a commercial concern and are using it to fabricate, produce or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.
  - b. Commercial or financial information is information about the operation of a specific business. It includes information concerning the cost and pricing of goods, supply sources, cost analyses, characteristics of customers, books

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<sup>1</sup> The Provisions of this Exhibit H-2-C are taken directly from Appendix C (California Energy Commission – Rights in Technical Data – Use of Facility) from the DOE Funds-In Agreement for Research and Development

and records of the business, sales information including mailing lists, business opportunities, information regarding the effectiveness and performance of personnel, and information incidental to Agreement administration.

4. “Unlimited Rights” means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.
  5. “Deliverable” data is that which, under the terms of this Agreement, is required to be delivered to the Sponsor.
  6. “Copyrighted Project Work” means any copyrightable work as defined under U.S. copyright law that is first created by the DOE and Facility Operator in the performance of this Agreement, is not a scholarly work, and to which the Facility Operator has acquired the rights to assert copyright in accordance with its M&O Contract with the U.S. Department of Energy.
- B. The Sponsor agrees to furnish to the DOE and Facility Operator or leave at the facility that information, if any, which is (1) essential to the performance of work by the Facility Operator personnel or (2) necessary for the health and safety of such personnel in the performance of the work. Any information furnished to the DOE and Facility Operator shall be deemed to have been delivered with Unlimited Rights unless marked as Proprietary Information. The Sponsor agrees that it has the sole responsibility for appropriately identifying and marking all documents containing Proprietary Information, whether such documents are furnished by the Sponsor or are incorporated within report(s) generated under this Agreement and made available to the Sponsor for review.
- If Proprietary Information is disclosed orally, electronically, visually, or in any other intangible form, it shall be identified as such, at the time of disclosure and confirmed in writing within ten (10) days as being Proprietary Information.
- C. The Sponsor, Facility Operator, and the Government shall have Unlimited Rights in all Generated Information, except for information which is disclosed in a Subject Invention disclosure being considered for patent protection or information which is marked as either Proprietary Information or copyrighted in accordance with the provisions set forth herein below. Subject Invention information which may be disclosed to the Sponsor prior to issuance of a patent shall be treated as confidential in accordance with 35 U.S.C. 205 and shall not be further disclosed by the Sponsor during pendency of the patent application.
- D. The Government and Facility Operator agree not to disclose properly marked Proprietary Information of the Sponsor without written approval, except to Government employees who are subject to the statutory provisions against disclosure of confidential information set forth in the Trade Secrets Act (18 U.S.C. 1905).

- E. The Sponsor is solely responsible for the removal of all of its Proprietary Information from the facility by or before termination of this Agreement. The Government and Facility Operator shall have Unlimited Rights in any Proprietary Information which is incorporated into the facility or equipment under this Agreement to such an extent that the facility or equipment is not restored to the condition existing prior to such incorporation. The Government and Facility Operator shall have Unlimited Rights in any information which is not removed from the facility by termination of this Agreement.
- F. The Sponsor has the right to obtain from the DOE through its Facility Operator as a deliverable, a copy of all Technical Data first produced in performance of this Agreement which the Sponsor has not excluded as being unusable to the PIER Program. The Sponsor agrees that the Facility Operator will also provide the Department of Energy with a nonproprietary description of the work performed under this Agreement.
- G. Copyrights. The Sponsor may assert copyright in any of its Generated Information. Except for software which is separately treated hereinbelow and to the extent the Facility Operator is given permission to assert copyright in accordance with its M&O Contract with the U.S. Department of Energy, the Sponsor is hereby granted a royalty-free, non-exclusive, irrevocable, non-transferable, worldwide license to produce, translate, publish, distribute, duplicate, exhibit, prepare derivative works, perform, use and dispose of, and to authorize others to produce, translate, publish, use, distribute, duplicate, exhibit, prepare derivative works, perform and dispose of all Generated Information copyrighted by the Facility Operator for State governmental purposes. Subject to the other provisions of this article, and to the extent that copyright is asserted, the U.S. Government reserves for itself a royalty-free, world-wide, irrevocable, non-exclusive license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, prepare derivative works, and perform any such Generated Information copyrighted by the Facility Operator or the Sponsor.
1. In the event software is first produced in performance of this Agreement, Facility Operator shall have the right to copyright and/or patent such software in accordance with its M&O Contract with the U.S. Department of Energy and hereby grants the Sponsor a royalty-free, no-cost, non-exclusive, irrevocable, non-transferable, worldwide, license to produce and use the software, and to prepare derivative works for State governmental purposes.
  2. For all Facility Operator Generated Information, which becomes a Copyrighted Project Work, the Facility Operator will apply a notice in accordance with 17 U.S.C. 401 et seq.
- H. The terms and conditions of this article shall survive the Agreement, in the event that the Agreement is terminated in whole or in part before completion of the Statement of Work.

## **EXHIBIT H-3 DEFINITIONS**

Note: These definitions shall be used by UC in contractual agreements executed for work under this Agreement with all Performing Institutions except DOE Laboratories. Exhibit H-4 shall be used with DOE Laboratories except those managed by UC.

### **1. DEFINITIONS**

- A. *Agreement Period*** is the length of the Agreement between the Energy Commission and the UC.
- B. *Agreement Start Date*** is the date Commission reimbursable expenses can begin after the Department of General Services signs the Agreement.
- C. *Agreement End Date*** is the last date Commission reimbursable expenses can be incurred and is the expiration date of the Agreement.
- D. *Copyrightable Work*** means any copyrighted work as defined under U.S. copyright law to which the Performing Institution has acquired title, that is first created by UC or by a Performing Institution in the performance of this Agreement and is not a scholarly work.
- E. *Date*** means calendar date.
- F. *Equipment*** means any products, objects, machinery, apparatus, implements or tools purchased, used or constructed within the project, including those products, objects, machinery, apparatus, implements or tools from which over thirty percent (30%) of the equipment is composed of materials purchased for the project.  
  
For purposes of determining depreciated value of equipment in the Agreement, the project shall terminate at the end of the normal useful life of the equipment purchased, funded and/or developed with Commission funds. The Commission may determine the normal useful life of such equipment.
- G. *Key Personnel*** are employees or consultants of UC or a Performing Institution who are critical to the outcome of the project. For example, they may have expertise in the particular field, or have experience that is not available from another source. Replacing these individuals may affect the outcome of the project.
- H. *Key Subcontractors*** are contractors, subcontractors or vendors to UC or to a Performing Institution and who are critical to the outcome of the project. As with Key Personnel, Key Subcontractors may have expertise in the particular field, or have

experience that is not available from another source and replacement may significantly affect the project. An employee of UC's or the Performing Institution's subcontractor or vendor may also qualify as "key".

- I. *Licensed Product*** means any product commercialized by a Licensee that embodies or utilizes a Subject Invention, Copyrightable Work or Project Related Products.
- J. *Licensee*** means the organization (or its affiliates, joint venture or sublicensee) that develops any Subject Invention, Copyrightable Work or Project Related Products into a commercial product that is made available to the public in the marketplace. Licensee may be the UC, a Performing Institution or a company to whom the UC or the Performing Institution licenses commercial rights.
- K. *Materials*** means the substances used in constructing a finished object, commodity, device, article or product.
- L. *Net Revenues*** means the total of the gross invoice prices of Licensed Product sold, less the sum of the following actual and customary deductions where applicable: cash; quantity discounts; sales, use, tariff, import/export duties or other excise taxes imposed upon particular sales; transportation charges; and allowance or credits to customers because of rejections or returns.
- M. *Net Royalties*** means gross royalties and fees received by UC or a Performing Institution from a Licensee as consideration for commercially licensing any Subject Invention, Copyrightable Work or Project-Related Product, less the following:
  1. Legal and other direct expenses (that are not otherwise reimbursed under an option or license agreement from a third party) of patenting, protecting and preserving patent, copyright and related property rights, maintaining patents and other such costs, taxes, or reimbursements as may be necessary or required by law, except patent infringement expenses, and
  2. Inventor or author shares in accordance with UC's, or as appropriate, the Performing Institution's patent or copyright policy

Direct expenses include operating expenses of UC and Performing Institutions. Net Royalties do not include any payments to joint holders nor research funding accepted by a Performing Institution in association with an option or licensing agreement. Net Royalties shall be aggregated cumulatively, over time, by UC for each Performing Institution and for all of each Performing Institution's disclosed Subject Inventions, Copyrightable Works and Project-Related Products.

- N. *Otherwise Disposing Of*** means (1) Project-Related Products and rights not sold but delivered by the UC or a Performing Institution to others regardless of the basis for compensation, if any, and (2) Project-Related Products and rights put into use by UC or any third party for any purpose other than testing or evaluation of the Project-Related Products.
- O. *Performing Institution*** means (i) any non-UC not-for-profit organization, for-profit organization, or Federal laboratory, or (ii) any part of University of California, such as a campus or UC-managed Department of Energy Laboratory performing research under this Agreement.
- P. *Project*** refers to the entire effort undertaken and planned by the UC and consisting of the work co-funded by the Commission. The project may coincide with or extend beyond the Agreement Period.
- Q. *Project-Related Products (“PRP”)*** means all tangible research products first made by UC or a Performing Institution in the performance of this agreement, but not a Subject Invention nor a Copyrightable Work.
- R. *Sale*** is the sale, license, lease, option, gift or other transfer of a Subject Invention, Copyrightable Work or Project Related Product.
- S. *Sales Price*** means gross revenue, excluding normal returns and allowances such as sales tax, freight and insurance, if applicable, derived from a sale.
- T. *Subject Invention*** means any patentable invention or discovery that is either:
1. Conceived and first actually reduced to practice in the performance of this Agreement;
  2. Conceived in the performance of this Agreement elected by the Commission pursuant and reduced to practice within 42 months following the termination or expiration of the applicable WA; or
  3. Conceived prior to and reduced to practice in the performance of this Agreement, provided that such conception was incorporated into the Project and the parties mutually agree in writing to include such conception.
- U. *Technology*** refers to the general subject area where the product or innovation will be used. For example, solar thermal electric generation is a technology area; direct steam generation is an innovation in this technology area. ***Technology Developed*** means subject invention and/or project-related products and rights.

## V. Terms Relating to Data

- 1) **Technical Data** or **Data** as used throughout this Agreement means recorded information regardless of form or characteristic, of a scientific or technical nature and used in the performance of this Agreement. It may, for example, document research; document experimental, developmental, demonstration, or engineering work; or be usable or used to define a design or process; or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, test specifications or related performance or design type documents or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of technical data include manufacturing techniques and methods, machinery, devices such as tools, products, or components, research and engineering data, engineering drawings and associated lists, specifications, engineering calculations, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used herein does not include financial reports, cost analyses and other information incidental to contract administration.
- 2) **Public Information** is information previously published, generally available from more than one source, or information in the public domain. All air monitoring and emission data included in a proposal or requested through a contract are public information. Government Code Section 6254.7 states that all information, analyses, plans or specifications that disclose the nature, extent, quantity, or degree of air contaminants or other pollution which any article, machine, equipment, or other contrivance will produce, which any state or local agency requires applicant to provide before the applicant builds, erects, alters, replaces, operates, sells, rents, or uses such article, etc., are public records.
- 3) **Confidential Information** is information submitted to the Commission, that UC has satisfactorily identified and which the Commission has agreed to designate as confidential pursuant to Title 20 CCR Sections 2501 and following (and amendments).
- 4) **Proprietary Data** is such data as UC has identified in a satisfactory manner as being under the Performing Institution's control prior to commencement of performance of this a WA or produced by the Performing Institution outside of this Agreement at its own expense, and which UC has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of the applicable WA is commenced.

- 5) A ***Trade Secret*** is any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented and which is generally known only to certain individuals with a commercial concern and are using it to fabricate, produce or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.
  
- 6) ***Generated Data*** is that data that UC collects, collates, records, deduces, reads out or postulates for use in the performance of this Agreement. In addition, any electronic data processing program, model or software system developed or substantially modified by the UC in the performance of this Agreement at Commission expense, together with complete documentation thereof, shall be treated as Generated Data.
  
- 7) ***Deliverable Data*** is that data which, under the terms of this Agreement, is required to be delivered to the Commission.

**EXHIBIT H-4**  
**DEFINITIONS AND ADDITIONAL CONTRACT TERMS**  
**FOR DOE**

**Definitions and Additional Agreement Terms**<sup>1</sup>

Note: These definitions shall be used by UC in contractual agreements executed for work under this Agreement with all DOE Laboratories except those managed by UC.

**Clause 1. Purpose and Precedence.**

- A. This contract is entered into between University of California (UC) and United States Department of Energy (DOE). This Contract is funded by the California Energy Commission. UC is subcontracting with DOE for the research described in the work statement. The Parties agree that this Exhibit is intended as an addendum to the contract between UC and DOE, to fulfill the legal and regulatory obligations and commitments that the California Energy Commission has to the State of California.
- B. In the event of any conflict between Federal law applicable to contract and State law, Federal law shall take precedence.

**Clause 2. Definitions.**

- A. **Agreement Budget** refers to reimbursable resources for that portion of the Project covered by the Agreement.
- B. **Agreement Period** is the length of the Agreement between the UC and the DOE. The Agreement Period coincides with that portion of the Project covered by the Agreement Budget.
- C. **Date** means calendar date.
  - 1. **Agreement Start Date** is the date reimbursable expenses can begin after the Agreement document is signed by the parties.

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<sup>1</sup> The Provisions of this Exhibit H-4 are taken directly from Appendix E (California Energy Commission – Definitions and Additional Agreement Terms) from the Fund-In Agreement for Research and Development. Only minor, clarifying changes were made for the purposes of the DOE Agreement between UC and the California Energy Commission.

2. **Termination Date** is the expiration date of the Agreement and is the last date reimbursable expenses can be incurred.
- D. **Equipment** means any products, objects, machinery, apparatus, implements or tools, in excess of \$5000.00, purchased or constructed under this Agreement, including those products, objects, machinery, apparatus, implements or tools, in excess of \$15,000.00, from which over thirty percent (30%) of the equipment is composed of materials purchased for the project.
- For the purposes of determining residual value, the UC will use straight line depreciation over the equipment's useful life as determined by the UC's standard accounting practices. The residual value will be calculated as of the date of the completion or termination of this Agreement.
- E. **Materials** means the substances used in constructing a finished object, commodity, device, article or product.
- F. **Participant's value contribution** means the assessed value of Federal Administrative Charges not charged to this project and assessed value of synergistic projects. The assessed value of such synergistic projects does not constitute a funding contribution or obligation (either cash or in-kind) on the part of the DOE or the Facility Operator.
- G. **Project** refers to the entire effort undertaken and planned by the Facility Operator under Appendix A, Statement of Work and includes the work funded by this contract. The Facility Operator's Project coincides with that portion of the Project covered by the Agreement Budget and the Agreement Period.
- H. **Sale** is sale, license, lease, gift or other transfer of a project-related product or right.

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

- A. Facility Operator, its subcontractors and their employees in the performance of work under this Agreement shall be responsible for using their best efforts to exercise the degree of skill and care required by customarily accepted good professional practices and procedures used in scientific and engineering research fields.
- B. In the event that the UC believes the Facility Operator/subcontractor has failed or is failing to perform in accordance with the standard of performance in paragraph 3A, the

California Energy Commission and the Facility Operator shall negotiate in good faith an equitable resolution satisfactory to both parties. If such resolution cannot be reached, the Parties shall work through the Alternate Dispute Resolution process described in the contract between UC & DOE. In the event negotiation and resort to the Alternate Dispute Resolution do not provide a satisfactory resolution, Sponsor's sole remedy in the event of the Facility Operator's failure to perform in accordance with the standard of performance in this paragraph is termination of the Agreement. Nothing herein shall preclude the Facility Operator from entering into agreements of other or additional remediation with the UC provided that any such agreement shall not result in costs allocable or liabilities chargeable to the Department of Energy.

- C. Nothing contained in this Clause 3 is intended to limit any of the rights or remedies that the Parties may have under law, or to limit exercise of any other provision of this agreement.

#### **Clause 4. Subcontractors and Subcontractor Agreements.**

- A. DOE oversight of Facility Operator's agreements with subcontractors. The Facility Operator shall be responsible to the DOE for establishing and maintaining contractual agreements with and reimbursement of each of the subcontractors for work performed in accordance with the terms of this Agreement. Facility Operator shall provide UC with copies of all subcontract agreements resulting from this Agreement promptly upon final execution thereof.
- B. Replacement of key subcontractors. The key subcontractors listed in Appendix A, Statement of Work cannot be replaced or substituted without prior written concurrence of UC Contract Manager. Such concurrence shall timely and not unreasonably withheld.
- C. Replacement or substitution of all other subcontractors. The Facility Operator shall notify the California Energy Commission in writing of any replacement or substitution of subcontractors not listed as key subcontractors in the Statement of Work.
- D. Termination of subcontracts. Upon the termination of any subcontract, the UC's Contract Manager shall be immediately notified.
- E. DOE oversight of Facility Operator's procurement processes. The Facility Operator shall use DOE-approved and regulated procurement policies, processes, and procedures to achieve the subcontract obligations under this Agreement. The DOE shall ensure that

Facility Operator's purchasing system and methods shall be fully documented, consistently applied, and acceptable to the Department of Energy. Federally-approved policies, processes, and procedures regarding competitive selection, sole-source justification, intellectual property rights, assignment, and flow-down shall be maintained for all subcontracts under this Agreement.

#### **Clause 5. Public Hearings.**

If public hearings on the subject matter dealt with in this Agreement are held during the period of the Agreement, the DOE shall ensure that the Facility Operator makes available to testify the personnel assigned to this Agreement if requested by UC. UC will reimburse, by advance payment, the labor and travel costs of testifying personnel assigned to this Agreement at the Facility Operator's rates for such work.

#### **Clause 6. Site Access for Project Review.**

The Parties acknowledge that the United States Department of Energy enforces strict requirements regarding security, safety, and access to the DOE National Laboratories' sites and facilities. **To the extent permitted by DOE and Facility Operator security, safety, and access requirements**, the UC staff or its representatives shall have reasonable access to the construction site or R&D laboratory and all project records related to performance under this Agreement.

#### **Clause 7. Notice to Parties and Facility Operator.**

Notice to the Parties may be given by certified mail properly addressed, postage fully prepaid, to the address listed in the Contract, and Block 14 (DOE) in the Standard Agreement for each respective party. Notice to the Facility Operator may be given by certified mail properly addressed, postage fully prepaid to the address listed in Block 12 (M&O Contractor of the National Laboratory). Notice may be given to such other address as either Party or the Facility Operator shall provide to the other in accordance with this section. Such notice shall be effective when received, as indicated by post office records, or if deemed undeliverable by post office, such notice shall be effective nevertheless fifteen (15) days after mailing.

Alternatively, notice may be given by personal delivery to the at the address designated in the Standard Agreement or to such other address as either Party or the Facility Operator shall notify the other in accordance with this section. Such notice shall be deemed effective when delivered unless a

legal holiday for State or Federal offices commences during the 24-hour period, in which case the effective time of the notice shall be postponed 24 hours for each such intervening day.

**Clause 8. Business Activity Reporting.**

- A. The DOE shall give UC prior written notice of any change of address or name change.
  
- B. Facility Operator shall not change or reorganize the type of business entity under which it does business except upon prior written notification to the UC, except that the Department of Energy can change the successor to the Facility Operator to continue the operation of the DOE facility without prior written notification to UC. In the event the UC is not satisfied that the new entity can perform as the original Facility Operator, the California Energy Commission may terminate this Agreement as provided in the Termination paragraph.
  
- C. Facility Operator shall promptly notify UC of the occurrence of each of the following
  - 1) The existence of any litigation or other legal proceeding affecting the Project;
  
  - 2) The occurrence of any casualty or other loss to project personnel, equipment, in excess of \$5,000.00, or third parties of a type commonly covered by insurance; and
  
  - 3) Facility Operator's receipt of notice of any claim or potential claim against Facility Operator for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the UC's rights.

**Clause 9. Travel and Per Diem.**

- A. Travel identified in Appendix A. Statement of Work does not require prior authorization.
  
- B. Travel that is not included in Facility Operator's Statement of Work shall require prior written authorization from UC's Contract Manager.
  
- C. Origination and destination points for calculating travel expenses shall be the Facility Operator's office location where the employees performing the Agreement are permanently assigned. The Facility Operator shall be reimbursed for travel and per diem on the same basis as the Facility Operator's DOE-approved rates in effect during this Agreement.

- D. The Facility Operator will document travel expenses as follows:
1. Expenses must be detailed using the Facility Operator's DOE-approved rates.
  2. Expenses must be documented by trip including dates and times of departure and return. Employee's travel expense report may be used instead.
  3. The Facility Operator will retain travel expense documentation and receipts for audit and verification to the extent audits are permitted by DOE policy.

### **Clause 10. Accounting, Cost Allowability, and Audit Provisions**

- A. Accounting Procedures. The Facility Operator's costs shall be determined on the basis of the Facility Operator's accounting system procedures and practices employed as of the effective date of this Agreement, and as may be revised from time to time, provided that generally accepted accounting principles and cost reimbursement practices are used. The Facility Operator's cost accounting practices used in accumulating and reporting costs during the performance of this Agreement shall 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 provided, further, that such costs may be accumulated and reported in greater detail during performance of this Agreement. The Facility Operator's accounting system shall distinguish between direct costs 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.
- B. Allowability and Unallowability of Costs. The costs that shall be reimbursed by Sponsor include all costs, direct and indirect, incurred in the performance of work under this Agreement. Allowability or unallowability of costs shall be determined in accordance with the Allowability Costs provision of the Department of Energy Acquisition Regulation (DEAR) incorporated in the Facility Operator's M&O Contract with the DOE Appendix F of this Agreement incorporates the current DEAR Allowable Cost provision of the Facility Operator's M&O Contract in effect as of the effective date of this Agreement and shall be determinative of the costs allowed under this Agreement.
- C. Audit. Upon the request of UC; the California Energy Commission; or the California Bureau of State Audits; and at the expense of the requesting party; the DOE or its designee, shall audit the Facility Operator's records related to this Agreement. The Facility Operator

shall furnish detailed itemization of, and retain all records relating to, direct expenses reimbursed to Facility Operator, and to hours of employment on this Agreement by an employee of Facility Operator for which UC is billed. Such records shall be maintained for a period of three years after final payment under this Agreement, or until audited by the DOE or its designee pursuant to the request for audit specified above, whichever occurs first. Once notified of a request for audit, the Facility Operator shall maintain such records until the audit is completed. Said audit shall be conducted in accordance with Government Auditing Standards, and shall be performed in a time frame and shall contain a scope of work mutually agreed to by the Department of Energy and the auditor. The auditor shall be provided a copy of the audit report and, upon request, shall have access to review the audit work papers.

## **Clause 11. Survival.**

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

- “Advance Funding, Invoicing and Payment”
- “Property”
- “Termination”
- “Alternate Dispute Resolution”
- “Indemnifications”
- “Patent Rights”
- “Rights in Technical Data”
- “Payments to Sponsor”
- “Site Access for Project Review”
- “Business Activity Reporting
- Accounting, Cost Allowability and Audit Provisions”

## **Clause 12. Stop Work.**

UC Contracts Officer may, at any time, by five-days written notice to the DOE, require the Facility Operator to stop all or any part of the Agreement’s work tasks.

- A. Compliance. Upon receipt of such stop work order, the DOE shall ensure that the Facility Operator immediately take all necessary steps to comply and to minimize the incurrence of costs allocable to work stopped.
- B. Equitable Adjustment. An equitable adjustment shall be made by UC based upon a written request for an equitable adjustment by the DOE. Such adjustment request must be made within thirty (30) days from the date of receipt of the stop work notice.
- C. Revoking a Stop Work Order. The DOE shall order the Facility Operator to resume the stopped work only upon receipt of written instructions from the UC’s Contract Officer canceling the Stop Work order.