

EXHIBIT C

**TERMS AND CONDITIONS
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EXHIBIT C

TERMS AND CONDITIONS

1. Grant Agreement

(choose 1st paragraph for PIER natural gas projects)

This project is being funded with a grant from the California Energy Commission (Energy Commission). Funding for this project was authorized by Assembly Bill No. 1002, Chapter 932, Statutes of 2000, and consists of funds from the Gas Consumption Surcharge Fund.

OR

(choose 2nd paragraph for PIER electricity projects)

This project is being funded with a grant from the California Energy Commission (Energy Commission). Funding for this project was authorized by Assembly Bill No. 995, Chapter 1051, Statutes of 2000, and consists of funds from the Public Interest Research, Development, and Demonstration Fund.

Project refers to the entire effort undertaken and planned by the Recipient, including the work co-funded by the Commission. The project may coincide with or extend beyond the Agreement period. **Project tasks** refer to the work elements of the project. Typically, there are distinct projects tasks within the project being paid for by the Commission under this Agreement.

This Agreement is comprised of the grant funding award, the Terms and Conditions, and all attachments. These Terms and Conditions are standard requirements for Public Interest Energy Research (PIER) grant awards. The Energy Commission may impose special conditions in this grant Agreement which address the unique circumstances of this project. Special conditions that conflict with these standard provisions take precedence. Any special conditions are attached to this Agreement.

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

All work and/or the expenditure of funds (Energy Commission-reimbursed and/or match share) must occur within the approved term of this Agreement. The Energy Commission cannot authorize any payments until all parties sign this Agreement. The start term of this Agreement is either the specified start term or the date the Energy Commission signs the Agreement, whichever is later. The Energy Commission will only sign the Agreement after the Recipient signs it and it has been approved at an Energy Commission Business Meeting.

2. Attachments and References

The following are attached and hereby expressly incorporated into this Agreement.

- Work Statement
- Budget
- Confidentiality Exhibit (if applicable)
- Intellectual Property Exhibit (if applicable)
- Special Conditions (if applicable)
- Agreement Definitions

The Office of Management and Budget (OMB) Circulars and/or federal regulations identified below are incorporated by reference as part of this Agreement. These Terms and Conditions and any Special Conditions take precedence over the circulars and/or regulations. OMB Circulars may be accessed on the OMB website at www.whitehouse.gov/omb/circulars/index.html and federal regulations may be accessed at www.arnet.gov/far/, or by calling the Office of Administration, Publications Office, at (202) 395-7332.

- OMB Circular A-110: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (also applicable to private entities)
- OMB Circular A-21: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Institutions of Higher Education (public and private colleges and universities)

3. Applicable Laws

Recipient agrees to abide by all federal, state, and local laws and regulations applicable to the project even if they are not stated in this Agreement.

4. Due Diligence

The Recipient is required to take timely actions which, taken collectively, move this project to completion. The Commission Agreement Manager will periodically evaluate the schedule for completion of Work Statement tasks. If the Commission Agreement Manager determines (1) the Recipient is not being diligent in completing the tasks in the Work Statement or (2) the time remaining in the funding award is insufficient to complete all project work tasks not later than the Agreement term date, the Project Manager shall consult with the Recipient to determine whether the tasks will be completed according to schedule. If completion cannot be completed on schedule or by a mutually agreeable extension in time, the Project Manager may recommend to the Policy Committee of the Energy Commission (Committee) that this Agreement be terminated, and the Committee may, without prejudice to any of

its remedies, terminate this Agreement in accordance with the Termination provisions stated in Clause 13.

5.Products

Products are defined as any tangible item specified in the Work Statement. Unless otherwise directed, draft copies of all products identified in the Work Statement shall be submitted to the Energy Commission's Accounting Office at the address below. The Accounting Office will forward products to the Commission Agreement Manager for review and comment. The Recipient will submit an original and two copies of the final version of all products to the Accounting Office.

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

6.Reports

a. Submission of Reports

All reports will be submitted to the Accounting Office at the address listed in Section 5 above.

b. Progress Reports

The Recipient shall prepare progress reports on the schedule provided in the work statement. The Recipient shall prepare progress reports which summarize all grant activities conducted by the Recipient for the reporting period, including an assessment of the ability to complete the project within the current budget and any anticipated cost overruns. See Attachment Exhibit A, Attachment A-2 "Content and Format of Progress Reports" for more information.

c. Final Reports

The Recipient shall prepare a final report outline, draft final report and final report on the schedule provided in the work statement. The final report shall describe the original purpose, approach, results and conclusions of the work done under this Agreement. See *Style Manual: Preparing Public Interest Energy Research (PIER) Program Technical Research Project Reports* located online at <http://www.energy.ca.gov/contracts/pier/contractors/>.

The Payment Request for the final payment (including any retention) may only be submitted after the final report is completed and the Commission Agreement Manager has verified that all work has been completed in accordance with the requirements of this Agreement.

d. Rights in Reports

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

e. Failure to Comply with Reporting Requirements

Failure to comply with the reporting requirements contained in this award will be considered a material noncompliance with the terms of the award.

7. Legal Statement on Reports and Products

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

LEGAL NOTICE

This document was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this document; nor does any party represent that the use of this information will not infringe upon privately owned rights. This report has not been approved or disapproved by the Energy Commission nor has the Energy Commission passed upon the accuracy of the information in this report.

8. Amendments

a. Procedure for Requesting Changes

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

- A brief summary of the proposed change;

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

b. Significant Changes

Significant changes to the Agreement must be approved by the Commission through a formal amendment. Examples of significant changes include:

- Change of Recipient.
- Changes to Exhibit A that significantly modify the scope or purpose of the Agreement.
- Changes to Exhibit A that extend the due dates beyond the term of the Agreement.
- Changes to Exhibit B that increase the amount of the Agreement.
- Changes to Exhibit B that increase rates or fees.

c. Non-Significant Changes

Changes that are not significant to the Agreement do not require approval through a formal amendment. However, if these changes are not formally approved they must be documented in a Letter of Agreement signed by both parties. Examples of non-significant changes include:

- Budget revisions among tasks or budget categories that do not affect the scope of the project or the overall Agreement amount, and adhere to the budget reallocation requirements discussed below.
- Corrections of grammatical or other minor errors.
- Revised product due dates, if the revised dates are within the approved term of the Agreement and are agreed to in writing by the Commission Agreement Manager.
- Designation of Project Managers.
- Revised contact information.
- An increase of the Recipient's match share.
- Selection of a new demonstration site, if the site change does not affect the Energy Commission's determination that the funded work is exempt from or not a project under the California Environmental Quality Act.

d. Budget Reallocations

- 1) The Energy Commission, through its Project Manager and Grants Officer, and the Recipient can agree upon and make certain budget reallocations without a formal amendment to this Agreement as long as ALL of the following conditions are met:
 - a) The total of all budget reallocations cannot exceed ten percent (10%) with a cap amount of \$75,000 of the Agreement Amount. For purposes of this provision, "Agreement Amount" means the total amount of Energy Commission funds being paid to Recipient under this Agreement. It does not include any match funds provided by Recipient.

For example, if under an agreement the Energy Commission agrees to pay a Recipient \$100,000 and the Recipient is supplying \$500,000 in match funding, the ten percent (10%) limitation applies to the \$100,000. Only up to \$10,000 of Energy Commission funds can be reallocated without a formal amendment. If under an agreement the Energy Commission agrees to pay a recipient \$800,000, ten percent would be \$80,000, but the cap is \$75,000, so the most that could be reallocated without a formal amendment is \$75,000.
 - b) The budget reallocation cannot substantially change the Work Statement. Examples of budget reallocations that do not substantially change the Work Statement, but are not limited to, the following:
 - Increasing or decreasing the overall travel budget. This does not mean an increase beyond the per diem rates allowed in accordance with UC Travel Policy, as stipulated under this Agreement.
 - Increasing or decreasing the equipment budget.
 - Increasing or decreasing the number of personnel assigned to complete tasks. This does not include increasing the salary rates of the personnel and classifications listed in the budget. Increasing salary rates requires a formal amendment. The addition of personnel also requires a formal amendment unless there is already an identified classification of rates in the budget that the new personnel will be filling.
 - c) The budget reallocation only involves moving funds between tasks or categories. The total Agreement Amount must remain unchanged. Increasing the total amount of the Agreement requires a formal amendment.

- d) The budget reallocation does not increase the percentage rate of Indirect Overhead, Fringe Benefits, General and Administrative Costs, or any other rates listed in the budget. For example, if an agreement budget lists the Indirect Overhead percentage rate as 25% of Direct Labor, the 25% cannot be changed without a formal amendment.
- 2) To effectuate a budget reallocation under this section, the Recipient must make a request in writing to both the Project Manager and the Grants Officer. Both the Project Manager and Grants Officer will then approve or disapprove the request in writing; the approval or disapproval is not effective or binding unless signed by both the Project Manager and the Grants Officer. Oral communications cannot be used or relied upon. If the request is approved, the Project Manager shall revise the Budget Attachments to reflect the changes and send them to the Grants Officer and Recipient.
- 3) Any desired budget reallocations that do not meet the four criteria in this section must be made through a formal amendment. For purposes of this provision, a “formal amendment” means that all of the following must occur: approval by the Energy Commission at a Commission Business Meeting, a written amendment signed by both parties.
- 4) Attempted budget reallocations that do not meet the requirements of this section are not legally binding upon the parties.

9.Contracting and Procurement Procedures

This section provides general requirements for an agreement between the Recipient and a third party (“subcontractor”).

Subcontracting criteria are specified in the applicable OMB Circulars incorporated by reference in this Agreement. The Energy Commission will defer to the Recipient’s own regulations and procedures as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in this Agreement and any OMB Circulars incorporated by reference in this Agreement.

Upon request, the Recipient must submit to the Commission Agreement Manager a copy of all solicitations for services or products required to carry out the terms of this Agreement, copies of the proposals or bids received, and copies of subcontracts executed. If a specific subcontractor was identified in the original grant application and the grant was evaluated based in part on this subcontractor's qualifications, then prior written approval from the Commission Agreement Manager is required before substituting a new subcontractor. (See Key Personnel and Key Subcontractors.)

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

All subcontracts except those with U.S. Department of Energy National Laboratories must incorporate all of the following:

- A clear and accurate description of the material, products, or services to be procured as well as a detailed budget and timeline.
- Provisions which allow for administrative, contractual, or legal remedies in instances where subcontractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
- Provisions for termination by the Recipient including termination procedures and the basis for settlement.
- Any additional requirements specified in the OMB Circulars and/or federal regulations incorporated by reference in this Agreement.
- Further assignments shall not be made to any third or subsequent tier subcontractor without additional advance written consent of the Energy Commission's Grants Officer.

All subcontracts except those with U.S. Department of Energy National Laboratories must also incorporate language conforming to the following provisions specified in this Agreement and contain the following provisions:

- Standard of Performance
- Nondiscrimination
- Indemnification
- Rights of Parties Regarding Intellectual Property
- Intellectual Property Items Developed Prior to this Agreement
- Travel and Per Diem
- Equipment
- Recordkeeping, Cost Accounting, and Auditing
- Access to Sites and Records
- Legal Notice
- Survival of the following sections:
 - a. Recordkeeping, Cost Accounting and Auditing
 - b. Equipment
 - c. Rights of Parties Regarding Intellectual Property
 - d. Access to Sites and Records

Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Energy Commission and any subcontractors, and no subcontract shall relieve the Recipient of its responsibilities and obligations

hereunder.

Recipient shall be responsible for establishing and maintaining contractual agreements with and reimbursement of each subcontractor for work performed in accordance with the terms of this Agreement.

Replacement or substitution of all non-key subcontractors is permitted with reasonable advance written notification to the Commission Agreement Manager.

All subcontracts entered into pursuant to this Agreement shall be subject to examination and audit by the Bureau of State Audits for a period of three years after final payment under this Agreement.

Failure to comply with the above requirements may result in the termination of this Agreement.

10.Key Personnel and Key Subcontractors

a. Key Personnel

Key personnel are employees of the Recipient 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. Key personnel, listed in the Budget exhibit, may not be substituted without the Commission Agreement Manager's approval. Such approval shall not be unreasonably withheld. Recipient may substitute all other personnel, with reasonable advance notification made to the Commission Agreement Manager.

b. Key Subcontractors

Key subcontractors are subcontractors or vendors to the Recipient 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. Replacing these subcontractors may affect the outcome of the project. An employee of the Recipient's subcontractor or vendor may also qualify as "key." Key subcontractors, listed in the Budget exhibit, may not be substituted without the Commission Agreement Manager's approval. Such approval shall not be unreasonably withheld. Recipient may substitute all other subcontractors, with reasonable advance notification made to the Commission Agreement Manager. Replacement of key subcontractors is subject to the "Contracting and Procurement Procedures" section contained within these terms and conditions.

11. Permits and Clearances

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

12. Equipment

Title to equipment acquired by the Recipient with grant funds shall vest in the Recipient. The Recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by grant funds and shall not encumber the property without Commission Agreement Manager approval.

Recipient should refer to the applicable OMB Circulars and/or federal regulations incorporated by reference in this Agreement for additional equipment requirements.

13. Termination

a. Default

In the event of any default of this Agreement, 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 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.50, shall be used to determine

allowable termination costs, but not in excess of the total amount of the Agreement.

14. Travel and Per Diem

- a. Recipient shall be reimbursed for travel and per diem for trips in accordance with the Regents-approved rates for University of California (UC) employees. Recipient shall provide a copy of the current Regents-approved rates to the Energy Commission upon request. Travel expenses in excess of Regents-approved rates cannot be reimbursed.
- b. Those trips already identified in the Budget section are considered approved when this Agreement goes into effect. Travel not listed in the Budget section of this Agreement shall require prior written authorization from the Commission Agreement Manager. When requesting such approval, Recipient will identify who shall travel, the purpose of travel and the destination.
- 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 not listed in the Budget section of this Agreement shall require prior written authorization, via e-mail or other means, from the Commission Agreement Manager.

15. Standard of Performance

- a. Recipient, its subcontractors and their employees in the performance of Recipient's work under this Agreement shall be responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures used in scientific and engineering research fields.
- b. The failure of a project to achieve the technical or economic goals stated in the Work Statement is not a basis for the Energy Commission to determine that the work is unacceptable, unless the work conducted by the Recipient

or its subcontractors is deemed by the Energy Commission to have failed the foregoing standard of performance.

- c. In the event that Recipient or its subcontractor fails to perform in accordance with the foregoing standard of performance, the Commission Agreement Manager and the Recipient Project Manager shall seek to negotiate in good faith an equitable resolution satisfactory to both parties.
- d. Nothing contained in this section is intended to limit any of the rights or remedies which the Energy Commission may have under law.

16. Payment of Funds

a. Payment Requests

Unless indicated otherwise in Special Conditions, the Recipient may request payment from the Energy Commission at any time during the term of this Agreement, but no more frequently than monthly, although it is preferred that payment requests be submitted with the progress reports.

Payments will generally be made on a reimbursement basis for Recipient's expenditures, i.e., after the Recipient has paid for a service, product, supplies, or other approved budget item. No reimbursement for food or beverages shall be made other than allowable per diem charges.

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

b. Advance Payment

- 1) 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 without prior written approval from both the Commission Agreement Manager and the Commission Grant Officer.
- 2) UC can submit the first invoice for advance payment at any time. Thereafter, Contractor shall submit all invoices for advance payment on a calendar quarter basis.
- 3) 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.

- 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 below.
- 5) Other than the initial advance payment, the Commission Agreement Manager will approve advance payments provided that the Commission Agreement Manager has received and approved the progress reports, and any other required products for the previous period.
- 6) Upon completion or termination of this Agreement, Contractor shall refund any excess funds to the Commission within sixty (60) calendar days.

c. Payment Request Format

A request for payment shall consist of, but not be limited to, the following:

- 1) Agreement number, date prepared, and billing period.
- 2) Operating expenses, including equipment, travel, miscellaneous, and materials.
- 3) Fees (fringe, direct and indirect overheads, general and administrative, profit, etc.). Identify actual and cumulative amounts by budget category.
- 4) A copy of the UC General Ledger for the invoice period.

The Energy Commission will accept computer-generated or electronically transmitted invoices without backup documentation provided that the Recipient sends a hardcopy the same day.

Recipient shall submit all invoices to the following address:

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

d. Release of Funds

Each invoice is subject to both Commission Agreement Manager and Commission Grants Officer approval. The Commission Agreement Manager will not process any payment request during the Agreement term if the following conditions have not been met:

- All required products and reports have been submitted and are in accordance with the Standard of Performance Clause.
- All applicable special conditions have been met.
- All appropriate permits or permit waivers from governmental agencies have been issued to the Recipient and copies have been received by the Commission Agreement Manager.

Payments shall be made to the Recipient only for undisputed invoices. An undisputed invoice is an invoice executed by the Recipient for project expenditures, that meets all payment conditions of the Agreement, and for which additional evidence is not required to make payment. The invoice may be disputed if all products due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. If the invoice is disputed the Recipient will be notified via a Dispute Notification Form within 15 working days of receipt of the invoice. On any disputed invoice, the Commission shall withhold payment only on that portion of the invoice that is disputed.

e. Indirect Costs

For any of the 10 University of California (UC) campuses and the UC Office of the President, whether funds are received through a prime award or through a subaward from another UC location, the maximum indirect cost rate allowable under this Agreement is 25% of Modified Total Direct Cost (MDTC).

f. Retention

No retention will be withheld under this Agreement.

g. State Controller's Office

Payments are made by the State Controller's Office.

17. Recordkeeping, Cost Accounting, and Auditing

a. Cost Accounting

Recipient agrees to keep separate, complete, and correct accounting of the costs involved in completing the grant and match funded (if any) portion of this project. The Energy Commission or its agent shall have the right to examine Recipient's books of accounts at all reasonable times to the extent and as is necessary to verify the accuracy of Recipient's reports.

b. Accounting Procedures

The Recipient's costs shall be determined on the basis of the Recipient's accounting system procedures and practices employed as of the effective date of this Agreement, provided that the Recipient shall use generally accepted accounting principles and cost reimbursement practices. The Recipient's cost accounting practices used in accumulating and reporting costs during the performance of this Agreement 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 Recipient'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.

c. Allowability of Costs

1) Allowable Costs

The costs for which the Recipient shall be reimbursed under this Agreement include all costs, direct and indirect, incurred in the performance of work that are identified in the grant Budget. Costs must be incurred within the term of the Agreement. Factors to be considered in determining whether an individual item of cost is allowable include (i) reasonableness of the item, (ii) appropriate use of the allocability of the item to the work, (iii) applicable federal OMB circulars and/or federal regulations incorporated by reference in this Agreement, and (iv) the terms and conditions of this Agreement.

2) Unallowable Costs

The following is a description of some specific items of cost that are unallowable; provided, however, that the fact that a particular item of cost is not included shall not mean that it is allowable. Details

concerning the allowability of costs are available from the Energy Commission's Accounting Office.

- a) Profit or Fees, Contingency Costs, Imputed Costs, Fines and Penalties, Losses, Excess Profit Taxes and increased rates and fees for this Agreement (if not otherwise approved by the Energy Commission as described in Section 8 of this Agreement).
 - b) The Energy Commission will pay for state or local sales or use taxes on expenditures. The State of California is exempt from Federal excise taxes.
- 3) Except as provided for in this Agreement, Recipient shall use the federal OMB circulars and/or federal regulations incorporated by reference in this Agreement when determining allowable and unallowable costs. In the event of a conflict, this Agreement takes precedence over the OMB Circulars and/or federal regulations.

d. Audit Rights

Recipient shall maintain books, records, documents, and other evidence, based on the procedures set forth above, sufficient to reflect properly all costs claimed to have been incurred in performing this Agreement. The Energy Commission, an agency of the state or, at the Energy Commission's option, a public accounting firm designated by the Energy Commission, may audit such accounting records at all reasonable times with prior notice by the Energy Commission. The Energy Commission shall bear the expense of such audits. It is the intent of the parties that such audits shall ordinarily be performed not more frequently than once every twelve (12) months during the performance of the work and once at any time within three (3) years following payment by the Energy Commission of the Recipient's final invoice. However, performance of any such interim audits by the Energy Commission does not preclude further audit.

Recipient agrees that the Energy Commission, 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 source documentation pertaining to the performance of this Agreement. Recipient 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. Recipient agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Recipient agrees to include a similar right

of the state to audit records and interview staff in any subcontract related to performance of this Agreement.

e. Refund to the Energy Commission

If the Energy Commission determines, that any invoiced and paid amounts exceed the actual allowable incurred costs, Recipient shall repay such amounts to the Energy Commission within thirty (30) days of request or as otherwise agreed by the Energy Commission and Recipient. If the Energy Commission does not receive such repayments, the Energy Commission shall be entitled to withhold further payments under this Agreement to the Recipient or seek repayment from the Recipient.

f. Match or Cost Share (match)

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

18. Indemnification

Recipient 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 Recipient, its officers, agents or employees.

The Energy Commission shall defend, indemnify and hold Recipient, 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.

19. Workers' Compensation Insurance

a. Recipient hereby warrants that it carries Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this Agreement, and agrees to furnish to the Commission Agreement Manager

satisfactory evidence of this insurance at any time the Commission Agreement Manager may request.

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

20. Confidentiality

- a. Information Considered Confidential

All Recipient information considered confidential at the commencement of this Agreement is designated an Attachment to this Agreement.

- b. Confidential Products: Labeling and Submitting Confidential Information

Prior to the commencement of this Agreement, the parties have identified in an Attachment to this Agreement, specific Confidential Information to be provided as a product. All such confidential products shall be marked, by the Recipient, as "Confidential" on each page of the document containing the Confidential Information and presented in a sealed package to the Grants and Loans Office. (Non-confidential products are submitted to the Commission Agreement Manager.) All Confidential Information will be contained in the "confidential" volume: no Confidential Information will be in the "public" volume.

- c. Submittal of Unanticipated Confidential Information as a Product

The Recipient and the Energy Commission agree that during this Agreement, it is possible that the Recipient may develop additional data or information not originally anticipated as a confidential product. In this case, Recipient shall follow the procedures for a request for designation of Confidential Information specified in title 20 CCR 2505. The Energy Commission's Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to the list of confidential products in an Attachment to this Agreement.

- d. Disclosure of Confidential Information

Disclosure of Confidential Information by the Energy Commission may only be made pursuant to 20 CCR 2506 and 2507. All confidential data, records or products that are legally disclosed by the Recipient or any other entity become public records and are no longer subject to the above confidentiality designation.

21. Intellectual Property Items Developed Prior to This Agreement

- a. The Commission makes no claim to intellectual property that existed prior to this agreement and was developed without Commission funding. An attachment to this Agreement identifies any applicable pre-existing intellectual property.

22. Rights of Parties Regarding Intellectual Property

- a. Commission's Rights in Products

Products 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 products and reports subject to the provisions of subparagraph C.

- b. Rights in Technical, Generated, and Product Data

- 1) UC's Rights

Data (Technical, Generated and Product) 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 products 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 Product Data produced under the Agreement, when requested.

UC is not required to copy and submit data that the Commission Agreement 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 facility for inspection, review and possible copying by the Commission Agreement Manager is expected to be a more efficient use of Commission staff and UC's time and efforts.

However, upon request by the Commission Agreement Manager, UC or the Performing Institution shall provide the Commission Agreement 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 Product) 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 products 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 product or report without first providing a copy of the disclosure document for review and comment to the Commission Agreement Manager. UC shall consider the comments of the Commission Agreement Manager and use professional judgment in revising the product 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 UC shall remain with the UC 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 product hereunder or to establish a baseline for repayment purposes.

h. Preservation of Data

Any Data which is reserved to UC by the express terms hereof, and pre-existing Proprietary Data and Trade Secrets which have been utilized to support any premise, postulate or conclusion referred to or expressed in any product hereunder, shall be preserved by UC at UC'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, Generated, Product, 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 their 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

- 2) UC will disclose to Commission, on a confidential basis, all Subject Inventions. The Commission may provide any suggestions to 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 UC 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, 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.

k. Commission's Rights to Invention

UC 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 GRANT NUMBER **PIR-XX-XXX**. 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 other than products 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 products using the following form or such other form as may be reasonably specified by Commission.

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

4) Software

In the event software that is not a product is developed under this Agreement, 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 this Agreement. 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 products or the UC's performance thereof under this Agreement.

23. Royalty Payments to the Energy Commission

Royalty provisions apply under this Agreement. These terms apply to both UC and non-UC personnel. For DOE projects, royalty provisions are included in Exhibit G-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 UC or its subcontractor 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, less payments made by UC to Commission in previous years when Net Royalties were positive. Payments shall be made by check and made payable to the California Energy Commission, PIER Fund.
- c. Net Revenues. If the UC or its subcontractor 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 subcontractor 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 UC and its subcontractor 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 its subcontractor 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 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 subcontractor. Amounts in default and not paid by a subcontractor 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 subcontractors' compliance and take reasonable enforcement measures calculated to obtain subcontractors' performance of their payment obligations under this clause.

- j. UC and its subcontractor may exercise the Early Buyout. UC and its subcontractor have the option of paying its royalty obligations to Energy Commission without a pre-payment penalty, provided UC and or its subcontractor makes the royalty payment within two (2) years from the date at which royalties are first due to the Energy Commission. Royalty payment must be in a lump sum amount equal to two (2) times the amount of funds drawn down on the Agreement.

24. General Provisions

- a. Governing Law

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

- b. Independent Capacity

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

- c. Assignment

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

- d. Timeliness

Time is of the essence in this Agreement.

- e. Unenforceable Provision

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

- f. Waiver

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

g. Assurances

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

h. Change in Business

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

i. Access to Sites and Records

The Energy Commission staff or its representatives shall have reasonable access to all project sites and to all records related to this Agreement.

j. Survival of Terms

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

- “Payments of Funds”
- “Equipment”
- “Change in Business”
- “Disputes”
- “Termination”
- “Recordkeeping, Cost Accounting, and Auditing”
- “Indemnification”
- “Right of Parties Regarding Intellectual Property”
- “Royalty Payments to the Energy Commission”
- Access to Sites and Records

25. Certifications and Compliance

a. Federal, State & Local Laws

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

b. Nondiscrimination Statement of Compliance

During the performance of this Agreement, Recipient and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (40), marital status, and denial of family care leave. Recipient and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Recipient and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part of it as if set forth in full. Recipient and its subcontractors shall give written notice of their obligations under this section to labor organizations with which they have a collective bargaining or other Agreement.

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

c. Drug Free Workplace Certification

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

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

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

d. National Labor Relations Board Certification (Not applicable to public entities)

Recipient, by signing this Agreement, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal Court has been issued against the Recipient within the immediately

preceding two year period because of the Recipient's failure to comply with an order of a Federal Court which orders the Recipient to comply with an order of the National Labor Relations Board.

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

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

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

f. Air or Water Pollution Violation

Under the state laws, the Recipient shall not be:

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

g. Americans with Disabilities Act

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

h. Union Activity

By signing this Agreement, the Recipient hereby certifies that Recipient will not use grant funds for any expenses to assist, promote, or deter union organizing. Any Recipient that makes expenditures to assist, promote, or deter union organizing shall maintain records sufficient to show that state funds have not been used for those expenditures (Government Code Section 16645.2).

i. Payment

Costs for this Agreement shall be computed in accordance with State Administrative Manual Section 8752 and 8752.1.

26. Definitions

- a. **Agreement Period** is the length of this Agreement between the Energy Commission and the Recipient. The Recipient's Project may coincide with or extend outside the Agreement Period.
- b. **Confidential Information** is information Recipient has submitted to the Energy Commission and has satisfactorily identified and which the Energy Commission has agreed to designate as confidential pursuant to Title 20 CCR 2501 and following (and amendments).
- c. **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.
- d. **Equipment** is defined as having a useful life of at least one year, having an acquisition unit cost of at least \$5,000, and purchased with Energy Commission funds. **Equipment** means any products, objects, machinery, apparatus, implements or tools purchased, used or constructed within the Project, including those products, objects, machinery, apparatus, implements or tools from which over thirty percent (30%) of the equipment is composed of Materials purchased for the Project. For purposes of determining depreciated value of equipment used in the Agreement, the Project shall terminate at the end of the normal useful life of the equipment purchased, funded and/or developed with Energy Commission funds. The Energy Commission may determine the normal useful life of such equipment.

- e. **Licensed Product** means any product commercialized by a Licensee that embodies or utilizes a Subject Invention, Copyrightable Work, or Project Related Products.
- f. **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.
- g. **Match Funds** means cash or in-kind (non-cash) contributions provided by Recipient, subcontractors or other parties that will be used in performance of this Agreement.
- h. **Materials** means the substances used in constructing a finished object, commodity, device, article or product.
- i. **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.
- j. **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 or 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.

- k. **Performing Institution** means (i) any non-UC not-for-profit organization, for-profit organization, or Federal laboratory, or (ii) any part of the University of California, such as a campus or UC-managed Department of Energy Laboratory performing research under this Agreement.
- l. **Project** refers to the entire effort undertaken and planned by the Recipient and consisting of the work co-funded by the Energy Commission.
- m. **Project-Related Products and Rights** 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.
- n. **Sale** is sale, license, lease, gift or other transfer of Project-Related Product and Rights.
- o. **Sales Price** means gross revenues, excluding normal returns and allowances such as sales tax, freight and insurance, if applicable, derived from a Sale.
- p. **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.
- q. **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.
- r. **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 administration of this Agreement.

- 2) **Proprietary Data** is such data as Recipient has identified in a satisfactory manner as being under Recipient's control prior to commencement of performance of this Agreement, and which Recipient 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 this Agreement is commenced. Proprietary Data also includes data of a proprietary nature produced during the course of this Agreement that is produced by Recipient or its subcontractors at their own expense.
 - 3) **Generated Data** is that data that the Recipient 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 Recipient in the performance of this Agreement at Energy Commission expense, together with complete documentation thereof, shall be treated as Generated Data.
 - 4) **Product Data** is that data which, under the terms of this Agreement, is required to be delivered to the Energy Commission.
- s. **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.