



STATE OF CALIFORNIA

GRANT AMENDMENT REQUEST FORM (GARF)

CEC-277 (Revised 12/2019)

CALIFORNIA ENERGY COMMISSION

Original Agreement # EPC-18-002 Amendment # 1

Division	Agreement Manager:	MS-	Phone
300 Energy Research Development	Katrina Leni-Konig	51	916-445-5310

Recipient's Legal Name	Federal ID #
California Clean Energy Fund dba CalCEF Ventures	77-0640000

Revisions: (check all that apply)	Additional Requirements
<input type="checkbox"/> Term Extension New End Date: / /	Include revised schedule and complete items A, B, C, & F below.
<input type="checkbox"/> Budget Augmentation Amendment Amount: \$ 0	Include revised budget and complete items A, B, C, D, & F below.
<input type="checkbox"/> Budget Reallocation	Include revised budget and complete items A, B, C, & F below.
<input checked="" type="checkbox"/> Scope of Work Revision	Include revised scope of work and complete items A, B, C, E, & F below.
<input type="checkbox"/> Change in Project Location or Demonstration Site	Include revised scope of work and complete items A, B, C, E, & F below.
<input type="checkbox"/> Novation/Name Change of Prime Recipient	Include novation documentation and complete items A, B, C, & F below.
<input checked="" type="checkbox"/> Terms and Conditions Modification	Include applicable exhibits with bold/underline/ strikeout and complete items A, B, C, & F below.

A) Business Meeting Information**Business Meeting approval is not required for the following types of Agreements:**☐ Minor amendments delegated to Executive Director per December 2013 ResolutionProposed Business Meeting Date 1 / 22 / 2020 ☒ Consent ☐ Discussion

Business Meeting Presenter Katrina Leni-Konig Time Needed: minutes

Please select one list serve. EPIC (Electric Program Investment Charge)

Agenda Item Subject and Description:

CALIFORNIA CLEAN ENERGY FUND DBA CALCEF VENTURES. Proposed resolution approving Amendment 1 to grant EPC-18-002, with California Clean Energy Fund dba CalCEF Ventures regarding a \$10,999,701 grant to fund the development of the California Test Bed Initiative (CalTestBed). The proposed amendment responds to clarification of CalCEF's planned CalTestBed selection processes for entrepreneurs to receive technology testing services. The planned processes do not require the extent of conflict-of-interest requirements set forth in the original Exhibit E of the grant agreement. The revised Exhibit E also reflects a new applicable law that takes effect January 1, 2020. Minor edits to the Scope of Work and the terms and conditions in Exhibit C were also needed. There is no impact on the budget. Contact: Katrina Leni-Konig.



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B) List all subcontractors (major and minor) and equipment vendors: (attach additional sheets as necessary)

Legal Company Name:	Budget
The Grant Farm	\$ 225,954
Los Angeles Cleantech Incubator	\$ 75,000.00
To Be Determined - Industry Tech Review	\$ 99,500.00
To Be Determined – Academic Tech Review	\$ 99,500.00

C) List all key partners: (attach additional sheets as necessary)

Legal Company Name:

D) Budget Information (only include amendment amount information)

Funding Source	Funding Year of Appropriation	Budget List Number	Amount
Funding Source			\$
Funding Source			\$
Funding Source			\$
Funding Source			\$
Funding Source			\$

R&D Program Area: N/A TOTAL: \$

Explanation for "Other" selection

Federal Agreement #:

E) California Environmental Quality Act (CEQA) Compliance

1. Is Agreement considered a "Project" under CEQA?

☒ Yes (skip to question 2) ☐ No (complete the following (PRC 21065 and 14 CCR 15378)):

Explain why Agreement is not considered a "Project":

2. If Agreement is considered a "Project" under CEQA:

a) ☒ Agreement **IS** exempt.☐ Statutory Exemption. List PRC and/or CCR section number:☒ Categorical Exemption. List CCR section number: Cal. Code Regs., tit 14, § 15306☐ Common Sense Exemption. 14 CCR 15061 (b) (3) Explain reason why Agreement is exempt under the above section:

The Energy Commission found this grant to be exempt from the California Environmental Quality Act, when the Commission approved the grant on 12/10/2018. The CEC filed a Notice of Exemption at the Office of Planning and Research. Amendment 1 modifies the grant agreement's provisions dealing with conflict-of-interest and clarifies the selection process for entrepreneurs to receive

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technology testing services. The amendment makes no substantive change in the actual work to be done under the grant. The grant will fund technology testing within existing facilities, information gathering and analysis, and collaboration efforts at existing public and private facilities involving negligible or no expansion of use beyond that existing. California Code of Regulations, title 14, section 15306 exempts basic data collection, research, experimental management, and resource evaluation activities that do not result in a serious or major disturbance to an environmental resource. With Amendment 1, the project still falls within the categorical exemption of section 15306.

- b) ☐ Agreement **IS NOT** exempt. (consult with the legal office to determine next steps)

Check all that apply

- ☐ Initial Study
☐ Negative Declaration
☐ Mitigated Negative Declaration
☐ Environmental Impact Report
☐ Statement of Overriding Considerations

F) The following items should be attached to this GARF (as applicable)

- | | | |
|---|---|--|
| 1. Exhibit A, Scope of Work | <input type="checkbox"/> N/A | <input checked="" type="checkbox"/> Attached |
| 2. Exhibit B, Budget Detail | <input checked="" type="checkbox"/> N/A | <input type="checkbox"/> Attached |
| 3. CEQA Documentation | <input checked="" type="checkbox"/> N/A | <input type="checkbox"/> Attached |
| 4. Novation Documentation | <input checked="" type="checkbox"/> N/A | <input type="checkbox"/> Attached |
| 5. CEC 105, Questionnaire for Identifying Conflicts | | <input checked="" type="checkbox"/> Attached |

Agreement Manager

Date

Office Manager

Date

Deputy Director

Date

Exhibit A Scope of Work

I. TASK ACRONYM/TERM LISTS

A. Task List

Task #	CPR ¹	Task Name
1		General Project Tasks
2	CPR	Develop CalTestBed Initiative Pre-Launch Materials
3		Launch CalTestBed Initiative
4		Target Customer Engagement
5		Required Reporting And Attendance For Group 1 Funding
6		Technology & Knowledge Transfer
7		Evaluation of Project Benefits

B. Acronym/Term List

Acronym/Term	Meaning
CalCEF	California Clean Energy Fund
CalSEED	California Sustainable Energy Entrepreneur Development Initiative
CalTestBed	California Test Bed Initiative
CalTestBed Network	California Test Bed Network
CAM	Commission Agreement Manager
CAO	Commission Agreement Officer
Energy Commission	California Energy Commission
CPR	Critical Project Review
CPUC	California Public Utilities Commission
CSU	California State University
DAC	Disadvantaged Community
DER	Distributed Energy Resources
DVBE	Disabled Veteran Business Enterprise
EPIC	Electric Program Investment Charge Program
EIE	Energy Innovation Ecosystem
Entrepreneur	An organization that applies for, or receives a, voucher. See Exhibit C for complete definition. May also be referred to as voucher recipients.
ERDD	Energy Research and Development Division
IOU	Investor Owned Utility
LBNL	Lawrence Berkeley National Laboratory
LLNL	Lawrence Livermore National Laboratory
LI	Low-Income
Plan	CalTestBed Initiative Plan
REIC	Regional Energy Innovation Clusters
TAC	Technical Advisory Committee
UCM	Uniform Contracting Mechanism
UC	University of California

¹ Please see subtask 1.3 in Part III of the Scope of Work (General Project Tasks) for a description of Critical Project Review Meetings.

Exhibit A Scope of Work

Acronym/Term	Meaning
UCOP	University of California Office of the President

Additional terms are defined in the Agreement, including but not limited to definitions located in Exhibits C and D.

II. PURPOSE OF AGREEMENT, PROBLEM/SOLUTION STATEMENT, AND GOALS AND OBJECTIVES

A. Purpose of Agreement

The purpose of this Agreement is to fund the development of the California Test Bed Initiative (CalTestBed) voucher program. The Project Team will develop, implement, and manage a voucher program that will include a Uniform Contracting Mechanism (UCM) that will enable California Distributed Energy Resources (DER) entrepreneurs to have access to the testing and certification facilities needed to refine their technology prototypes, meet customer specifications, and accelerate the successful commercialization of California's most promising DER technologies, including but not limited to distributed renewable generation resources, energy efficiency, energy storage, and demand response technologies.

B. Problem/ Solution Statement

Problem

California's early-stage clean energy entrepreneurs face a series of significant hurdles in accessing testing, validation, and certification facilities as they attempt to move their technologies from prototype to pilot and demonstration scale. This problem must be addressed at this time because clean energy innovations that are critical to helping to meet California's ambitious energy goals are stalling out in the product-testing, -validation and -certification phases and are slowed or stopped on their path to successful commercialization in California's energy marketplace.

Test beds are existing facilities that provide these testing, validation and certification services for DER technologies. Test beds primarily focus on hardware technologies, though they may also be able to support testing of software in relationship with hardware technologies. A host of clean energy test bed facilities exist in California, including those contained within the University of California (UC) and California State University (CSU) systems, as well national laboratory test beds, utility test beds, and privately-owned test bed operations. Currently, these test beds are largely disorganized, disparate, disconnected, and underfunded. Further, little or no ecosystem or infrastructure is in place to provide clean energy innovators with a roadmap for understanding how to identify, access, solicit, negotiate, contract, and fund these test bed services.

Solution

The CalTestBed Initiative is a voucher program that will dramatically advance the rate of technological and scientific innovation in California by assisting California's clean energy entrepreneurs in gaining access to critical testing, validation and certification facilities as they move their innovative technologies from prototype to pilot-scale demonstration. Streamlining access to these facilities by providing vouchers to California DER entrepreneurs, the CalTestBed Initiative will assist entrepreneurs in refining their technology prototypes, better meeting customer specifications, and, ultimately, accelerating some of California's most promising early-stage clean energy technologies on the pathway to successful commercialization.

C. Goals and Objectives of the Agreement

Exhibit A

Scope of Work

Agreement Goals

The goals of this Agreement are:

- Test and refine standardized entrepreneur-facing services in the starting cohort of testbeds as a first step towards all of California's testbeds refining and adopting a suite of entrepreneur support services that will attract early stage clean energy entrepreneurs to bring their product ideas to California for development and testing.
- Develop, manage, and administer a voucher-type UCM that accelerates the most promising clean technologies by making funding available to test beds.
- Add additional testbed and certification resources to the project, as needed.
- Create an online portal for all current and future clean energy entrepreneur-facing services in one accessible location.
- Facilitate the adoption of an industry-accepted intake process in which entrepreneurs are trained to navigate and plan for the testbed phase and use the facilities and services;
- Develop industry-accepted customer feedback procedures that include the needs of Disadvantaged Communities and are integrated into the testbed system.
- Develop and implement an outreach program to inform disabled veteran-owned businesses of California Energy Commission (Energy Commission) workshops, training, and funding opportunities;
- Creating a transparent process that fairly and neutrally engages, coordinates and optimizes the entirety of services and assets available to clean energy entrepreneurs.

Ratepayer Benefits:²

This Agreement will result in the ratepayer benefits of greater electricity reliability, lower costs, and increased safety.

Increased Reliability

- Increase electricity reliability by increasing the array of energy efficient technologies that decrease demand on the grid.
- Testing new clean energy technologies for failure in testbeds increases the reliability of the end product for the California ratepayer.

Lower Costs

- Lower costs to the ratepayer by accelerating new clean energy technologies to the market that offer energy efficiency and lower costs to the ratepayers.
- Avoided cost to California ratepayers of current slow and stalling entrepreneur-facing services.
- Faster commercialization of clean energy products reduces costs to the ratepayer of older non-renewable and inefficient energy products.
- Lower costs of ratepayers' future investment in early clean energy technology testing as a result of a highly sophisticated California Testbed Network (CalTestBed Network) and their adoption of a suite of services supportive to accelerating the early

² California Public Resources Code, Section 25711.5(a) requires projects funded by the EPIC program to result in ratepayer benefits. The California Public Utilities Commission (CPUC), which established the EPIC in 2011, defines ratepayer benefits as greater reliability, lower costs, and increased safety ([See CPUC "Phase 2" Decision 12-05-037 at page 19, May 24, 2012, http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/167664.PDF](http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/167664.PDF)).

Exhibit A

Scope of Work

stage entrepreneur through testing to bring technologies to market that help California achieve its clean energy goals.

Increased Safety

- Increase safety by streamlining the ratepayer / customer feedback process among testbeds to better meet customer safety specifications.
- Coordinate standardization of safety testing and certifications for testbeds in CalTestBed.
- Coordinated testbeds can share and respond better to a growing number of decentralized power vendors and their needs for safety testing for clean energy technologies.

Technological Advancement and Breakthroughs:³

This Agreement will lead to technological advancement and breakthroughs to overcome barriers to the achievement of the State of California's statutory energy goals by advancing an inspiring long-term vision in which clean tech entrepreneurs can be introduced to a coordinated ecosystem of streamlined entrepreneur-facing services established across California's testbeds. The project team will lead the promotion and outreach of the voucher program; the development and dissemination of the voucher results to the broader EPIC community and specifically back to the target customers; and lead the development of a standardized contracting mechanism for the testbeds and managed labs.

Agreement Objectives

The objectives of this Agreement in relation to Market Facilitation are:

- Formalize a CalTestBed Network that begins with the entirety of test beds⁴ within the project team, and seek to add more test bed assets both inside and outside of the existing testbeds, as appropriate and beneficial;

³ California Public Resources Code, Section 25711.5(a) also requires EPIC-funded projects to lead to technological advancement and breakthroughs to overcome barriers that prevent the achievement of the state's statutory and energy goals.

⁴ The initial set of participating testbeds consists of the Center for the Built Environment (CBE), California Institute for Energy and the Environment, Center for Information Technology Research in the Interest of Society (CITRIS), Western Cooling Efficiency Center, California Lighting Technology Center, Green Transportation Battery Laboratory, Irvine Smart Grid Demonstration Project (ISGD), Advanced Power and Energy Testbed Program (APEP), National Fuel Cell Research Center (NFCRC), WINSmartGrid, Smart Grid Energy Research Center (SMERC), UC Advanced Solar Technology Institute, Center for Environmental Research and Technology (CE-CERT), Southern California Research Initiative for Solar Energy, Sustainable Integrated Grid Initiative (SIGI), Sustainable Power and Energy Center (Microgrid), UC San Diego Urban Mobility Testbed and Laboratory, Solid Oxide Fuel Cell Laboratory (SOFC), System Identification and Control Laboratory (SICL), Kleissl Urban Energy Efficiency Laboratory, Laboratory for Energy Storage and Conversion (LESC), ARPA-E CHARGES Project, Microgrid & Energy Research Park, Institute for Energy Efficiency, Materials Research Laboratory, Independent testbed facilities, FLEXLAB, Demand to Grid Laboratory (D2G), Appliance Standards Test Chambers, Lawrence Livermore National Laboratory (LLNL) and Lawrence Berkeley National Laboratory (LBNL). With the exception of LLNL and LBNL, the test labs listed above are within campuses of the University of California and are part of the UC system. LBNL is a U.S. Department of Energy (DOE) facility, operated by the University of California, Berkeley Campus, under agreement with U.S. DOE. LLNL is a U.S. DOE facility, operated by Lawrence Livermore National Security.

Exhibit A

Scope of Work

- Disburse \$8.8 million in vouchers within the Agreement period to approximately 70 of the most promising new DER technology entrepreneurs for two tiers of projects ⁵;
- Create a streamlined UCM to ensure that the program serves to accelerate, rather than decelerate, commercialization of early stage clean energy technologies;
- Work with Energy Commission staff to devise a plan that ensures promising technologies are elicited from a wide range of demographics and communities
- Manage entrepreneur-facing services developed for and evaluated by Entrepreneurs.

⁵ The Recipient's initial assumptions for a two-tier structure is as follows, subject to revisions and refinement based on program learnings, which will be incorporated into CalTestBed Initiative Plan updates and Annual Solicitation Schedules as appropriate: Tier One would have a budget range of \$10,000 - \$50,000 per voucher. Tier One would be suitable for technologies that have very few variations of their prototypes in development, and Entrepreneurs who desire a quick, comparative assessment of their performance relative to a standard set of conditions. A Tier One engagement could typically be 3 months. Tier Two would have a budget range of \$50,000 - \$300,000 per voucher. Technologies without an existing, pre-defined standardized test protocol, or that require significant test set-up, would be eligible for Tier Two. A typical Tier Two engagement could be between 9 months and 1 year.

Exhibit A Scope of Work

III. TASK 1 GENERAL PROJECT TASKS

PRODUCTS

Subtask 1.1 Products

The goal of this subtask is to establish the requirements for submitting project products (e.g., reports, summaries, plans, and presentation materials). Unless otherwise specified by the Commission Agreement Manager (CAM), the Recipient must deliver products as required below by the dates listed in the **Project Schedule (Part V)**. Products that require a draft version are indicated by marking “**(draft and final)**” after the product name in the “Products” section of the task/subtask. If “(draft and final)” does not appear after the product name, only a final version of the product is required. With respect to due dates within this Scope of Work, “**days**” means working days.

The Recipient shall:

For products that require a draft version, including the Final Report Outline and Final Report

- Submit all draft products to the CAM for review and comment in accordance with the Project Schedule (Part V). The CAM will provide written comments to the Recipient on the draft product within 15 days of receipt, unless otherwise specified in the task/subtask for which the product is required.
- Consider incorporating all CAM comments into the final product. If the Recipient disagrees with any comment, provide a written response explaining why the comment was not incorporated into the final product.
- Submit the revised product and responses to comments within 10 days of notice by the CAM, unless the CAM specifies a longer time period, or approves a request for additional time.

For products that require a final version only

- Submit the product to the CAM for acceptance. The CAM may request minor revisions or explanations prior to acceptance.

For all products

- Submit all data and documents required as products in accordance with the following:

Instructions for Submitting Electronic Files and Developing Software:

- **Electronic File Format**

- Submit all data and documents required as products under this Agreement in an electronic file format that is fully editable and compatible with the Energy Commission’s software and Microsoft (MS)-operating computing platforms, or with any other format approved by the CAM. Deliver an electronic copy of the full text of any Agreement data and documents in a format specified by the CAM, such as memory stick or CD-ROM.

The following describes the accepted formats for electronic data and documents provided to the Energy Commission as products under this Agreement, and establishes the software versions that will be required to review and approve all software products:

- Data sets will be in MS Access or MS Excel file format (version 2007 or later), or any other format approved by the CAM.

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- Text documents will be in MS Word file format, version 2007 or later.
 - Documents intended for public distribution will be in PDF file format.
 - The Recipient must also provide the native Microsoft file format.
 - Project management documents will be in Microsoft Project file format, version 2007 or later.
- **Software Application Development**
- Use the following standard Application Architecture components in compatible versions for any software application development required by this Agreement (e.g., databases, models, modeling tools), unless the CAM approves other software applications such as open source programs:
- Microsoft ASP.NET framework (version 3.5 and up). Recommend 4.0.
 - Microsoft Internet Information Services (IIS), (version 6 and up) Recommend 7.5.
 - Visual Studio.NET (version 2008 and up). Recommend 2010.
 - C# Programming Language with Presentation (UI), Business Object and Data Layers.
 - SQL (Structured Query Language).
 - Microsoft SQL Server 2008, Stored Procedures. Recommend 2008 R2.
 - Microsoft SQL Reporting Services. Recommend 2008 R2.
 - XML (external interfaces).

Any exceptions to the Electronic File Format requirements above must be approved in writing by the CAM. The CAM will consult with the Energy Commission's Information Technology Services Branch to determine whether the exceptions are allowable.

MEETINGS

Subtask 1.2 Kick-off Meeting

The goal of this subtask is to establish the lines of communication and procedures for implementing this Agreement.

The Recipient shall:

- Attend a "Kick-off" meeting with the CAM, the Commission Agreement Officer (CAO), and any other Energy Commission staff relevant to the Agreement. The Recipient will bring its Project Manager and any other individuals designated by the CAM to this meeting. The administrative and technical aspects of the Agreement will be discussed at the meeting. Prior to the meeting, the CAM will provide an agenda to all potential meeting participants. The meeting may take place in person or by electronic conferencing (e.g., WebEx), with approval of the CAM.

The administrative portion of the meeting will include discussion of the following:

- Terms and conditions of the Agreement;
- Administrative products (subtask 1.1);
- Critical Project Review meetings (subtask 1.3);
- Match fund documentation (subtask 1.7);
- Permit documentation (subtask 1.8);
- Subcontracts (subtask 1.9); and
- Any other relevant topics.

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The technical portion of the meeting will include discussion of the following:

- The CAM's expectations for accomplishing tasks described in the Scope of Work;
 - An updated Project Schedule;
 - Technical products (subtask 1.1);
 - Progress reports and invoices (subtask 1.5);
 - Final Report (subtask 1.6);
 - Technical Advisory Committee meetings (subtasks 1.10 and 1.11); and
 - Any other relevant topics.
- Provide an *Updated Project Schedule*, *List of Match Funds*, and *List of Permits*, as needed to reflect any changes in the documents.

The CAM shall:

- Designate the date and location of the meeting.
- Send the Recipient a *Kick-off Meeting Agenda*.

Recipient Products:

- Updated Project Schedule (*if applicable*)
- Updated List of Match Funds (*if applicable*)
- Updated List of Permits (*if applicable*)

CAM Product:

- Kick-off Meeting Agenda

Subtask 1.3 Critical Project Review (CPR) Meetings

The goal of this subtask is to determine if the project should continue to receive Energy Commission funding, and if so whether any modifications must be made to the tasks, products, schedule, or budget. CPR meetings provide the opportunity for frank discussions between the Energy Commission and the Recipient. As determined by the CAM, discussions may include project status, challenges, successes, advisory group findings and recommendations, final report preparation, and progress on technical transfer and production readiness activities (if applicable). Participants will include the CAM and the Recipient, and may include the CAO and any other individuals selected by the CAM to provide support to the Energy Commission.

CPR meetings generally take place at key, predetermined points in the Agreement, as determined by the CAM and as shown in the Task List on page 1 of this Exhibit. However, the CAM may schedule additional CPR meetings as necessary. The budget will be reallocated to cover the additional costs borne by the Recipient, but the overall Agreement amount will not increase. CPR meetings generally take place at the Energy Commission, but they may take place at another location, or may be conducted via electronic conferencing (e.g., WebEx) as determined by the CAM.

The Recipient shall:

- Prepare a *CPR Report* for each CPR meeting that: (1) discusses the progress of the Agreement toward achieving its goals and objectives; and (2) includes recommendations and conclusions regarding continued work on the project.
- Submit the CPR Report along with any other *Task Products* that correspond to the technical task for which the CPR meeting is required (i.e., if a CPR meeting is required for Task 2, submit the Task 2 products along with the CPR Report).
- Attend the CPR meeting.

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- Present the CPR Report and any other required information at each CPR meeting.

The CAM shall:

- Determine the location, date, and time of each CPR meeting with the Recipient's input.
- Send the Recipient a *CPR Agenda* and a *List of Expected CPR Participants* in advance of the CPR meeting. If applicable, the agenda will include a discussion of match funding and permits.
- Conduct and make a record of each CPR meeting. Provide the Recipient with a *Schedule for Providing a Progress Determination* on continuation of the project.
- Determine whether to continue the project, and if so whether modifications are needed to the tasks, schedule, products, or budget for the remainder of the Agreement. If the CAM concludes that satisfactory progress is not being made, this conclusion will be referred to the Deputy Director of the Energy Research and Development Division.
- Provide the Recipient with a *Progress Determination* on continuation of the project, in accordance with the schedule. The Progress Determination may include a requirement that the Recipient revise one or more products.

Recipient Products:

- CPR Report(s)
- Task Products (draft and/or final as specified in the task)

CAM Products:

- CPR Agenda
- List of Expected CPR Participants
- Schedule for Providing a Progress Determination
- Progress Determination

Subtask 1.4 Final Meeting

The goal of this subtask is to complete the closeout of this Agreement.

The Recipient shall:

- Meet with Energy Commission staff to present project findings, conclusions, and recommendations. The final meeting must be completed during the closeout of this Agreement. This meeting will be attended by the Recipient and CAM, at a minimum. The meeting may occur in person or by electronic conferencing (e.g., WebEx), with approval of the CAM.

The technical and administrative aspects of Agreement closeout will be discussed at the meeting, which may be divided into two separate meetings at the CAM's discretion.

- The technical portion of the meeting will involve the presentation of findings, conclusions, and recommended next steps (if any) for the Agreement. The CAM will determine the appropriate meeting participants.
- The administrative portion of the meeting will involve a discussion with the CAM and the CAO of the following Agreement closeout items:
 - Disposition of any state-owned equipment.
 - Need to file a Uniform Commercial Code Financing Statement (Form UCC-1) regarding the Energy Commission's interest in patented technology.
 - The Energy Commission's request for specific "generated" data (not already provided in Agreement products).

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- Need to document the Recipient's disclosure of "subject inventions" developed under the Agreement.
- "Surviving" Agreement provisions such as repayment provisions and confidential products.
- Final invoicing and release of retention.
- Prepare a *Final Meeting Agreement Summary* that documents any agreement made between the Recipient and Commission staff during the meeting.
- Prepare a *Schedule for Completing Agreement Closeout Activities*.
- Provide *All Draft and Final Written Products* on a CD-ROM or USB memory stick, organized by the tasks in the Agreement.

Products:

- Final Meeting Agreement Summary (*if applicable*)
- Schedule for Completing Agreement Closeout Activities
- All Draft and Final Written Products

REPORTS AND INVOICES

Subtask 1.5 Progress Reports and Invoices

The goals of this subtask are to: (1) periodically verify that satisfactory and continued progress is made towards achieving the project objectives of this Agreement; and (2) ensure that invoices contain all required information and are submitted in the appropriate format.

The Recipient shall:

- Submit a monthly *Progress Report* to the CAM. Each progress report must:
 - Summarize progress made on all Agreement activities as specified in the scope of work for the preceding month, including accomplishments, problems, milestones, products, schedule, fiscal status, and an assessment of the ability to complete the Agreement within the current budget and any anticipated cost overruns. See the Progress Report Format Attachment for the recommended specifications.
- Submit a monthly or quarterly *Invoice* that follows the instructions in the "Payment of Funds" section of the terms and conditions, including a financial report on Match Fund and in-state expenditures.

Products:

- Progress Reports
- Invoices

Subtask 1.6 Final Report

The goal of this subtask is to prepare a comprehensive Final Report that describes the original purpose, approach, results, and conclusions of the work performed under this Agreement. The CAM will review the Final Report, which will be due at least **two months** before the Agreement

Exhibit A

Scope of Work

end date. When creating the Final Report Outline and the Final Report, the Recipient must use the Style Manual provided by the CAM.

Subtask 1.6.1 Final Report Outline

The Recipient shall:

- Prepare a *Final Report Outline* in accordance with the *Style Manual* provided by the CAM. (See Task 1.1 for requirements for draft and final products.)

Recipient Products:

- Final Report Outline (draft and final)

CAM Product:

- Style Manual
- Comments on Draft Final Report Outline
- Acceptance of Final Report Outline

Subtask 1.6.2 Final Report

The Recipient shall:

- Prepare a *Final Report* for this Agreement in accordance with the approved Final Report Outline, Style Manual, and Final Report Template provided by the CAM with the following considerations:
 - Ensure that the report includes the following items, in the following order:
 - Cover page (**required**)
 - Credits page on the reverse side of cover with legal disclaimer (**required**)
 - Acknowledgements page (optional)
 - Preface (**required**)
 - Abstract, keywords, and citation page (**required**)
 - Table of Contents (**required**, followed by List of Figures and List of Tables, if needed)
 - Executive summary (**required**)
 - Body of the report (**required**)
 - References (if applicable)
 - Glossary/Acronyms (If more than 10 acronyms or abbreviations are used, it is required.)
 - Bibliography (if applicable)
 - Appendices (if applicable) (Create a separate volume if very large.)
 - Attachments (if applicable)
 - Ensure that the document is written in the third person.
 - Ensure that the Executive Summary is understandable to the lay public.
 - Briefly summarize the completed work. Succinctly describe the project results and whether or not the project goals were accomplished.
 - Identify which specific ratepayers can benefit from the project results and how they can achieve the benefits.
 - If it is necessary to use a technical term in the Executive Summary, provide a brief definition or explanation when the technical term is first used.
 - Follow the Style Guide format requirements for headings, figures/tables, citations, and acronyms/abbreviations.

Exhibit A Scope of Work

- Ensure that the document omits subjective comments and opinions. However, recommendations in the conclusion of the report are allowed.
- Include a brief description of the project results in the Abstract.
- Submit a draft of the report to the CAM for review and comment. The CAM will provide written comments to the Recipient on the draft product within 15 days of receipt
- Consider incorporating all CAM comments into the Final Report. If the Recipient disagrees with any comment, provide a written response explaining why the comment was not incorporated into the final product
- Submit the revised Final Report and responses to comments within 10 days of notice by the CAM, unless the CAM specifies a longer time period or approves a request for additional time.
- Submit one bound copy of the *Final Report* to the CAM along with *Written Responses to Comments on the Draft Final Report*.

Products:

- Final Report (draft and final)
- Written Responses to Comments on the Draft Final Report

CAM Product:

- Written Comments on the Draft Final Report

MATCH FUNDS, PERMITS, AND SUBCONTRACTS

Subtask 1.7 Match Funds

The goal of this subtask is to ensure that the Recipient obtains any match funds planned for this Agreement and applies them to the Agreement during the Agreement term.

While the costs to obtain and document match funds are not reimbursable under this Agreement, the Recipient may spend match funds for this task. The Recipient may only spend match funds during the Agreement term, either concurrently or prior to the use of Energy Commission funds. Match funds must be identified in writing, and the Recipient must obtain any associated commitments before incurring any costs for which the Recipient will request reimbursement.

The Recipient shall:

- Prepare a *Match Funds Status Letter* that documents the match funds committed to this Agreement. If no match funds were part of the proposal that led to the Energy Commission awarding this Agreement and none have been identified at the time this Agreement starts, then state this in the letter.

If match funds were a part of the proposal that led to the Energy Commission awarding this Agreement, then provide in the letter:

- A list of the match funds that identifies:
 - The amount of cash match funds, their source(s) (including a contact name, address, and telephone number), and the task(s) to which the match funds will be applied.
 - The amount of each in-kind contribution, a description of the contribution type (e.g., property, services), the documented market or book value, the source (including a contact name, address, and telephone number), and the task(s) to which the match funds will be applied. If the in-kind contribution is equipment or other tangible or real property, the Recipient must identify its owner and provide a contact name, address, telephone number, and the address where

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the property is located.

- A copy of a letter of commitment from an authorized representative of each source of match funding that the funds or contributions have been secured.
- At the Kick-off meeting, discuss match funds and the impact on the project if they are significantly reduced or not obtained as committed. If applicable, match funds will be included as a line item in the progress reports and will be a topic at CPR meetings.
- Provide a *Supplemental Match Funds Notification Letter* to the CAM of receipt of additional match funds.
- Provide a *Match Funds Reduction Notification Letter* to the CAM if existing match funds are reduced during the course of the Agreement. Reduction of match funds may trigger a CPR meeting.

Products:

- Match Funds Status Letter
- Supplemental Match Funds Notification Letter (*if applicable*)
- Match Funds Reduction Notification Letter (*if applicable*)

Subtask 1.8 Permits

The goal of this subtask is to obtain all permits required for work completed under this Agreement in advance of the date they are needed to keep the Agreement schedule on track. Permit costs and the expenses associated with obtaining permits are not reimbursable under this Agreement. Permits must be identified and obtained before the Recipient may incur any costs related to the use of the permit(s) for which the Recipient will request reimbursement.

The Recipient shall:

- Prepare a *Permit Status Letter* that documents the permits required to conduct this Agreement. If no permits are required at the start of this Agreement, then state this in the letter. If permits will be required during the course of the Agreement, provide in the letter:
 - A list of the permits that identifies: (1) the type of permit; and (2) the name, address, and telephone number of the permitting jurisdictions or lead agencies.
 - The schedule the Recipient will follow in applying for and obtaining the permits.

The list of permits and the schedule for obtaining them will be discussed at the Kick-off meeting (subtask 1.2), and a timetable for submitting the updated list, schedule, and copies of the permits will be developed. The impact on the project if the permits are not obtained in a timely fashion or are denied will also be discussed. If applicable, permits will be included as a line item in progress reports and will be a topic at CPR meetings.

- If during the course of the Agreement additional permits become necessary, then provide the CAM with an *Updated List of Permits* (including the appropriate information on each permit) and an *Updated Schedule for Acquiring Permits*.
- Send the CAM a *Copy of Each Approved Permit*.
- If during the course of the Agreement permits are not obtained on time or are denied, notify the CAM within 5 days. Either of these events may trigger a CPR meeting.

Products:

- Permit Status Letter
- Updated List of Permits (*if applicable*)
- Updated Schedule for Acquiring Permits (*if applicable*)
- Copy of Each Approved Permit (*if applicable*)

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Subtask 1.9 Subcontracts

The goals of this subtask are to: (1) procure subcontracts required to carry out the tasks under this Agreement; and (2) ensure that the subcontracts are consistent with the terms and conditions of this Agreement.

The Recipient shall:

- Manage and coordinate subcontractor activities in accordance with the requirements of this Agreement.
- Incorporate this Agreement by reference into each subcontract.
- Include any required Energy Commission flow-down provisions in each subcontract, in addition to a statement that the terms of this Agreement will prevail if they conflict with the subcontract terms.
- If required by the CAM, submit a draft of each *Subcontract* required to conduct the work under this Agreement.
- Submit a final copy of the executed subcontract.
- Notify and receive written approval from the CAM prior to adding any new subcontractors (see the discussion of subcontractor additions in the terms and conditions).

Products:

- Subcontracts (*draft if required by the CAM*)

TECHNICAL ADVISORY COMMITTEE

Subtask 1.10 Technical Advisory Committee (TAC)

The goal of this subtask is to create an advisory committee for this Agreement. The TAC should be composed of diverse professionals. The composition will vary depending on interest, availability, and need. TAC members will serve at the CAM's discretion. The purpose of the TAC is to:

- Provide guidance in project direction. The guidance may include scope and methodologies, timing, and coordination with other projects. The guidance may be based on:
 - Technical area expertise;
 - Knowledge of market applications; or
 - Linkages between the agreement work and other past, present, or future projects (both public and private sectors) that TAC members are aware of in a particular area.
- Review products and provide recommendations for needed product adjustments, refinements, or enhancements.
- Evaluate the tangible benefits of the project to the state of California, and provide recommendations as needed to enhance the benefits.
- Provide recommendations regarding information dissemination, market pathways, or commercialization strategies relevant to the project products.

The TAC may be composed of qualified professionals spanning the following types of disciplines:

- Researchers knowledgeable about the project subject matter;
- Members of trades that will apply the results of the project (e.g., designers, engineers, architects, contractors, and trade representatives);
- Public interest market transformation implementers;
- Product developers relevant to the project;
- U.S. Department of Energy research managers, or experts from other federal or state agencies relevant to the project;

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- Public interest environmental groups;
- Utility representatives;
- Air district staff; and
- Members of relevant technical society committees.

The Recipient shall:

- Prepare a *List of Potential TAC Members* that includes the names, companies, physical and electronic addresses, and phone numbers of potential members. The list will be discussed at the Kick-off meeting, and a schedule for recruiting members and holding the first TAC meeting will be developed.
- Recruit TAC members. Ensure that each individual understands member obligations and the TAC meeting schedule developed in subtask 1.11.
- Prepare a *List of TAC Members* once all TAC members have committed to serving on the TAC.
- Submit *Documentation of TAC Member Commitment* (such as Letters of Acceptance) from each TAC member.

Products:

- List of Potential TAC Members
- List of TAC Members
- Documentation of TAC Member Commitment

Subtask 1.11 TAC Meetings

The goal of this subtask is for the TAC to provide strategic guidance for the project by participating in regular meetings, which may be held via teleconference.

The Recipient shall:

- Discuss the TAC meeting schedule with the CAM at the Kick-off meeting. Determine the number and location of meetings (in-person and via teleconference) in consultation with the CAM.
- Prepare a *TAC Meeting Schedule* that will be presented to the TAC members during recruiting. Revise the schedule after the first TAC meeting to incorporate meeting comments.
- Prepare a *TAC Meeting Agenda* and *TAC Meeting Back-up Materials* for each TAC meeting.
- Organize and lead TAC meetings in accordance with the TAC Meeting Schedule. Changes to the schedule must be pre-approved in writing by the CAM.
- Prepare *TAC Meeting Summaries* that include any recommended resolutions of major TAC issues.

Products:

- TAC Meeting Schedule (draft and final)
- TAC Meeting Agendas (draft and final)
- TAC Meeting Back-up Materials
- TAC Meeting Summaries

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IV. TECHNICAL TASKS

Note:

By mutual agreement, the following language is not incorporated by reference from CalCEF's grant application, Attachment 4, pages 15-16:

"By maximizing their standing resource sharing agreements, the sister family of organizations—CalCEF Innovations, CalCEF Ventures, and CalCEF Catalyst, with its wholly owned subsidiary CalCharge—are poised to execute and manage CalTestBed."

The purpose of this exclusion is to emphasize that California Clean Energy Fund (d.b.a., CalCEF Ventures) is the Recipient, and the affiliates mentioned above (i.e., CalCEF Innovations, CalCEF Catalyst, and CalCharge), are not subcontractors or subrecipients.

TASK 2: DEVELOP CALTESTBED INITIATIVE PRE-LAUNCH MATERIALS

The goals of this task are to develop and finalize all materials necessary to launch the CalTestBed Initiative.

Subtask 2.1 CALTESTBED INITIATIVE PLAN

The goal of this subtask is to develop the CalTestBed Initiative Plan (Plan) to serve as the strategic and operation plan for the CalTestBed Initiative, and develop and manage the technical aspects of the CalTestBed Initiative in accordance with the Plan.

The Recipient shall work with the University of California Office of the President (UCOP) in developing the Plan. The UCOP's role will be as a partner to coordinate the various UC Campuses and test labs and LBNL regarding the CalTestBed Initiative. The UCOP is not a subcontractor; nor it is providing match funding or in-kind match services to the Project.

The Recipient shall:

- Develop and submit a *Draft CalTestBed Initiative Plan* to the CAM for review and comment. The *CalTestBed Initiative Plan* should include:
 - Description of the procedures, processes, tools and resources that will be used to implement, develop, and manage the CalTestBed Initiative in a manner that achieves the Goals and Objectives of the agreement.
 - Description of all participating test bed facilities. Descriptions should include, at a minimum, technical capabilities of each facility, range of DER technologies that can be tested at each facility.
 - Procedure for including additional test facilities beyond the initial set of participating facilities.
- Incorporate CAM feedback and submit the *Final CalTestBed Initiative Plan* for CAM approval.
- Develop and maintain the tools and resources identified in the Plan.
- Provide or make available on an as-needed-basis the tools and resources for use by applicants and recipients.
- Develop, maintain, and update, as needed, a *CalTestBed Network List* of technical experts that, upon request from the Recipient, will provide:
 - Independent technical reviews to be used by the CalTestBed-TAC in evaluating applications for awards.
 - Technical consulting to recipients of awards.
- The CalTestBed Network List shall include the following for each technical expert as permissible while achieving compliance with evolving data privacy standards:
 - Name

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- Affiliation
- Area(s) of expertise
- Contact information
- Services provided to CalTestBed: technical review of proposals, technical consulting.

Products:

- CalTestBed Initiative Plan (draft and final)
- CalTestBed Network List

Subtask 2.2 CALTESTBED APPLICATION AND Awardee PROCESS

The goal of this subtask is to develop application materials and on-line application forms to solicit applications for inclusion in the CalTestBed Initiative.

The Recipient shall:

- Develop and submit to the CAM a draft *CalTestBed Initiative Application Manual and FAQ* that communicates the aspects of the CalTestBed Initiative necessary for entrepreneurs and researchers to produce quality applications for receiving vouchers. This will be a public document that will describe the following to potential applicants (i.e., Entrepreneurs):
 - The solicitation release and notification process;
 - An intuitive and streamlined application system for applicants;
 - The eligibility requirements for applicants;
 - The application screening and selection criteria;
 - The award ~~recommendation and Energy Commission approval~~ process;
 - The process for unsuccessful applicants to request debriefings.
 - The contract management process
- Incorporate CAM feedback and submit a final *CalTestBed Initiative Application Manual and FAQ*
- Utilize existing research assets developed by California Energy Commission in parallel solicitations on scientific breakthroughs, possible future scientific breakthroughs, and their potential applications to energy for inclusion in the CalTestBed Initiative Application Manual.
- Create on-line *Application Forms* for the CalTestBed Initiative in accordance with the final *CalTestBed Initiative Application Manual and FAQ*.
- Develop an *Annual Solicitation Schedule(s)* and schedule up to three solicitations per year as directed by the CAM, taking into account the number of voucher applications received, the budget, and the status of program administration workload.
- Seek approval from the Energy Commission for the solicitation focus areas as each new solicitation is developed, ensuring all solicitations are consistent with the EPIC Triennial Investment Plans. Upon approval of the solicitation package, develop, release, and advertise the solicitation to promote geographically and organizationally diverse applicants in accordance with the CalTestBed Initiative Plan developed under Subtask 2.1.
- Develop target awardees for initial solicitation rounds, which may include, but not be limited to, CalSEED Awardees, Small Business Innovation Research and Advanced Research Projects Agency-Energy Awardees, and National Renewable Energy Laboratory (NREL) Demonstration Program Awardees; and develop *REIC Awardee Nomination and Evaluation Plan* for four Regional Energy Innovation Clusters (REIC), including Los Angeles Regional Energy Innovation Cluster, Central Valley Regional

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Energy Innovation Cluster, San Diego Regional Energy Innovation Cluster and Bay Area Regional Energy Innovation Cluster.

- Participate in a CPR meeting and prepare a *CPR Report* prior to the public launch of the CalTestBed Initiative

Products:

- CalTestBed Initiative Application Manual and FAQ (draft and final)
- Application Forms (draft and final)
- Annual Solicitation Schedule#1-5
- REIC Awardee Nomination and Evaluation Plan
- CPR Report

Subtask 2.3 Develop Universal Contract Mechanism (UCM)

The goal of this subtask is to develop standard contract terms and formats for scopes of work, budgets and instructions, personnel classifications and rates, and invoices for voucher recipients and Test Beds. The idea is to prepare a set of template user agreements (or purchase order-type agreements) and related documents (a.k.a. contract package) to govern the relationships between Entrepreneurs, Test Beds, and the Recipient.

If testing of a technology involves testing energy technology performance in buildings outside of a laboratory-type setting or testing of the buildings themselves (e.g., how the building energy usage changes), then the testing may involve utility customer information that may be “Personal Information” under the Information Practices Act. Under these circumstances, pursuant to Exhibit D, if any information under this Agreement is “Personal Information” as defined under the Information Practices Act (see California Civil Code section 1798.3(a) and Exhibit D section 3 of this Agreement for the definition of “Personal Information”) then Recipient must, and ensure any subcontractor, partner, Test Bed, or Entrepreneur who collects or otherwise has access to the Personal Information must, comply with the Information Practices Act (California Civil Code sections 1798 et seq.) when performing activities under this Agreement.

The Recipient shall:

- Develop and submit to CAM *Draft User Agreement for Entrepreneurs* and *Draft User Agreement for Test Beds*. The user agreements will govern the relationship between a successful CalTestBed Initiative Entrepreneur that receives a voucher and a Test Bed facility. The *Draft User Agreement for Test Beds* will also cover the payment relationship between the Recipient and the Test Beds, along with several provisions similar to certain flow-down requirements for subcontractors. Because these user agreements will be essential to success of the Project, the Recipient will work closely with the Energy Commission staff in developing the user agreements. In addition, the UCOP and LBNL will be consulted during development of the user agreements. More than one draft may be necessary. Items to be included in the user agreements shall include, but are not limited to:
 - Services, facilities, and equipment the Test Bed will provide to the Entrepreneur;
 - Intellectual property rights regarding any innovations developed at a TestBed facility;
 - Confidentiality of data and information;
 - Consequences for Test Beds and Entrepreneurs who fail to carry out agreed upon tasks or otherwise breach the user agreement;
 - Conflicts of interest

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- Incorporate CAM feedback and submit *Final User Agreement for Entrepreneurs* and *Final User Agreement for Test Beds*.
- Develop *Draft Standard Terms and Conditions for Entrepreneurs*. The terms and conditions will govern the relationship between CalTestBed Entrepreneurs and the Recipient.
- Incorporate CAM feedback and submit *Final Standard Terms and Conditions for Entrepreneurs*.
- Develop a *Uniform Contract Package for Entrepreneurs*, which will provide the necessary templates and instructions for CalTestBed Entrepreneurs to be accepted into the CalTestBed Initiative. The *Uniform Contract Awardee Package* will include standardized templates for documents that include, but are not limited to:
 - Scopes of work
 - Project timelines
 - Budgets
 - Invoices with instructions on how to list items such as personnel classifications and rates

Products:

- User Agreement for Entrepreneurs (draft and final)
- User Agreement for Testbeds (draft and final)
- Standard Terms and Conditions for Entrepreneurs (draft and final)
- Uniform Contract Package for Entrepreneurs (draft and final)

(Note: The draft names of the various types of agreements listed in this subsection may be altered, or a different number of standardized agreements may be the final result. Whatever the final set of agreements and related documents, they must comply with the requirements in this agreement, including this subtask. More than one draft may be necessary)

Subtask 2.4 CALIFORNIA TESTBED NETWORK

The goal of this subtask is to coordinate and organize a CalTestBed Network of public and private energy test beds in California to streamline funding for the delivery of technology testing, validation, and certification services to early stage clean energy entrepreneurs.

The Recipient shall:

- Publish *Directory of California Energy Test Beds* that identifies their facilities, capacities, services, and point of contacts. Update as needed.
- Prepare and submit to the CAM a *Draft Business Requirements Document* which will discuss the branding, and design, of public-facing materials describing the CalTestBed Initiative
- Incorporate CAM feedback and submit a *Final Business Requirements Document*
- Publish a website in accordance with the Final Business Requirements Document. The website should organize and present all test bed services provided by the testbeds; present relevant news and upcoming opportunities; detail the process of receiving a voucher as a CalTestBed Entrepreneur; provide downloadable instructions for managing and invoicing a successful Award; guide for planning tests in the testbeds.

Products:

- Directory of California Energy Test Beds
- Business Requirements Document (draft and final)

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Subtask 2.5 APPLICANT RECRUITMENT AND OUTREACH

The goal of this task is to create, implement, and manage an outreach process to assure a robust pool of clean energy entrepreneurs that can apply for the CalTestBed Initiative.

The Recipient shall:

- Create and submit to CAM *Draft Marketing Materials* to encourage participation in the CalTestBed Initiative including by underrepresented groups. The marketing materials should be consistent with the Final Business Requirements Document developed under Subtask 2.4. Examples of marketing materials may include:
 - Entrepreneur Success Story video testimonials
 - Brochures
 - Pamphlets
 - Postcards
- Incorporate feedback from CAM and submit *Final Marketing Materials*.
- Develop and submit to CAM *Draft Presentation Materials* to present CalTestBed Initiative at public events, which could include but are not limited to Energy Commission events.
- Incorporate feedback from CAM and submit *Final Presentation Materials*.
- Promote the CalTestBed Initiative to organizations with a presence throughout California, including, but not limited to, non-governmental organizations, federal/state agencies, university partners, test beds, California-based incubator and accelerators, and the EIE.
- Promote and coordinate CalTestBed Initiative with EIE events to determine if a role exists for CalTestBed at the events.
- Coordinate introduction of the CalTestBed Network at four locations in California.
- Develop and submit to CAM *Draft Press Notifications and Media Releases* regarding the CalTestBed Initiative and upcoming solicitations.
- Incorporate CAM feedback and submit *Final Press Notifications and Media Releases*
- Distribute *Email Notifications* to Energy Commission email distribution list for solicitation round if requested by the CAM.

Products:

- Marketing Materials (draft and final)
- Presentation Materials (draft and final)
- Press Notifications and Media Releases (draft and final)
- Email Notifications

TASK 3: LAUNCH CALTESTBED INITIATIVE

The goal of this task is to publicly launch the CalTestBed Initiative – including accepting applicants into the initiative, match-making them with the appropriate test bed facility, managing the voucher program, and reporting on the progress of Entrepreneurs who received vouchers.

Subtask 3.1 APPLICANT SCORING AND REVIEW

The goal of this subtask is to screen applications for eligibility; initiate project evaluation and selection processes; and recommend selected projects for funding to the CAM.

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The Recipient shall:

- Develop *Scorer and Reviewer Forms* in accordance with the Final CalTestBed Initiative Application Manual and FAQ developed under Subtask 2.2 for CalTestBed applicant reviewers.
- Identify a Technical Review Team to evaluate applicant proposals and submit a *List of Technical Review Team Members* that includes the team members' names, companies, and email addresses.
 - The Technical Review Team is responsible for independently reviewing, evaluating, and scoring CalTestBed applications received.
 - The Technical Review Team may be comprised of individuals including, but not limited to, those identified in the CalTestBed Network List (developed under Subtask 2.1), members of the TAC, and Energy Commission staff, with the following exception. No one, including employees, officers, directors, and consultants to the California Clean Energy Fund and/or any of its affiliates, shall be permitted to participate in the Technical Review Team, unless such an individual has no actual or foreseeable conflict of interest and no circumstances that may be perceived as a conflict of interest, as demonstrated in documentation provided to the CAM prior to that person's involvement on the Technical Review Team. **(See Exhibit E to the Agreement.)**
- Conduct at least one training session for the Technical Review Team prior to the start of application scoring.
 - The training session will cover, at a minimum, scoring policies, procedures, conflicts of interest, and expected timeline consistent with the CalTestBed Initiative Application Manual and FAQ
- ~~Ensure that members of the Technical Review Team do not have conflicts of interest with any of the applicants they are scoring.~~
 - ~~Provide proof to the CAM that members of the Technical Review Team do not have actual or foreseeable conflicts of interest with any applicants they are scoring, nor circumstances that may be perceived as a conflict of interest.~~
- Distribute eligible applications to Technical Review Team and ensure that scoring is conducted properly.
 - Submit to the CAM a *Recommended Entrepreneur Package* after the Technical Review Team has finished its review of eligible applications. The *Recommended Entrepreneur Package* should include the following information for each recommended voucher recipient:
 - Entrepreneur's name (e.g., corporate name)
 - Project Manager
 - Organization
 - Address and Project Location (if different from address)
 - Status, if applicable, as Disabled Veteran Business Enterprise (DVBE), minority-, women-, or LGBT-owned business (not mandatory, only if available based on optional survey questions)
 - Requested Voucher Amount
 - Requested Test Bed facility
 - Project description
 - Description of how the project will benefit California IOU electric ratepayers
 - A sequential identification number
 - A composite score and rank order
 - A funding justification
 - A project scope of work, and schedule

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- A project budget showing all proposed expenditures.
- A fact sheet for each proposed voucher recipient with a Project Summary; description of Technology Readiness Level (TRL); discussion of Entrepreneur Qualifications, Objectives and Needs; and discussion of prospective customer development and commercialization plan for distribution to audiences identified in other tasks.

Products:

- List of Technical Review Team Members
- Scorer and Reviewer Forms (draft and final)
- Entrepreneur Packages

Subtask 3.2 PAIRING AWARDEES WITH TESTBED FACILITIES

The goal of this task is to implement a system to match CalTestBed Entrepreneurs with participating test beds ~~once the Entrepreneurs' vouchers are approved by the Energy Commission~~, and to aid Entrepreneurs with executing the required documents to begin testing their technology at a testbed. This pairing process will support an efficient and transparent process that can guide Entrepreneurs to the best available test bed resources for their proposed innovation.

The Recipient shall:

- Utilize the Directory of California Energy Test Beds developed in Subtask 2.4 to inform participating entrepreneurs of the test bed facilities available within the voucher program.
- Distribute Entrepreneur fact sheets to participating test beds ~~once Entrepreneur has received approval from the Energy Commission.~~
- Develop and use recurring *CalTestBed Webinars* to introduce participating test beds to Entrepreneurs.
- Support Entrepreneurs in completing the Uniform Contract Package for Entrepreneurs developed under Subtask 2.3.
- Support Entrepreneurs in executing the User Agreement for Entrepreneurs, developed under Subtask 2.3; and ensure Entrepreneurs understand all aspects of the Standard Terms and Conditions for Entrepreneurs, developed under Subtask 2.3.
- Submit to CAM, an *Executed Entrepreneur Award Package* for each approved Entrepreneur, which shall include:
 - A Completed Uniform Contract Package for Entrepreneurs
 - Executed copy of the User Agreement for Entrepreneurs
 - Executed copy of the User Agreement for Testbeds

Products:

- CalTestBed Webinars
- Executed Entrepreneur Award Package

Subtask 3.3 VOUCHER AGREEMENT AND AWARD MANAGEMENT

The goal of this task is to actively manage CalTestBed Entrepreneurs, including award evaluation and outcomes analysis.

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The Recipient shall:

- Develop and manage an evaluation of the quality of service provided to Entrepreneurs by each test bed facility and the experience of the test bed facilities as partners in the voucher program.
 - Contract third-party evaluator to evaluate the quality of service provided to the Entrepreneurs by each test bed facility and the experience of the test bed facilities as partners in the voucher program. Compile the findings and provide recommend improvements in quality of service in a *Summary Results of Voucher Program Evaluation for Entrepreneurs and Test Beds Report*.
- Develop and submit to the CAM *Draft Tracking and Evaluation Tools* to measure and track the progress of Entrepreneurs and the voucher program as a whole. Examples of metrics to include in the tools include, but are not limited to:
 - Public, high-level, non-confidential data query to filter and sort data
 - User survey data
 - Real-time updates of available and expended voucher funds
 - Map the geographic array of voucher applications and awards as well as participating test beds with overlays of Disadvantaged Communities.
 - Array of types of technologies funded by the voucher program.
 - Number of Entrepreneurs that successfully graduate from the Research and Development phase to Pilot phase.
 - Amount of time it takes for Entrepreneurs to complete the Test Bed phase and its various components including: research testbeds, application for voucher, matchmaking process, intake process, testing, and customer feedback.
 - Number of vouchers from underrepresented and/or Disadvantaged Community groups.
- Incorporate CAM feedback and develop *Final Tracking and Evaluation Tools*

Products:

- Summary Results of Voucher Program Evaluation for Entrepreneurs and Test Beds
- Tracking and Evaluation Tools (draft and final)

Task 4: TARGET CUSTOMER ENGAGEMENT

The goals of this task are to engage target customer groups and to advise Entrepreneurs as to the potential commercial value of their innovation; refine prototypes in order to meet customer specifications; and provide feedback to Entrepreneurs on test bed results and outcomes.

Subtask 4.1 Entrepreneur Information Dissemination

The goal of this task is to distribute information about Entrepreneurs to various stakeholders and include Entrepreneurs at public events throughout the state to attract potential customers and investors.

The Recipient shall:

- Distribute Entrepreneur Fact Sheets to UC/CSU/Utility Energy Efficiency Partnership for customer feedback and refinement.
- Integrate Entrepreneur Presentations on their technologies at a conference with the approval of the CAM.
- Preview technologies to customer groups for feedback and refinement of specifications at public events, which may include, but are not limited to the following:

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- Annual CalCharge Battery Summit bringing together energy storage and power electronics customers and developers. Hosted at Lawrence Berkeley Lab and Lawrence Livermore National Lab.
 - Los Angeles CleanTech Institute's Southern California Conference of IOUs to showcase DER technologies.
- Utilize the following methods to have customers in the listed groups preview the technologies and provide feedback.
 - Technology demonstration and pitches
 - Develop and distribute *Report on CalTestBed Technologies* that discusses
 - Description of technologies tested
 - Description of testing performed
 - Lessons learned
 - Future needs
 - Customer / technology matchmaking
- Coordinate customer feedback to technology developers by collecting surveys from each group that previewed technologies and delivering the information to each CalTestBed Entrepreneur. Summarize the process and customer feedback in *Report on Customer Feedback Process*.
- Develop informal USTestBed Network to engage emerging state test bed efforts around the country in regular meetings to discuss best practices, evaluate emerging trends and opportunities and common goals, and summarize in *USTestBed Network Annual Symposium Memos*
- Provide a *List of Participating Organizations in USTestBed Network*. Update as needed.

Products:

- Report on CalTestBed Technologies
- Report on Customer Feedback Process
- USTestBed Network Annual Symposium Memos
- List of Participating Organizations in USTestBed Network

Subtask 4.2 TECHNOLOGY DEMONSTRATION

The goal of this subtask is to connect Entrepreneurs to pilot and demonstration opportunities post prototype, but before commercialization.

The Recipient shall:

- Conduct evaluation of pilot and demonstration opportunities
- Survey utility, private and governmental (local, regional, state and federal) programs that provide opportunities to pilot DER technologies in operational environments to evaluate pilots or demonstrations of Entrepreneur technologies.
- Invite Entrepreneurs to demonstrate their technologies at customer events listed in Subtask 2.5.
- Summarize the process of supporting technology demonstrations in *Summary Report of Pilot Programs*.
- Host annual CalTestBed Network Symposium and prepare an *Annual CalTestBed Network Symposium Memo* detailing the event and action items following the event.

Products:

- Summary Report of Pilot Programs
- Annual CalTestBed Network Symposium Memo

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Task 5: REQUIRED REPORTING AND ATTENDANCE FOR GROUP 1 FUNDING

The goal of this task is to fulfill additional requirements set for Group 1 under GFO-17-301.

The Recipient shall:

- Produce and submit to CAM an annual *Draft CalTestBed Initiative Annual Report* that details:
 - Vouchers distributed
 - What services were provided by test bed facilities
 - High-level summary of the results of completed tests, excluding Entrepreneur Confidential Information
 - Full scale pilots resulting from voucher program
 - Evaluation of the test bed facilities used
 - Survey of the Entrepreneurs as to their satisfaction with the CalTestBed Initiative
 - Types of feedback given by customers
 - Summary of the tools and resources developed as identified in the CalTestBed Initiative Plan developed under Subtask 2.1
 - Summary of the findings derived from the Final Tracking and Evaluation Tools developed under Subtask 3.3
 - Efforts to sustain CalTestBed after funding expires.
- Incorporate CAM feedback and develop a *Final CalTestBed Initiative Annual Report*
- Attend an annual California Energy Innovation Strategy Meeting and, after the event, submit a *Strategy Meeting Action Items Memo*.

Products:

- CalTestBed Initiative Annual Report (draft and final)
- Strategy Meeting Action Items Memo

Task 6: TECHNOLOGY & KNOWLEDGE TRANSFER

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

The Recipient shall:

- Prepare an *Initial Fact Sheet* at start of the project that describes the project. Use the format provided by the CAM.
- Prepare a *Final Project Fact Sheet* at the project's conclusion that discusses results. Use the format provided by the CAM.
- Prepare a *Technology/Knowledge Transfer Report* that includes:
 - A case study documenting the steps taken to create, implement, and manage the CalTestBed Initiative.
 - Lessons learned and recommendations for developing similar voucher programs in other areas (e.g. other states).
 - Copies of documents, fact sheets, journal articles, press releases, and other documents prepared for public dissemination. These documents must include the Legal Notice required in the terms and conditions. Indicate where and when the documents were disseminated.
 - Additional areas as determined by the CAM.
- When directed by the CAM, develop *Presentation Materials* for an Energy Commission-sponsored conference/workshop(s) on the project.
- When directed by the CAM, participate in annual EPIC symposium(s) sponsored by the California Energy Commission.

Exhibit A Scope of Work

- Provide at least (6) six *High Quality Digital Photographs* (minimum resolution of 1300x500 pixels in landscape ratio) of pre-and post-technology installation at the project sites or related project photographs.
- Prepare a *Technology/Knowledge Transfer Report* on technology transfer activities conducted during the project.

Products:

- Initial Fact Sheet (draft and final)
- Final Project Fact Sheet (draft and final)
- Presentation Materials (draft and final)
- High Quality Digital Photographs
- Technology/Knowledge Transfer Report (draft and final)

Task 7: EVALUATION OF PROJECT BENEFITS

The goal of this task is to report the benefits resulting from this project.

The Recipient shall:

- Complete three Project Benefits Questionnaires that correspond to three main intervals in the Agreement: (1) *Kick-off Meeting Benefits Questionnaire*; (2) *Mid-term Benefits Questionnaire*; and (3) *Final Meeting Benefits Questionnaire*.
- Provide all key assumptions used to estimate projected benefits, including targeted market sector (e.g., population and geographic location), projected market penetration, baseline and projected energy use and cost, operating conditions, and emission reduction calculations. Examples of information that may be requested in the questionnaires include:
 - For Product Development Projects and Project Demonstrations:
 - Published documents, including date, title, and periodical name.
 - Estimated or actual energy and cost savings, and estimated statewide energy savings once market potential has been realized. Identify all assumptions used in the estimates.
 - Greenhouse gas and criteria emissions reductions.
 - Other non-energy benefits such as reliability, public safety, lower operational cost, environmental improvement, indoor environmental quality, and societal benefits.
 - Data on potential job creation, market potential, economic development, and increased state revenue as a result of the project.
 - A discussion of project product downloads from websites, and publications in technical journals.
 - A comparison of project expectations and performance. Discuss whether the goals and objectives of the Agreement have been met and what improvements are needed, if any.
 - Additional Information for Product Development Projects:
 - Outcome of product development efforts, such copyrights and license agreements.
 - Units sold or projected to be sold in California and outside of California.
 - Total annual sales or projected annual sales (in dollars) of products developed under the Agreement.
 - Investment dollars/follow-on private funding as a result of Energy Commission funding.

Exhibit A Scope of Work

- Patent numbers and applications, along with dates and brief descriptions.
- Additional Information for Product Demonstrations:
 - Outcome of demonstrations and status of technology.
 - Number of similar installations.
 - Jobs created/retained as a result of the Agreement.
- For Information/Tools and Other Research Studies:
 - Outcome of project.
 - Published documents, including date, title, and periodical name.
 - A discussion of policy development. State if the project has been cited in government policy publications or technical journals, or has been used to inform regulatory bodies.
 - The number of website downloads.
 - An estimate of how the project information has affected energy use and cost, or have resulted in other non-energy benefits.
 - An estimate of energy and non-energy benefits.
 - Data on potential job creation, market potential, economic development, and increased state revenue as a result of project.
 - A discussion of project product downloads from websites, and publications in technical journals.
 - A comparison of project expectations and performance. Discuss whether the goals and objectives of the Agreement have been met and what improvements are needed, if any.
- Respond to CAM questions regarding responses to the questionnaires.

The Energy Commission may send the Recipient similar questionnaires after the Agreement term ends. Responses to these questionnaires will be voluntary.

Products:

- Kick-off Meeting Benefits Questionnaire
- Mid-term Benefits Questionnaire
- Final Meeting Benefits Questionnaire

V. PROJECT SCHEDULE

Please see the attached Excel spreadsheet.

EXHIBIT C - California Clean Energy Fund
ELECTRIC PROGRAM INVESTMENT CHARGE (EPIC) MODIFIED
GRANT TERMS AND CONDITIONS FOR THE CALIFORNIA TEST BED
INITIATIVE

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

EXHIBIT C

TERMS AND CONDITIONS

1. ***Introduction***

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

This Agreement includes: (1) the Agreement signature page (**form CEC-146**); (2) the scope of work (**Exhibit A**); (3) the budget (**Exhibit B**); (4) these terms and conditions (**Exhibit C**); (5) special terms and conditions that address the unique circumstances of the funded project regarding the Information Practices Act (**Exhibit D**); (6) a contacts list (**Exhibit F**); (7) special terms and conditions that address the unique circumstances of the funded project regarding conflicts of interest (**Exhibit E**); (8) all attachments; and (9) all documents incorporated by reference.

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

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

The documents below are incorporated by reference into this Agreement. These terms and conditions will govern in the event of a conflict with the documents below, with the exception of the documents in subsection (g). Where this Agreement or California laws and regulations are silent or do not apply, the Energy Commission will use the federal cost principles and acquisition regulations listed below as guidance in determining whether reimbursement of claimed costs is allowable. Documents incorporated by reference include:

Solicitation Documents (if applicable)

- a. The funding solicitation for the project supported by this Agreement; however, the terms and conditions referenced by the Solicitation Manual are amended as follows:
(i) this Exhibit C replaces the Exhibit C referenced by the Solicitation Manual, (ii) Exhibit D (Information Practices Act) is added; (iii) Exhibit E (conflicts of interest) is added.
- b. The Recipient's proposal submitted in response to the solicitation, as amended by the Scope of Work.

CPUC Decision

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

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

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

Federal Acquisition Regulations (applicable to commercial organizations)

- e. 48 CFR, Ch.1, Subchapter E, Part 31, Subpart 31.2: Contracts with Commercial Organizations (supplemented by 48 CFR, Ch. 9, Subchapter E, Part 931, Subpart 931.2 for Department of Energy grants)

Nondiscrimination

- f. 2 California Code of Regulations, Section 11099 et seq.: Contractor Nondiscrimination and Compliance

General Laws

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

3. *Standard of Performance*

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

4. *Due Diligence*

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

5. *Products*

- a. A “**Product**” is any tangible item specified for delivery to the Energy Commission in the Scope of Work, such as a report or summary. “Products” exclude Entrepreneur’s Technical Data, which may be shown to (but not possessed by, or copied for) Energy Commission or California Public Utilities staff in a secure location, as discussed in Section 19.

- The Recipient will submit all Products identified in the Scope of Work to the Commission Agreement Manager, in the manner and form specified in the Scope of Work.
- The Recipient will also submit all Products prepared during the invoicing period to the Accounting Office along with the invoice, as specified in subsection (c) of Section 8 (Payment of Funds).

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

- b. Confidential Products

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

c. Rights in Products

Section 21 deals with rights in Products.

d. Failure to Submit Products

Failure to submit a Product required in the Scope of Work may be considered material noncompliance with the Agreement terms. Without prejudice to any other remedies, noncompliance may result in actions such as the withholding of future payments or awards, or the suspension or termination of the Agreement.

e. Final Report and Payment

The Recipient may only submit a request for the final payment (including any retention) after the final report is completed, submitted to the Commission Agreement Manager, and Energy Research and Development Division management has verified satisfactory completion of work.

f. Legal Statements on Products

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

LEGAL NOTICE

This document was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. Neither the Commission, the State of California, nor the Commission's employees, contractors, or subcontractors makes any warranty, express or implied, or assumes any legal liability for the information in this document; nor does any party represent that the use of this information will not infringe upon privately owned rights. This document has not been approved or disapproved by the Commission, nor has the Commission passed upon the accuracy of the information in this document.

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

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

6. Amendments

a. Procedure for Requesting Changes

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

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

b. Approval of Changes

No amendment or variation of this Agreement shall be valid unless made in writing and signed by both of the parties except for the Commission's unilateral termination rights in Section 17 of these terms. No oral understanding or agreement is binding on any of the parties. Changes to the Agreement must be approved at a Commission business meeting or by the Executive Director (or his/her designee).

The Commission Agreement Manager or Commission Agreement Officer will provide the Recipient with guidance regarding the level of Commission approval required for a proposed change.

c. Personnel, Subcontractor, or Testbed Changes

All changes below require advance written approval by the Commission Agreement Manager, in addition to the appropriate level of Commission approval as described in subsection (b).

1) Replacement of Key Personnel at Recipient, Subcontractors, and Vendors

The Commission Agreement Manager must provide advance written approval of the replacement of any personnel except undergraduate students.

2) Assignment of New Personnel to an Existing Job Classification

If the Recipient or a subcontractor seeks to assign new personnel to a job classification identified in Exhibit B, the Recipient or subcontractor must submit the individual's resume and proposed job classification and rate to the Commission Agreement Manager for approval. The proposed rate may not exceed the maximum rate identified for the job classification. Neither the Recipient nor any subcontractor may use the job classifications or rates of their subcontractors for personnel.

If the individual performs any work prior to the effective date of the amendment documenting the change, the Recipient will bear the expense of the work.

3) Promotion of Existing Personnel to an Existing Job Classification

Promotion of existing Recipient and major subcontractor personnel to rates higher than those listed for their current classification in Exhibit B will not be approved. If the actual rates (e.g., direct labor rates, fringe benefit rates, and indirect rates) exceed the approved rates in the Budget, the difference may be charged to the agreement as a match share expenditure.

4) Addition of Job Classifications and Changes in Hours

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

6) Addition, Removal, and Replacement of Test Beds

Besides requesting and obtaining permission from the Commission Agreement Manager in writing to add, remove, or replace a Test Bed, along with providing the rationale for the change and any information requested by the Commission Agreement Manager about the rationale and/or the Test Bed, the Recipient shall send a copy of the request to the Commission Agreement Officer. The purposes of this provision include, but are not limited to, monitoring the robustness of the program, evaluating potential conflicts of interest, and identifying Agreement management issues.

7. Contracting and Procurement Procedures

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

a. Recipient's Obligations to Subcontractors

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

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

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

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

b. Recipient's Obligations to Test Beds and Entrepreneurs

1) The Recipient is responsible for handling all contractual and administrative issues arising out of or related to any agreements with Test Beds and Entrepreneurs that Recipient enters into for the performance of this Agreement. Under subtask 2.3 (Develop Universal Contract Mechanism (UCM)) of the Scope of Work, the Recipient is to prepare template user agreements (or purchase order-type agreements) and related documents (a.k.a. contract package) to govern the relationships between Entrepreneurs, Test Beds, and the Recipient, in consultation with Energy Commission staff. In this Agreement, these various user agreements are referred to as UCM agreements. The Recipient will subsequently use these UCM agreements to carry out the program, e.g., provide vouchers to Entrepreneurs and pay Test Beds for testing.

2) Nothing contained in this Agreement or otherwise creates any contractual relation between the Commission and any Test Beds or Entrepreneurs, and no UCM agreement with a Test Bed or Entrepreneur may relieve the Recipient of its responsibilities under this Agreement. Exceptions are that the Commission will be a third-party beneficiary as set forth in sections 7(d) and 7(e).

The Recipient's obligation to pay Test Beds is an independent obligation from the Commission's obligation to make payments to the Recipient. As a result, the Commission has no obligation to pay or enforce the payment of any funds to any Test Bed. The Commission has no obligation to perform Recipient's or an Entrepreneur's obligations under a UCM agreement with a Test Bed.

The Recipient's obligations, if any, to Entrepreneurs are independent obligations. The Commission has no obligation to enforce the terms of a Voucher provided to an Entrepreneur. The Commission has no obligation to perform Recipient's or a Test Bed's obligations under a UCM agreement with an Entrepreneur.

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

c. Flow-Down Provisions regarding Subcontractors

Subcontracts funded in whole or in part by this Agreement must include language conforming to the provisions below.

- Standard of Performance (Section 3)
- Legal Statements on Products (included in Section 5, "Products")
- Travel and Per Diem (Section 9)
- Prevailing Wage (Section 10)
- Recordkeeping, Cost Accounting, and Auditing (Section 11)
- Equipment (Section 14)
- Indemnification (Section 18)
- Confidentiality (Section 19)
- Pre-Existing and Independently Funded Intellectual Property (Section 20)
- Intellectual Property (Section 21)
- California Taxpayer Access to Publicly Funded Research Act (Section 22)
- Access to Sites and Records (included in Section 23, "General Provisions")
- Certifications and Compliance (Section 24)
- Exhibit D, special terms regarding the Information Practices Act
- Exhibit E, special terms regarding conflicts of interest
- Survival of the following sections:
 - Equipment (Section 14)
 - Recordkeeping, Cost Accounting, and Auditing (Section 11)
 - Pre-Existing and Independently Funded Intellectual Property (Section 20)
 - Intellectual Property (Section 21)
 - California Taxpayer Access to Publicly Funded Research Act (Section 22)
 - Access to Sites and Records (included in Section 23, "General Provisions")
 - Exhibit D, special terms regarding the Information Practices Act

- o Exhibit E, special terms regarding conflicts of interest

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

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

d. Flow-Down Provisions and Additional Provisions regarding Test Beds

UCM agreements between the Recipient and Test Beds under this Agreement must include language conforming to the provisions below, unless the user agreements are entered into by the University of California (UC) or the U.S. Department of Energy (DOE) national laboratories (such as Lawrence Berkeley National Laboratory). For the user agreements associated with UC Test Beds, the Recipient will, in consultation with the Energy Commission and UC, develop terms and conditions under Subtask 2.3 (UCM), and will use as a starting point the terms and conditions negotiated by the Energy Commission with UC for its grants under the EPIC program. For the user agreements associated with DOE national laboratories, the Recipient will, in consultation with the Energy Commission and UC, develop terms and conditions under Subtask 2.3 (UCM), and will use as a starting point the terms and conditions negotiated by the Energy Commission with DOE national laboratories for its grants under the EPIC program. The Recipient shall work with the Energy Commission to resolve issues raised by any inconsistencies in preparing the UCM agreements.

- Standard of Performance (Section 3)
- Legal Statements on Products (included in Section 5, "Products")
- Prevailing Wage (Section 10)
- Recordkeeping, Cost Accounting, and Auditing (Section 11)
- Indemnification (Section 18)
- Confidentiality (Section 19)
- California Taxpayer Access to Publicly Funded Research Act (Section 22)
- Certifications and Compliance (Section 24)
- Exhibit D, special terms regarding the Information Practices Act
- Exhibit E, special terms regarding conflicts of interest
- Survival of the following sections:
 - o Recordkeeping, Cost Accounting, and Auditing (Section 11)
 - o California Taxpayer Access to Publicly Funded Research Act (Section 22)
 - o Exhibit D, special terms regarding the Information Practices Act
 - o Exhibit E, special terms regarding conflicts of interest

In addition to these flow-down provisions, UCM agreements between the Recipients and Test Beds under this Agreement must also cover the items listed in subtask 2.3 of the Scope of Work.

UCM agreements between the Recipients and Test Beds under this Agreement must specify that no new facilities nor expansion of existing facilities will be undertaken in furtherance of this Agreement. In addition, the Test Beds shall not engage in any testing that would have an adverse significant effect on the environment. All testing must be done within existing Test Lab facilities or related testing facilities (such as buildings in which a DER technology is deployed for the test).

UCM agreements between Recipient and Test Beds must designate the Energy Commission as a third-party beneficiary.

e. Flow-Down Provisions and Additional Provisions regarding Entrepreneurs

User agreements between the Recipient and Entrepreneurs under this Agreement must include language conforming to the provisions below. The Recipient shall work with the Energy Commission to resolve issues raised by any inconsistencies in preparing the UCM agreements.

- Standard of Performance (Section 3)
- Legal Statements on Products (included in Section 5, “Products”)
- Prevailing Wage (Section 10)
- Recordkeeping, Cost Accounting, and Auditing (Section 11)
- Indemnification (Section 18)
- Confidentiality (Section 19)
- California Taxpayer Access to Publicly Funded Research Act (Section 22)
- Certifications and Compliance (Section 24)
- Exhibit D, special terms regarding the Information Practices Act
- Exhibit E, special terms regarding conflicts of interest
- Survival of the following sections:
 - Recordkeeping, Cost Accounting, and Auditing (Section 11)
 - California Taxpayer Access to Publicly Funded Research Act (Section 22)
 - Exhibit D, special terms regarding the Information Practices Act
 - Exhibit E, special terms regarding conflicts of interest

In addition to these flow-down provisions, UCM agreements between the Recipient and Entrepreneurs under this Agreement must also cover the items listed in subtask 2.3 of the Scope of Work.

UCM agreements between the Recipient and Entrepreneurs under this Agreement must specify that no funds will be paid directly to Entrepreneurs under this Agreement. Funding for tests will be provided directly from the Recipient to the Test Bed, only in accordance with a Voucher award to the Entrepreneur, and such Voucher will set a maximum budget for the test, subject to amendment only with ~~Energy Commission~~ **Recipient’s written** approval. In other words, the Entrepreneur will only receive a Voucher that provides permission to have a particular test at a particular Test Bed, and no money.

UCM agreements between the Recipient and Entrepreneurs under this Agreement must specify that no new facilities nor expansion of existing facilities will be undertaken in furtherance of this Agreement. In addition, related to the testing under this Agreement, the Entrepreneurs shall not engage in any activities that would have an adverse significant effect on the environment. Further, all testing must be done within existing Test Lab or related testing facilities (such as buildings in which a DER technology is deployed for the test).

UCM agreements between the Recipient and Entrepreneurs must designate the Energy Commission as a third-party beneficiary.

f. Audits

All subcontracts entered into for the performance of this Agreement are subject to examination and audit by the Energy Commission and/or Bureau of State Audits, or their designated representative, for a period of three (3) years after payment of the Recipient's final invoice under this Agreement.

The Energy Commission and/or Bureau of State Audits, or their designated representative, may also audit Test Bed transactions, including back up documentation for expenditures listed on Test Bed invoices, except not transactions of Test Beds of the U.S. Department of Energy national laboratories (such as Lawrence Berkeley National Laboratory). If the Energy Commission or Bureau of State Audits desires an audit of a U.S. DOE Test Bed, it may request such audit from a cognizant federal audit agency. The Recipient shall incorporate this Energy Commission right to audit in the user agreements for Test Beds.

g. Copies of Subcontracts

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

h. Conflicting Subcontract Terms

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

i. Copies of Agreements with Test Beds

The Recipient must provide a copy of any agreement between the Recipient and a Test Bed pursuant to this Agreement, upon request by the Energy Commission.

j. Conflicting Terms in Agreements with Test Beds and Entrepreneurs

The purpose of subtask 2.3 of the Scope of Work (Uniform Contract Mechanism) is to create template user agreements with Test Beds and Entrepreneurs that are compatible with this Agreement. Subsequently, if the Recipient identifies conflicts between this Agreement and UCM agreement with a Test Bed or with an Entrepreneur, the Recipient will notify the Commission Agreement Manager of the conflict within fifteen (15) days of discovery.

k. Penalties for Noncompliance

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

8. Payment of Funds

a. Definitions

For purposes of this Section 8, the following terms have the following meaning:

- "Advance Payment" means the Energy Commission pays Recipient prior to the Recipient Incurring or Paying the expense.
- "Incurred Cost" means an expense for which the Recipient has become liable (legally obligated) to pay. Here are examples of incurred costs:
 - The Recipient's staff has completed work during the month but has not been paid by the Recipient. These labor and associated costs (e.g., fringe benefits) are considered Incurred Costs.
 - The Recipient has purchased a piece of equipment **and** received an invoice, bill, or receipt. The Recipient has not yet paid the invoice. The invoice shows the amount to be paid and confirmation of the sale. This is an Incurred Cost.

Incurring costs for equipment DO NOT include purchase orders unless accompanied by an invoice, bill, or receipt that shows the payment amount due to the seller for the equipment.
 - A Subcontractor's staff has completed work during the month and has provided an invoice to the Recipient but has not been paid by the Recipient. These labor and associated costs (e.g., fringe benefits) are considered Incurred Costs.
- "Paid Cost" means an expense for which the Recipient has already made payment.

b. Advance Payments

Regarding subcontractors, the Recipient can receive Advance Payments only for subcontractors with the U.S. Department of Energy laboratories (none of which are designated as subcontractors at the inception of this Agreement). Regarding Test Labs, the Recipient can also receive Advance Payments for Test Labs with the U.S. Department of Energy laboratories and Test Labs. that are part of the University of California's system and campuses. Otherwise, Advance Payments are NOT allowed under this Agreement. The Energy Commission in its sole discretion, and not the Recipient, decides if the Commission will make an Advance Payment.

c. Reimbursable Cost Requirements

In addition to any other requirements in this Agreement, the Energy Commission is only obligated to reimburse the Recipient for Incurred and Paid Costs that are (1) incurred during the Agreement Term; (2) invoiced within the required timeframes of this Agreement; (3) made in accordance with the Agreement's Budget; and (4) actual and allowable expenses under this Agreement.

ALL of the items in the Budget, including without limitation labor rates, fringe and indirect and individually listed items are caps (i.e., maximums), and the Recipient can only bill its ACTUAL amount up to capped amounts listed in the Budget. For example, if the Budget includes an employee's hourly rate of \$50/hour but the employee is only paid \$40/hour, the Recipient can only bill for \$40/hour. Under the same example, if the employee earned \$70/hour but the Budget only lists \$50/hour, the Recipient can only bill for \$50. Another example is if the maximum fringe rate listed in the budget is 20% but the Recipient's actual fringe rate is only 15%, the Recipient can only bill at 15%.

d. Recipient's 14-Day Payment Requirement for Incurred Costs

The Recipient shall pay ALL Incurred Costs for which it has invoiced the Energy Commission within 14 calendar days of receiving payment under this Agreement for the Incurred Costs. For example, if the Recipient invoices and then receives payment from the Commission on September 15 for an Incurred Cost of \$10,000, the Recipient shall pay the entire \$10,000 by September 29. This requirement is needed to prevent Recipients from creating long lead times for Incurred Costs (e.g., invoicing and receiving payment from the Commission but not paying for the Incurred Costs for weeks or months).

The Recipient shall only invoice the Commission for Incurred Expenses the Recipient shall pay with 14 calendar days of receiving payment from the Commission. For example, assume the Recipient has an Incurred Cost for a piece of equipment that costs \$300,000 and will pay in three installments of \$100,000 each over three months. The Recipient shall only invoice the Commission for \$100,000 each month. The Recipient shall not invoice for the entire \$300,000 and retain the balance over the three months.

For any Incurred Costs for which the Recipient has received funds from the Energy Commission and does not pay within 14 calendar days, the Recipient shall on the very next business day after the 14 calendar days submit repayment of the unpaid amount back to the Energy Commission. Repaid funds will be placed back into the agreement and will be available to reimburse allowable costs in accordance with this agreement. When making a repayment under this provision, the Recipient shall specify "Repayment of Unspent Funds under Agreement [EPC-18-002]." Recipient shall remit the repayment to:

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

This repayment requirement of the Recipient is in addition to any other rights the Energy Commission can enforce relative to this Agreement. Recipient agrees and acknowledges that time is of the essence in paying Incurred Costs and submitting repayments and the Energy Commission can treat the Recipient's breach of either requirement as a material breach. Recipient can contact the Commission Agreement Manager for any questions about the logistics of making repayments.

e. Payment Requests

The Recipient may request payment from the Energy Commission at any time during the term of this Agreement but no more frequently than monthly. It is preferred that payment requests be submitted with the progress reports. The final payment request, including retention, MUST be received by the Energy Commission no later than the agreement end date.

Recipient agrees and acknowledges that time is of the essence in submitting the final payment request. The Commission has a limited period of time, set by law, in which it can reimburse funds under this Agreement. Without prejudice to the Commission's other rights, the Recipient risks not receiving any funds, and relieves the Commission of any duty and liability whatsoever to pay, for any payment requests received after the end of the Agreement.

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

All Recipient expenditures, reimbursable and match, must occur within the approved term of this Agreement.

f. Invoice Approval and Disputes:

Each request for payment is subject to the Commission Agreement Manager's approval. Payments will be made to the Recipient for undisputed invoices. An undisputed invoice is an invoice submitted by the Recipient for work performed, for which project expenditures and products meet all Agreement conditions, and for which additional evidence is not required to determine its validity.

The invoice will be disputed if all products due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. If the invoice is disputed, the Recipient will be notified via a Dispute Notification Form within fifteen (15) working days of receipt of the Commission Agreement Manager's invoice.

g. Recipient's headquarters:

For purposes of payment, the Recipient's headquarters is the location of the Recipient's office where the majority of its employees assigned responsibilities for this Agreement are permanently assigned.

h. Multiple Non-Energy Commission Funding Sources:

No payment will be made for costs identified in Recipient invoices that have been or will be reimbursed by another source, including but not limited to an agreement with another government entity.

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

i. Reduced funding:

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

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

j. Allowability of Costs

a) Allowable Costs

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

b) Unallowable Costs

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

- a) Profit of the Recipient or fees (This restriction does not apply to subcontractors or Test Beds; profit is capped at 10 percent for subcontractors and Test Beds.);
 - b) Contingency costs;
 - c) Imputed costs (e.g., cost of money);
 - d) Fines and penalties;
 - e) Losses;
 - f) Excess profit taxes; and
 - g) Unapproved, increased rates and fees for this Agreement
- c) Except as provided for in this Agreement or applicable California law or regulations, the Recipient will use the federal cost principles and/or acquisition regulations incorporated by reference in Section 2 of this Agreement when determining allowable and unallowable costs. In the event of a conflict, this Agreement takes precedence over the federal cost principles and/or acquisition regulations.

k. Payment Request Format

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

- 1) An invoice that includes a list of Incurred and Paid Costs. Backup documentation is required at the time of invoice submittal, such as time cards, vendor invoices, and proof of payment (e.g., cancelled checks). Unless otherwise specified in Exhibit B or the invoice template, the invoice must include the following:
 - a) Agreement number;

- b) Date prepared;
 - c) Recipient's Federal tax ID number;
 - d) Billing period;
 - e) Recipient's actual labor expenditures, including hourly unloaded labor rates by individual name and classification, hours worked, and benefits (fully loaded rates may only be used if they are included in the grant budget);
 - f) Non-labor expenses, including fringe benefits, indirect overhead, and general/administrative expenses;
 - g) Operating expenses, including travel, equipment, materials, and other;
 - h) By budget line item (cost component) category, the budgeted amount, amount billed to date, currently billed amount, and balance of funds;
 - i) Match fund expenditures (if applicable);
 - j) Receipts for travel (including departure and return times), equipment, materials, and miscellaneous; and
 - k) Subcontractor invoices that include all items above, for correspondence with the budget (e.g., if the budget lists hourly labor rates, the subcontractor's invoice should include hourly labor rates).
 - l) Test Bed invoices related to Vouchers, if any, for the period.
- 2) A progress report that documents evidence of progress, as described in the Scope of Work.
 - 3) Products prepared by the Recipient during the invoicing period, as described in the Scope of Work.

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

The Recipient must submit all invoices to the following address:

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

If the Recipient has not otherwise provided to the Commission documentation showing the Recipient's payment of Incurred Costs, the Recipient shall provide such documentation as soon as possible and not later than three working days from a request from Commission personnel.

I. Certification

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

The documents included in this request for payment are true and correct to the best of my knowledge and I, as an agent of [Company Name] have authority to submit this request. I certify that reimbursement for these costs has not and will not be received from any other sources, including but not limited to a government entity contract, subcontract, or other procurement method. For projects considered to be a public work, prevailing wages were paid to eligible

workers who provided labor for the work covered by this invoice; the Recipient and all subcontractors have complied with prevailing wage laws.

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

Indirect cost rates must be developed in accordance with generally accepted accounting principles and the applicable federal cost principles or acquisition regulations (see the provisions incorporated by reference in Section 2). If the Recipient has an approved fringe benefits or indirect cost rate (indirect overhead, G&A, or F&A) from its cognizant federal agency, the Recipient may bill at the federal rate up to the budget rate caps if the following conditions are met:

- The Recipient may bill at the federal provisional rate but must adjust annually to reflect its actual final rates for the year in accordance with the Labor, Fringe, and Indirect Invoicing Instructions contained in the budget (Exhibit B).
- The cost pools used to develop the federal rates must be allocable to the Agreement, and the rates must be representative of the portion of costs benefiting the Agreement. For example, if the federal rate is for manufacturing overhead at the Recipient's manufacturing facility and the Agreement is for research and development at the Recipient's research facility, the federal indirect overhead rate would not be applicable to the Agreement.
- The federal rate must be adjusted to exclude any costs that are specifically prohibited in the Agreement.
- The Recipient may only bill up to the Agreement budget rate caps, unless and until an amendment to the budget is approved.

n. Retention

The Energy Commission shall retain 10 percent of any payment request or 10 percent of the total Energy Commission award at the end of the project, except there shall be no retention on payments related to a Voucher, i.e., a payment the Recipient makes to a Test Bed to perform a test for an Entrepreneur based on a Voucher award to the Entrepreneur. The Energy Commission has the sole discretion to decide which of these methods of retention will be used in this Agreement. The Recipient must submit a completed payment request requesting release of the retention within the required timeframe (see part e "Payment Requests" above in this term). The CAM will review the project file and, when satisfied that the terms of the funding Agreement have been fulfilled, will authorize release of the retention.

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

When the Commission withholds 10% retention from each invoice, the Recipient can choose to flow down the retention requirement to its subcontractors subject to the following restrictions and any other requirements in this Agreement:

- The Recipient shall not flow down retention requirements to U.S. Department of Energy national laboratory subcontractors.

- The retention flowed down to subcontractors can only be up to a total of 10% of the amount of Commission funds the subcontractor is to receive. The Recipient is responsible for carrying the retention for its funded portion of the entire Agreement and cannot pass its share of retention to subcontractors. Here are three examples:
 - i. A subcontractor submits an invoice for \$100,000 to the Recipient, and the Recipient in turn submits it to the Commission. The Commission will only pay \$90,000 of the invoice and the Recipient can elect to pay only \$90,000 to the subcontractor.
 - ii. The subcontractor is the U.S. Department of Energy national laboratory and it submits an advance request for \$100,000 to the Recipient, including any other documents required in the Energy Commission's U.S. Department of Energy Terms and Conditions. The Recipient in turn submits the advance requests to the Commission for payment. The Commission will pay the full amount of the advance requests to the Recipient and the Recipient must pay the full amount to the U.S. Department of Energy.
 - iii. The Recipient submits an invoice for its own staff in the amount of \$20,000. The Commission will only pay \$18,000 to the Recipient, and the Recipient cannot withhold the \$2,000 difference from subcontractor reimbursements.

These requirements apply to all levels of subcontractors (e.g., a subcontractor to a subcontractor).

- o. Advertising-related Expenditures
Except as specified in Sections 2.4, 2.5, 3.2 and 4.1 of the Scope of Work, no CEC-reimbursable funds may be spent on advertising under this Agreement; any advertising-related expenditures must be made using Match Funds. Advertising expenditures includes preparation of marketing materials, Internet web site(s), and web pages.

9. Travel and Per Diem

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

10. ***Prevailing Wage***

a. Requirement

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

b. Determination of Project’s Status

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

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

- 1) Timely obtain a legally binding determination from DIR or a court of competent jurisdiction before work begins on the Project that the proposed project is not a public work; or
- 2) Assume that the project is a public work and ensure that:
 - Prevailing wages are paid unless and until DIR or a court of competent jurisdiction determines that the project is not a public work;
 - The project budget for labor reflects these prevailing wage requirements; and
 - The project complies with all other requirements of prevailing wage law, including but not limited to keeping accurate payroll records and complying with all working hour requirements and apprenticeship obligations.

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

c. Subcontractors and Flow-down Requirements

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

d. Indemnification and Breach

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

e. Budget

The Recipient's budget on public works projects must indicate which job classifications are subject to prevailing wage. For detailed information about prevailing wage and the process to determine if the proposed project is a public work, the Recipient may wish to contact DIR or a qualified labor attorney for guidance.

f. Covered Trades

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

g. Questions

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

h. Certification

The Recipient will certify to the Energy Commission on each payment request form either that: (a) prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and the Recipient and all contractors and subcontractors otherwise complied with all California prevailing wage laws; or (b) the project is not a public work requiring the payment of prevailing wages. In the latter case, the Recipient will provide competent proof of a DIR or court determination that the project is not a public work requiring the payment of prevailing wages.

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

11. Recordkeeping, Cost Accounting, and Auditing

a. Cost Accounting

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

b. Accounting Procedures

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

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

c. Audit Rights

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

It is the intent of the parties that the audits will ordinarily be performed not more frequently than once every twelve (12) months during the performance of the work and once at any time within three (3) years after payment by the Energy Commission of the Recipient's final invoice. However, performance of any such interim audits by the Energy Commission does not preclude further audit.

The Recipient will allow the auditor(s) to access such records during normal business hours, and will allow interviews of any employees who might reasonably have information related to such records. The Recipient will include a similar right of the state to audit records and interview staff in any subcontract related to the performance of this Agreement and in any UCM agreement with a Test Bed related to the performance of this Agreement, except a UCM agreement with any DOE national laboratory. For a UCM agreement with any DOE national laboratory Test Bed, the agreement will use the language previously negotiated between the Energy Commission and DOE regarding audit requests for EPIC projects.

d. Refund to the Energy Commission

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

e. Audit Cost

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

f. **Match or Cost Share**

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

12. Workers' Compensation Insurance

- a. The Recipient warrants that it carries Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this Agreement, and agrees to furnish to the Commission Agreement Manager satisfactory evidence of this insurance upon the Commission Agreement Manager's request.
- b. If the Recipient is self-insured for worker's compensation, it warrants that the self-insurance is permissible under the laws of the State of California and agrees to furnish to the Commission Agreement Manager satisfactory evidence of the insurance upon the Commission Agreement Manager's request.

13. Permits and Clearances

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

14. Equipment

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

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

This section does not pertain to Test Beds nor to Entrepreneurs; neither are expected to purchase Equipment under this Agreement.

15. [Reserved]

16. Stop Work

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

- a. **Compliance.** Upon receipt of a stop work order, the Recipient must immediately take all necessary steps to comply with the order and to stop the incurrence of costs allocable to the Energy Commission.
- b. **Canceling a Stop Work Order.** The Recipient may resume the work only upon receipt of written instructions from Energy Commission staff.

17. Termination

- a. **Purpose**

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

b. With Cause

The Energy Commission may, for cause, terminate this Agreement upon giving five (5) calendar days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations. The Recipient will relinquish possession of equipment purchased for this Agreement with Energy Commission funds to the Commission, or the Recipient may purchase the equipment as provided by the terms of this Agreement, with approval of the Energy Commission.

The term “for cause” includes but is not limited to the following:

- Partial or complete loss of match funds;
- Reorganization to a business entity unsatisfactory to the Energy Commission;
- Retention or hiring of subcontractors, or replacement or addition of personnel, that fail to perform to the standards and requirements of this Agreement;
- The Recipient’s inability to pay its debts as they become due and/or the Recipient’s default of an obligation that impacts its ability to perform under this Agreement; or
- Significant change in state or Energy Commission policy such that the work or product being funded would not be supported by the Commission.

c. Without Cause

The Energy Commission may terminate this Agreement without cause upon giving thirty (30) days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations.

18. Indemnification

To the extent allowed under California law, the Recipient will indemnify, defend, and hold harmless the state (including the Energy Commission) and state officers, agents, and employees from any and all claims and losses in connection with the performance of this Agreement, including but not limited to testing activities, Entrepreneurs’ acts or omissions, and Test Beds’ acts or omissions.

19. Confidentiality and CEC- Deemed Confidential Information

Under this Agreement, there are several categories of confidential information. One category pertains to confidential information of the Recipient and confidential information to which the Recipient will have access as part of implementing the Project. A second category (called CEC-Deemed Confidential Information) pertains to confidential information for which the Recipient, an Entrepreneur, and/or a Test Bed seeks protection under Energy Commission regulations. A third category is confidential information of the Entrepreneur. A fourth category is confidential information of the Test Bed. Section 25 provides definitions. This Exhibit C provides a foundation for the handling and protection of confidential information under the California Test Bed Initiative, but the UCM agreements that Recipient will prepare under the Uniform Contract Mechanism subtask in the Scope of Work will provide further terms regarding protections and procedures for confidential information and Intellectual Property. This section 19 focuses primarily on the second category, called CEC-Deemed Confidential Information.

a. Identification of CEC-Deemed Confidential Information

- 1) Prior to the effective date of this Agreement, the Recipient will identify all Products (or information contained within Products) that it considers to be confidential, in addition to the legal basis for confidentiality, in Attachment 1 to this Exhibit C. If the Energy Commission agrees that the information is confidential, it will not disclose it except as provided in subsection (b), and it will be considered CEC-Deemed Confidential Information.

- 2) During the Agreement, if the Recipient develops additional Products (or information contained within Products) not originally anticipated as confidential, it will follow the procedures for a request for designation of confidential information specified in Title 20 California Code of Regulations (CCR) Section 2505.

The Energy Commission's Executive Director will make the confidentiality determination that the information is CEC-Deemed Confidential Information. Following this determination, the confidential information may be added to Attachment 1 through a Letter of Agreement (see the "Amendments" section). The Energy Commission will not disclose information subject to an application for confidential designation except as provided in subsection (b).

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

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

- 4) The intent of this Agreement is that Entrepreneur Confidential Data and Test Bed Confidential Data will not need to use the process above, because that data and information will not be included in Products and will not be owned or possessed by the Energy Commission at any time. Exhibit C, Section 19(e) discusses this aspect. Nevertheless, if an Entrepreneur or a Test Bed desires to use the CEC-Deemed Confidential Information process to obtain Executive Director approval and protection of information, it may use the process described above to seek such approval.

b. Disclosure of CEC-Deemed Confidential Information

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

c. Waiver of Consequential Damages

In no event will the Energy Commission, the California Public Utilities Commission, or the state of California be liable for any special, incidental, or consequential damages based on breach of warranty, breach of contract, negligence, strict tort, or any other legal theory for the disclosure of CEC-Deemed Confidential Information or any other confidential information arising from this Agreement, even if the Commission has been advised of the possibility of such damages.

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

d. Limitations on the Recipient's Disclosure of Products

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

e) **Restriction on Access to Entrepreneur Confidential Information and Test Bed Confidential Information**

- 1) If Energy Commission staff or California Public Utilities Commission staff request review of any Entrepreneur Confidential Data or Test Bed Confidential Data, the data will be shown to staff in a secure location, but the Energy Commission, California Public Utilities Commission, or its staff will not own nor possess the data at any time. Copies of such information will not be provided to staff. The purpose of this provision is to protect Entrepreneur Confidential Data and Test Bed Confidential Data; thereby encouraging Entrepreneurs to use the CalTestBed program and encouraging Test Beds to participate in the program. No Load Serving Entity will be permitted to see or receive Entrepreneur Confidential Data or Test Bed Confidential Data.

If Recipient, Recipient's subcontractor, an Entrepreneur, or a Test Bed inadvertently provide Energy Commission staff with Entrepreneur Confidential Data or Test Bed Confidential Data, Recipient shall indemnify, defend, and hold harmless the Energy Commission as set forth in sections 18 and 21(e).

- 2) In contrast, Public Agreement Information will be provided to Energy Commission staff to assist staff in overseeing the CalTestBed program and related EPIC purposes.

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

a. **Ownership**

The Energy Commission makes no ownership or license claims to Pre-existing Intellectual Property, Independently Funded Intellectual Property, or Project-relevant Pre-existing or Project-Relevant Independently Funded Intellectual Property. **"Ownership"** is defined in section 25. Intellectual property licenses are discussed in Section 21.

- 1) **"Pre-existing intellectual property"** is defined in section 25.
- 2) **"Independently funded intellectual property"** is defined in section 25.
- 3) **Project-Relevant Pre-Existing Intellectual Property and Project-Relevant Independently Funded Intellectual Property** are defined in section 25.

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

1) **Identification of Property**

- a) Regarding Products, the Recipient shall identify all project-relevant pre-existing intellectual property in the Exhibit C, Attachment 1 prior to the effective date of the Agreement, or within sixty (60) days of becoming aware that the property has been or will be used to support a premise, postulate, or conclusion referred to or expressed in any Product under this Agreement. Attachment 1 may be amended (see the "Amendments" section).

The Recipient and the Energy Commission both expect that the vast majority of the Pre-Existing Intellectual Property and Independently-Funded Intellectual Property involved in the CalTestBed Initiative will belong to Entrepreneurs seeking Vouchers for tests at Test Beds, and such Intellectual Property will not be incorporated in any Product under the Agreement. There may also be such types of Intellectual Property belonging to Test Beds that will not be incorporated in any Product. Similarly, Intellectual Property creation or further development through the testing of an Entrepreneur's technology at a Test Bed is not expected to be incorporated into any Product under the Agreement. Therefore, these types of Entrepreneur's Intellectual Property and Test Bed's Intellectual Property need not be disclosed on the forms in Exhibit C Attachment-1.

In contrast, the focus of Exhibit C Attachment-1 is the Intellectual Property associated with Recipient's and Recipient's subcontractors' development and implementation of the CalTestBed Initiative itself. Therefore, relevant Intellectual Property, if any, must be disclosed in Exhibit C Attachment-1.

- b) Failure to identify Project-Relevant Pre-Existing Intellectual Property or Independently Funded Intellectual Property in Exhibit C Attachment 1 may result in the property's designation as Intellectual Property that is subject to licenses, as described in Section 21.

2) Access to Property

The extent of Energy Commission and California Public Utilities Commission access to Recipient's Project-Relevant Pre-Existing and Recipient's Independently Funded Intellectual Property is limited to that reasonably necessary to: (a) demonstrate the validity of any premise, postulate, or conclusion referred to or expressed in any Product; or (b) establish a baseline for repayment purposes.

Upon the Commission Agreement Manager's request, the Recipient will provide the Commission Agreement Manager and any reviewers designated by the Energy Commission or the California Public Utilities Commission with access to review the Recipient's Project-Relevant Pre-Existing Intellectual Property and Recipient's Independently Funded Intellectual Property. If the property has been designated as confidential as specified in Section 19, the Energy Commission will only disclose it under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508.

3) Preservation of Property

The Recipient will preserve any Recipient's Project-Relevant Pre-Existing Intellectual Property and Recipient's Independently Funded Intellectual Property at its own expense for at least three (3) years after payment by the Energy Commission of the Recipient's final invoice.

The Energy Commission and the California Public Utilities Commission will have reasonable access to the Recipient's Project-Relevant Pre-Existing Intellectual Property and Recipient's Independently Funded Intellectual Property throughout the retention period.

21. Intellectual Property

a. Ownership

- 1) The Energy Commission does not own any Intellectual Property that Recipient or Recipient's subcontractors create under this Agreement (subject to any Intellectual Property terms in the subcontract between Recipient and subcontractor), but does have the licenses described in subsection 21(b). Recipient has no ownership rights to any Intellectual Property to which Entrepreneurs or Test Beds have Intellectual Property rights.

"Intellectual property" is defined in section 25.

- 2) The Energy Commission owns all Products identified in the Scope of Work, with the exception of Products that fall within the definition of "Intellectual Property." The Energy Commission has no ownership rights to any Intellectual Property to which Entrepreneurs or Test Beds have Intellectual Property rights.

"Product" is defined in Exhibit C, section 5.

- 3) The UCM agreements will make use of the definitions in section 25 pertaining to Intellectual Property.

b. Intellectual Property Licenses

- 1) Both the Energy Commission and the California Public Utilities Commission have a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce Recipient's Intellectual Property for governmental purposes. The licenses are transferable only to load-serving entities for the purpose described below.
- 2) Under limited circumstances, both the Energy Commission and the California Public Utilities Commission may grant load-serving entities a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce Recipient's Intellectual Property to enhance the entities' service to EPIC ratepayers. **The Intellectual Property that may be licensed to load-serving entities is limited to analytical tools and models that can be used to inform distribution planning and decision-making that benefits electric ratepayers. No intellectual property licenses for any other type of developed technology will be granted to load-serving entities by the Energy Commission or the California Public Utilities Commission under this Agreement. "Load-serving entity" means a company or other organization that provides electricity to EPIC ratepayers.**

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

- 3) The Recipient has a non-exclusive, non-transferable, irrevocable, worldwide, perpetual license to use, publish, translate, modify, and reproduce written Products created for Agreement reporting and management purposes, such as reports and summaries.
- 4) If any Intellectual Property that is subject to the licenses above has been designated as confidential as specified in Section 19, all license holders will only disclose the intellectual property under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508.
All license holders will ensure that their officers, employees, and subcontractors who have access to the Intellectual Property are informed of and abide by the disclosure limitations in Section 19.
- 5) The Energy Commission and the California Public Utilities Commission have a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, reproduce, and to make derivative works from, all Internet web sites and web pages, Internet domain names, trademarks, service marks, and logos that Recipient and/or Recipient's subcontractors create under this Agreement to implement the CalTestBed Initiative. In addition, the Recipient and its subcontractors agree that the Energy Commission and any Energy Commission agent, contractor, or grantee may use any Internet web sites and web pages, Internet domain names, trademarks, service marks, and logos used to implement the CalTestBed Initiative, under a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license after termination of this Agreement. The purpose of this provision is at least in part to allow the Energy Commission to further fund development and use of the CalTestBed Initiative through its own efforts, future grantees, and/or future contractors. Potential trademarks, service marks, and logos expected to be created, or having been created, at the time of entering this agreement include at least these words: California Test Bed Initiative, CalTestBed, CalTestBed Network, and phrases similar to these.

c. Inventions

"Invention" is defined in section 25.

1) Legal Notice

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

"This invention was made with State of California support under California Energy Commission grant number EPC-18-002."

d. Access to and Preservation of Intellectual Property

1) Access to Intellectual Property

Upon the Commission Agreement Manager's request, the Recipient will provide the Commission Agreement Manager and any individuals designated by the Energy Commission or the California Public Utilities Commission with access to the Recipient's Intellectual Property in order to exercise the license described above. This provision does not apply to Entrepreneurs' Intellectual Property or Test Beds' Intellectual Property.

2) Preservation of Intellectual Property

The Recipient will preserve Recipient's Intellectual Property at its own expense for at least three (3) years after payment by the Energy Commission of the Recipient's final invoice.

e. Intellectual Property Indemnity

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

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

22. California Taxpayer Access to Publicly Funded Research Act

a. As a condition to receiving funding under this Agreement, the Recipient agrees to fully comply with the California Taxpayer Access to Publicly Funded Research Act (California Government Code sections 13989 et seq., the "Act") and provisions of this section, which apply to publications describing knowledge, an invention, or technology funded within the scope of this Agreement.

b. For purposes of complying with the Act and this section of the Agreement, the following definitions shall apply.

1) "Peer-Reviewed Manuscript" means a manuscript after it has been peer reviewed and in the form in which it has been accepted for publication in a scientific journal.

2) "Research Grant" in the Act and "this Agreement" in this section mean this Agreement.

3) "State Agency" in the Act means the Energy Commission.

c. The Recipient shall provide for free public access to any Peer-Reviewed Manuscript developed within the scope of this Agreement.

- d. The Recipient shall ensure that any publishing or copyright agreements concerning Peer-Reviewed Manuscripts:
 - 1) Fully comply with California Government Code section 13989.6;
 - 2) Do not conflict with the Energy Commission's rights under this Agreement;
 - 3) Secure for the Energy Commission the rights provided under this Agreement, including the rights to Intellectual Property as specified in Section 20; and
 - 4) Recognize the free public access to the Peer-Reviewed Manuscript.
- e. The Recipient shall report to the Energy Commission the final disposition of any Peer-Reviewed Manuscript, including but not limited to if it was published; when it was published; where it was published; and, when the 12-month time period expires, where the Peer-Reviewed Manuscript will be available for open access.
- f. Not later than 12 months after the official date of publication, or sooner if specified in the Schedule of Products, the Recipient shall make available to the Energy Commission an electronic version of any Peer-Reviewed Manuscript that is developed within the scope of this Agreement.
- g. The Recipient shall make publicly accessible an electronic version of any Peer-Reviewed Manuscript that is developed within the scope of this Agreement, not later than 12 months after the official date of publication, on a repository approved in writing by the Energy Commission, including but not limited to the University of California's eScholarship Repository at the California Digital Library; the California State University's ScholarWorks at the Systemwide Digital Library; or PubMed Central. The Recipient shall notify the Energy Commission when the Peer-Reviewed Manuscript is available on an Energy Commission-approved repository.
- h. If the Recipient is unable to ensure that its Peer-Reviewed Manuscript is accessible on an Energy Commission-approved, publicly accessible repository, the Recipient may comply by providing the manuscript to the Energy Commission not later than 12 months after the official date of publication.
- i. For any publications other than a Peer-Reviewed Manuscript, (herein referred to as "Other Publications") including scientific meeting abstracts, developed within the scope of this Agreement, the Recipient shall:
 - 1) Provide an electronic version of the Other Publications to the Energy Commission not later than 12 months after the official date of publication.
 - 2) Ensure that any publishing or copyright agreements concerning Other Publications:

- i. Do not conflict with the Energy Commission's rights under this Agreement.
 - ii. Secure for the Energy Commission the rights provided under this Agreement, including the rights to Intellectual Property as specified in Section 20.
- j. The Act states that "Grantees are authorized to use grant money for publication costs, including fees charged by a publisher for color and page charges, or fees for digital distribution." Recipient agrees that for purposes of this Agreement, the Recipient is only authorized to use funds under this Agreement, including Matching funds, for these purposes **if the expenses are included in the Agreement's Budget and meet the other Agreement requirements for payment, including that the Commission will only reimburse the Recipient for expenditures incurred during the Agreement term. If these expenses are not included in the Budget, both parties must agree and amend the Budget to include such expenditures before Recipient is authorized to use Agreement funds, either reimbursable expenses or match, for these purposes.**
- k. Should a conflict exist between the terms in this Section 24 and other terms of this Agreement, the terms in this section prevail.

23. **General Provisions**

a. Governing Law

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

b. Independent Capacity

In the performance of this Agreement, the Recipient and its agents, subcontractors, and employees will act in an independent capacity and not as officers, employees, or agents of the State of California. Nevertheless, Exhibit E applies, including the designation of who will be regarded as a Consultant for purposes of conflicts of interest rules under this Agreement.

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

c. Assignment

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

d. Timeliness

Time is of the essence in this Agreement.

e. Severability

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

f. Waiver

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

g. Assurances

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

h. Change in Business

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

i. Access to Sites and Records

Energy Commission and California Public Utilities Commission staff and representatives will have reasonable access to all Project sites and to all records related to this Agreement, except as set forth in section 19(e), and except as limited below.

The U.S. Department of Energy (DOE) enforces strict requirements regarding security, safety, and access to the DOE National Laboratories' sites and facilities. To the extent permitted by DOE and the National Laboratory's facility operator, security, safety, and access requirements, the Energy Commission and the California Public Utilities Commission and their respective staff and representatives shall have reasonable access to the construction site or Research & Development laboratory and receive presentations and information related to performance under this Agreement.

j. Prior Dealings, Custom, or Trade Usage

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

k. Survival of Terms

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

- Legal Statements on Products (included in Section 5, “Products”)
- Payment of Funds (Section 8)
- Recordkeeping, Cost Accounting, and Auditing (Section 11)
- Equipment (Section 14)
- Termination (Section 17)
- Indemnification (Section 18)
- Pre-Existing and Independently Funded Intellectual Property (Section 20)
- Intellectual Property (Section 21)
- California Taxpayer Access to Publicly Funded Research Act (Section 22)
- Change in Business (see this section)
- Access to Sites and Records (see this section)
- Exhibit D, special terms regarding the Information Practices Act
- Exhibit E, special terms regarding conflicts of interest

24. *Certifications and Compliance*

a. Federal, State, and Local Laws

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

b. Nondiscrimination Statement of Compliance

During the performance of this Agreement, the Recipient and its subcontractors will not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, or denial of family care leave. The Recipient and its subcontractors will ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

The Recipient and its subcontractors will comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 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 4.1 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full. The Recipient and its subcontractors will give written notice of their obligations under this section to labor organizations with which they have a collective bargaining or other Agreement.

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

c. Drug-Free Workplace Certification

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

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

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

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

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

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

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

- 1) It recognizes the importance of child and family support obligations and will fully comply with all applicable state and federal laws relating to child and family support enforcement, including but not limited to disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

- 2) To the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- f. Air or Water Pollution Violation
- Under state laws, the Recipient will not be:
- 1) In violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;
 - 2) Subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
 - 3) Finally determined to be in violation of provisions of federal law relating to air or water pollution.
- g. Americans With Disabilities Act
- By signing this Agreement, the Recipient assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. Section 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA.

25. Definitions

- **Agreement Term** means the length of this Agreement, as specified on the Agreement signature page (form CEC-146).
- **Benefits/Impact Data** is data and information that is capable of describing the benefits and/or impact of, or of assisting in evaluating, the California Test Bed Initiative, as the data relate to the IOU (Investor-Owned Utility) ratepayers and to the State of California. Such data and information shall be sufficiently high-level (e.g., aggregated or anonymized) to not reveal the identity of an Entrepreneur regarding success, failure, or performance of any specific test. Also, such data and information shall be sufficiently aggregated or anonymized or hidden in some manner as to prevent the valuable data, information, and hardware related to the Entrepreneur's technology from being released to the public.
- **Budget Reallocation** means the movement of funds between tasks identified in the budget (Exhibit B).
- **Business Information** is information about the operation of a specific business. It includes information concerning the cost and pricing of goods, supply sources, financial reports, cost analyses, characteristics of customers, books and records of the business, sales information including mailing lists, customer lists, business opportunities, information regarding the effectiveness and performance of personnel, and information incidental to grant administration.
- **CEC-Deemed Confidential Information** means information that the Recipient, Test Bed, or Entrepreneur has satisfactorily identified as confidential under Energy Commission regulations and that the Energy Commission has agreed to designate as confidential under Title 20 California Code of Regulations Section 2505.
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- **Deliverable Data** is that data and information which, under the terms of this Agreement, is required to be delivered to the CEC.

- **DER** means Distributed Energy Resources, as defined in the Scope of Work.
- **Effective Date** means the date on which this Agreement is signed by the last party required to sign, provided that signature occurs after the Agreement has been approved by the Energy Commission at a business meeting or by the Executive Director or his/her designee.
- **Entrepreneur** means an Organization that applies, or has applied, to the CalTestBed program for a Voucher, and Entrepreneur also means an Organization that receives, or has received, a Voucher (i.e., a Voucher recipient). An Entrepreneur is not a subrecipient of the grant.
- **Entrepreneur Confidential Information** is valuable data, information, and hardware related to the Entrepreneur's technology, created through development, evaluation, or testing. The term may include but not be limited to: Technical Data, Technology Evaluation Data, Proprietary Data, Trade Secret, and an Entrepreneur's Business Information.
- **EPIC** means the Electric Program Investment Charge, an electricity ratepayer-funded surcharge authorized by the California Public Utilities Commission in December 2011.
- **Equipment** means products, objects, machinery, apparatus, implements, or tools that are purchased or constructed with Energy Commission funds for the project, and that have a useful life of at least one year and an acquisition unit cost of at least \$5,000. "Equipment" includes products, objects, machinery, apparatus, implements, or tools that are composed by over thirty percent (30%) of materials purchased for the project. For purposes of determining depreciated value of equipment used in the Agreement, the project will terminate at the end of the normal useful life of the equipment purchased and/or developed with Energy Commission funds. The Energy Commission may determine the normal useful life of the equipment.
- **Independently Funded Intellectual Property** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice by the Recipient, Entrepreneur, Test Bed, or other third party during or after the Agreement term without Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.

"Works of authorship" does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices. The Commission owns such products regardless of their funding source.
- **Intellectual Property** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice with Agreement or match funds during or after the Agreement term; (b) any associated proprietary rights to these items, such as patent and copyright; and (c) any upgrades or revisions to these items.

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

Intellectual Property does not include Entrepreneur Confidential Information or Test Bed Confidential Information.

- **Invention** means intellectual property that is patentable.
- **Load-serving entity** means a company or other organization that provides electricity to EPIC ratepayers.
- **Match Funds** means cash or in-kind (i.e., non-cash) contributions provided by the Recipient or a third party for a project funded by the Energy Commission. If this Agreement resulted from a solicitation, refer to the solicitation’s discussion of match funding for guidelines specific to the project.
- **Materials** means the substances used to construct, or as part of, a finished object, commodity, device, article, or product and that does not meet the definition of Equipment.
- **Organization** means a business entity or governmental body, including but not limited to: for-profit corporation, partnership, limited partnership, limited liability company; not-for-profit entity, non-profit entity; and government agency, department, or district.
- **Ownership** means exclusive possession of all rights to property, including the right to use and transfer property.
- **Pre-Existing Intellectual Property** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that the Recipient, Entrepreneur, Test Bed, or other third party owned or possessed prior to the effective date of this Agreement and that have not been developed, altered, or reduced to practice with Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.
- **Product** is defined in section 5.
- **Project** means the entire effort undertaken and planned by the Recipient and consisting of the work funded by the Energy Commission. The Project may coincide with or extend beyond the Agreement term. However, as the term Project is used as the qualifier “Project-Relevant” regarding a type of Intellectual Property, the term Project is limited to that which is set forth in a Product.

- **Project-Relevant Pre-existing Intellectual Property** means pre-existing intellectual property used to support a premise, postulate, or conclusion referred to or expressed in any Product under this Agreement.
- **Project-Relevant Independently Funded Intellectual Property** means independently funded intellectual property used to support a premise, postulate, or conclusion referred to or expressed in any Product under this Agreement.
- **Proprietary Information** is such data as that the Recipient, an Entrepreneur, or a Test Bed has identified in a satisfactory manner as being under its control prior to commencement of performance of this Agreement or produced at its own expense, and which it 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.
- **Public Agreement Data** means information regarding the success and progress of the California Test Bed Initiative Agreement (EPC-18-002), for the purpose of understanding the performance and benefits of the Voucher program. This data and information shall *not* contain valuable data and information regarding the Entrepreneurs' technology (including Entrepreneur Confidential Data) that is evaluated under the Voucher program. Nor shall it contain Test Bed Confidential Information. However, Public Agreement Data may include aggregated or anonymized information about Entrepreneurs, Test Beds, and testing that allows analysis of the performance and benefits of the CalTestBed Initiative. Public Agreement Data may include Recipient's Business Information related to the Agreement and CalTestBed implementation, Public Information, Deliverable Data, and Benefits/Impact Data. Public Agreement Data has no distribution limitations and thus can be distributed to the public.
- **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 an applicant to provide before the applicant builds, erects, alters, replaces, operates, sells, rents, or uses such article, etc., are public records.
- **State** means the state of California and all California state agencies within it, including but not limited to commissions, boards, offices, and departments.
- **Technical Data** means recorded information regardless of form or characteristic, of a scientific or technical nature. 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, and catalog item identification.

- **Technology Evaluation Data** is data, information and results that were generated in the process of evaluating an Entrepreneur's technology. This data and information is specific to, and is capable of describing the performance of, that technology. Technology Evaluation Data includes data that the evaluator of the Entrepreneur's technology collects, collates, records, deduces, reads out, or postulates to use to evaluate that technology. For the purposes of this definition, the evaluator may include the Test Bed and the Entrepreneur.
- **Technology Development Data and Hardware** means data, information, and hardware that are created by the Entrepreneur and/or a supporting third party (such as Test Bed staff) in the process of developing or inventing new technology, as part of the Test Bed's technology evaluation process under the CalTestBed Initiative.
- **Test Bed** means a specific facility that provides testing of DER technologies, and **Test Bed** also refers to the entity that operates the facility. A Test Bed is not a subrecipient of the grant.
- **Test Bed Confidential Information** is valuable data, information, and hardware related to the Test Bed and its functioning. The term may include but not be limited to: Technical Data, Proprietary Data, Trade Secret, and a Test Bed's Business Information.
- **Trade Secret** means 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.
- **UCM agreements** refers to agreements and related documents to prepared as part of the Uniform Contract Mechanism under subtask 2.3. These documents will be used to govern the relationships between the Recipient, the Test Beds, and the Entrepreneurs. The word "agreements" is not capitalized in order to avoid confusion with the term "Agreement." The term "user agreement" is synonymous with UCM agreement.
- **Voucher** means a document provided by the Recipient to an Entrepreneur ~~after Energy Commission approval~~ that gives the Entrepreneur permission to obtain a test from a Test Bed for the Entrepreneur's technology, and which provides a maximum budget for the test.

EXHIBIT E

Conflict of Interest

These special terms and conditions regarding conflict of interest in Exhibit E prevail over any conflicting terms in Exhibit C, Terms and Conditions of Agreement EPC-18-002, *“Electric Program Investment Charge (EPIC) Modified Grant Terms and Conditions for the California Test Bed Initiative,”* or elsewhere in the Agreement between California Clean Energy Fund d.b.a. CalCEF Ventures (Recipient) and the California Energy Commission (Energy Commission), of which this Exhibit E is a part.

For purposes of this Exhibit E, the term “Recipient’s Team” means all of Recipient’s subcontractors; members of the Technical Review Team; members of the Technical Advisory Committee; and anyone else participating in the selection of Entrepreneurs to receive Vouchers.

1. Recipient’s Responsibility for Compliance

Recipient shall avoid and ensure Recipient’s Team avoids all conflicts of interest in the performance of this Agreement. Recipient and its employees are responsible for compliance and responsible for ensuring Recipient’s Team complies with all applicable California conflict of interest laws, including but not limited to Government Code sections 81000 *et seq.* (Political Reform Act) and 1090 *et seq.*, as well as all other applicable laws, ordinances, regulations, and standards. Recipient shall make its employees aware of the provisions in this Exhibit, and shall enforce them. Recipient shall ensure that these provisions are included in all subcontracts and any other agreements with the Recipient’s Team, and shall enforce them.

2. Avoidance of Conflicts of Interest

- a. Recipient shall, and ensure Recipient’s Team shall, (i) be impartial in discharging their duties under this Agreement; (ii) excuse themselves from decisions when a personal or family financial interest may be affected by the subject decision, or when he or she otherwise has a personal interest in the outcome; and (iii) not use any confidential information acquired in their performance under this Agreement for personal advantage, including but not limited to, in competing for concurrent or future funding (grants, contracts, or loans) from the Energy Commission.
- b. Recipient acknowledges that in governmental contracting even the appearance of a conflict of interest can be harmful to the interest of the State. Thus, Recipient shall, and ensure Recipient’s Team shall, refrain from any practices, activities, or relationships that appear to conflict with Recipient’s obligations under this Agreement. In the event Recipient is uncertain whether the appearance of a conflict of interest may exist, Recipient shall submit to the CAM a written description of the relevant details, and shall avoid the activity in question until receiving written approval from the Energy Commission to carry out that activity.

3. Government Code Section 11000.5 (Effective January 1, 2020)

Assembly Bill 1013 (2019) added 11000.5 to the Government Code, which states:

(a) A state agency shall not permit an evaluator to review a discretionary grant application submitted by an organization or a person for which the evaluator was a representative, voting member, or staff member within the two-year period preceding receipt of that application.

(b) For purposes of this section:

(1) "Organization" does not include a public agency as defined in Section 6252, an auxiliary organization as defined in Section 89901 of the Education Code, or an entity of the federal government.

(2) "Person" shall have the same meaning as defined in Section 6252.

(3) "Representative" does not include an unpaid volunteer.

(4) "Staff member" does not include an unpaid volunteer.

Because Recipient is issuing Vouchers with state funds, Recipient shall comply and ensure Recipient's Team complies with this law as if they are a "state agency" within the meaning of this law. This includes not allowing any evaluator in the selection of Entrepreneurs to receive Vouchers to review an application for which the evaluator was a representative, voting member, or staff member within the two-year period preceding receipt of that application.

4. Notification of Potential Problems. Recipient shall immediately inform the CAM in writing of any potential problems in compliance with this Exhibit.
5. Flow-Down. Recipient shall flow-down the terms in this Exhibit to its subcontractors.
6. Survival. The terms of this Exhibit shall remain in full force and effect in perpetuity.

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EXHIBIT E

Conflict of Interest

These special terms and conditions regarding conflict of interest in Exhibit E prevail over any conflicting terms in Exhibit C, Terms and Conditions of Agreement EPC-18-002, *“Electric Program Investment Charge (EPIC) Modified Grant Terms and Conditions for the California Test Bed Initiative,”* or elsewhere in the Agreement between California Clean Energy Fund d.b.a. CalCEF Ventures (Recipient) and the California Energy Commission (Energy Commission), of which this Exhibit E is a part.

1. ~~Applicability For Purposes of Laws.~~ Recipient agrees that California conflict this **Exhibit E, the term “Recipients Team” means all** of interest laws, including but not limited to Government Code sections 81000 ~~et seq.~~ and 1090 ~~et seq.~~, apply to Recipient’s, subcontractors, members of the Technical Review Team, members of the Technical Advisory Committee, and anyone else on Recipient’s team involved **participating** in the selection of Entrepreneurs to receive Vouchers under this Agreement.
- 2.

1. Recipient’s Responsibility for Compliance.

Recipient shall avoid **and ensure Recipient’s Team avoids** all conflicts of interest in the performance of this Agreement. Recipient and its employees are responsible for compliance with **and responsible for ensuring Recipient’s Team complies with all applicable** California conflict of interest laws, including but not limited to Government Code sections 81000 *et seq.* (Political Reform Act) and 1090 *et seq.*, as well as all other applicable laws, ordinances, regulations, and standards.

a.

Recipient shall make its employees aware of the provisions in the Political Reform Act and in this Exhibit, and shall enforce them. Recipient shall ensure that these provisions are included in all subcontracts **and any other agreements with the Recipient’s Team**, and shall enforce them.

- b. ~~Recipient understands and agrees that every individual qualifying as a “consultant” under the Political Reform Act has an ongoing duty to avoid conflicts of interest and is personally liable for penalties.~~

- c. ~~Consultants Defined.~~ All of the Recipient’s officers, directors, and employees; subcontractors’ officers, directors, and employees; members of the Technical Review Team; members of the Technical Advisory Committee; and anyone else on Recipient’s team involved in the selection of Entrepreneurs to receive Vouchers, working on Tasks 2, 3, and 4 are “Consultants” assigned to Disclosure Category 1. A description of the disclosure categories in Title 20 California Code of Regulations sections 2401 and 2402 is located at:
<https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeo>

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~~fRegulations?guid=IC23FEB00D44E11DEA95CA4428EC25FA0.~~

~~Consultants are subject to the requirements and restrictions of the Political Reform Act, and shall file an original Form 700 with the Energy Commission (See Government Code sections 82019 and 87302), except those employees working in strictly administrative job classifications. Recipient and the Commission Agreement Manager may work together to narrow the list of consultants as job duties are more specifically defined. The following job classifications are strictly administrative: IT Associate (contract); intern. Employees working only on strictly administrative tasks, including Task 1, are not Consultants and need not file a Form 700 unless directed to do so by the Energy Commission.~~

- ~~d. Recipient is responsible for having Consultants complete Form 700s and submit them to the Energy Commission, and Recipient is responsible for reviewing each Form 700 at multiple points: 1) within 30 business days from the date the Consultant begins work under the Agreement; 2) at least every twelve months until the Agreement end date; and 3) within 30 days of the end date of the Agreement. These points of review will ensure that each employee and subcontractor has considered their relationship with the Recipient and other project entities, as such entities are subject to change over the life of the project.~~
 - ~~e. Recipient is responsible for ensuring that Consultants complete the online ethics training at least once every two years as required by Government Code section 11146. The training is provided by the Fair Political Practices Commission and the California Office of the Attorney General and is available at <https://oag.ca.gov/ethics/course>. Recipient shall provide records to the Energy Commission Filing Officer indicating the name, job title, and date of completion of the orientation course.~~
 - ~~f. Failure to file a Form 700, or failure to meet training requirements of Government Code 11146, can result in automatic daily fines and other consequences.~~
- ~~3. Reservation of Right to Require Form 700 from Any Employee. The Energy Commission reserves the right to require any individual working under this Agreement to file a Form 700.~~
- ~~4. Form 700. Each Consultant, or other individual required by the Energy Commission to do so, shall file a Form 700. Form 700 is available at <http://www.fppc.ca.gov/forms.html#title1>.~~
- ~~a. The Form 700 shall be filed in person at, or mailed to, the following address (e-mails and faxes are not acceptable):-
Energy Commission Filing Officer — Form 700 Filing
Selection & Equal Employment Opportunity Office
1516 9th St., MS 52
Sacramento, CA 95814~~

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- ~~b. A Form 700 must be filed at the times required under the Political Reform Act, which include the following:
 - ~~i. Assuming Office Statement. Must be filed within 30 days of beginning work under the Agreement. Beginning work means when the employee actually performs work under the Agreement; it does not mean the start date of the Agreement unless the employee starts work on the start date.~~
 - ~~ii. Annual Statement. Must be filed annually, no later than April 1.~~
 - ~~iii. Leaving Office Statement. Must be filed within 30 days of ceasing to perform work under the Agreement (e.g., removed as a subcontractor, completion of assigned tasks) or within 30 days after the Agreement ends.~~~~
 - ~~c. Failure to file the Form 700 when required can result in automatic daily fines and other consequences.~~
 - ~~d. When completing the Form 700, each Consultant must disclose financial interests that fit within the disclosure categories assigned to them through the Form 805. A description of the disclosure categories is set forth in the Energy Commission's Conflict of Interest Code at Cal. Code Regs., tit. 20, §2402.~~
- ~~5. Form 805. Recipient shall:~~
- ~~a. Provide the CAM with a Fair Political Practices Commission Form 805, Agency Report of Consultant, within 5 days of the Agreement start date. Form 805 is available at: <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Agency%20Reports/805.pdf>.
 - ~~i. The Recipient shall complete Section 2, Firm Information.~~
 - ~~ii. Under Section 3, Consultant Information, the Recipient shall complete the Consultant Name section for every individual (including names of subcontractors' employees) performing working under Tasks 2, 3, and 4, along with the Assuming/Start Date for each individual.~~
 - ~~iii. The Recipient shall leave the remaining information, other than all of Section 2 and Recipient Name only under Section 3, required by the Form 805 blank.~~~~
 - ~~b. Within 30 days of the Recipient's submittal of the Form 805, the CAM will return the completed Form 805 to the Recipient for use in completing Form 700. In the event the Form 805 is not returned by the CAM to the Recipient before an individual's Assuming Office Form 700 is due, the individual should report under the broadest disclosure of the Energy Commission's Conflict of Interest Code at Cal. Code Regs., tit. 20, § 2402 which is Category 1.~~
 - ~~c. Submit to the CAM a supplemental Form 805 whenever a new Consultant begins work under the Agreement.~~
 - ~~d. Notify the CAM in writing if a Consultant listed on a Form 805 ceases to perform work under the Agreement, within 30 days of the date the Consultant ceases to perform such work.~~

~~6. Restrictions on Outside Work.~~

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~~a. Prohibition on Participating in Energy Commission Funding Opportunities. Under this Agreement, if the Recipient and its subcontractors assist the Energy Commission to develop agreements, develop competitive solicitations or score applications, then Recipient; all of its subcontractors; members of the Technical Review Team; members of the Technical Advisory Committee; and anyone else on Recipient's team involved in the selection of Entrepreneurs to receive Vouchers are prohibited from participating and agree not to participate (e.g., through development of an application, as an applicant, subcontractor, or match-fund partner), in any Energy Commission solicitation or other funding opportunity that solicits or includes work that is related to work done under this Agreement.~~

~~b. Recipient and Subcontractor Financial Interests Recipient; all of its subcontractors; members of the Technical Review Team; members of the Technical Advisory Committee; and anyone else on Recipient's team involved in the selection of Entrepreneurs to receive Vouchers shall not negotiate, make arrangements, or enter into any other agreement or working relationship with an individual or entity who is interested in or is likely to be interested in receiving a Voucher under this Agreement. This includes Entrepreneurs.~~

~~If such an agreement or working relationship began prior to and exists at the start of this Agreement, the Recipient or subcontractor shall complete the agreement or working relationship as soon as possible. And during the pendency of the pre-existing relationship or working relationship, the Recipient; subcontractor; members of the Technical Review Team; members of the Technical Advisory Committee; and anyone else on Recipient's team involved in the selection of Entrepreneurs to receive Vouchers shall not provide advice or guidance to the individual or entity regarding receiving a Voucher under this Agreement, nor to those individuals or entities that received Vouchers. A member of the Technical Review Team must recuse himself or herself from scoring, and any participation whatsoever, in a solicitation that includes an individual or entity for which the member has had any pre-existing relationship or has any working relationship.~~

~~c. Restrictions Following Agreement Term. All individuals identified as consultants are subject to restrictions of the Political Reform Act on post-governmental activity. Recipient shall ensure that all consultants are aware of these restrictions. Guidance published by the Fair Political Practices Commission on these restrictions can be found at:
<http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Public%20Officials%20and%20Employees/Leaving-State-Employment.pdf>~~

~~7. 2. Avoidance of Conflicts of Interest of Appearance of Conflict.~~

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- a. Recipient shall, and ensure Recipient's Team shall, (i) be impartial in discharging their duties under this Agreement; (ii) excuse themselves from decisions when a personal or family financial interest may be affected by the subject decision, or when he or she otherwise has a personal interest in the outcome; and (iii) not use any confidential information acquired in their performance under this Agreement for personal advantage, including but not limited to, in competing for concurrent or future funding (grants, contracts, or loans) from the Energy Commission.
- b. Recipient acknowledges that in governmental contracting even the appearance of a conflict of interest can be harmful to the interest of the State. Thus, Recipient; ~~all of its subcontractors; members of the Technical Review Team; members of the Technical Advisory Committee; and anyone else on Recipient's team involved in the selection of Entrepreneurs to receive Vouchers~~ agrees to shall, and ensure Recipient's Team shall, refrain from any practices, activities, or relationships that appear to conflict with Recipient's obligations under this Agreement. In the event Recipient is uncertain whether the appearance of a conflict of interest may exist, Recipient shall submit to the CAM a written description of the relevant details, and shall avoid the activity in question until receiving written approval from the Energy Commission to carry out that activity.

8. 3. Government Code Section 11000.5 (Effective January 1, 2020)

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(a) A state agency shall not permit an evaluator to review a discretionary grant application submitted by an organization or a person for which the evaluator was a representative, voting member, or staff member within the two-year period preceding receipt of that application.

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9. ~~4.~~ Notification of Potential Problems. Recipient shall immediately inform the CAM in writing of any potential problems in compliance with this Exhibit.

~~10.~~ 5. Flow-Down. Recipient shall flow-down the terms in this Exhibit to its subcontractors.

~~11.~~ 6. Survival. The terms of this Exhibit shall remain in full force and effect in perpetuity.

STATE OF CALIFORNIA

**STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION**

**RESOLUTION - RE: CALIFORNIA CLEAN ENERGY FUND DBA CALCEF
VENTURES**

RESOLVED, that the State Energy Resources Conservation and Development Commission (CEC) adopts the staff CEQA findings contained in the Agreement or Amendment Request Form (as applicable); and

RESOLVED, that the CEC approves Amendment 1 to grant EPC-18-002, with California Clean Energy Fund dba CalCEF Ventures regarding a \$10,999,701 grant to fund the development of the California Test Bed Initiative (CalTestBed). The proposed amendment responds to clarification of CalCEF's planned CalTestBed selection processes for entrepreneurs to receive technology testing services. The planned processes do not require the extent of conflict-of-interest requirements set forth in Exhibit E of the original grant agreement. The revised Exhibit E also reflects a new applicable law that takes effect January 1, 2020. Minor edits to the Scope of Work and the Terms and Conditions in Exhibit C were also needed. There is no impact on the budget; and

FURTHER BE IT RESOLVED, that the Executive Director or his/her designee shall execute the same on behalf of the CEC.

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted at a meeting of the CEC held on January 22, 2020.

AYE:
NAY:
ABSENT:
ABSTAIN:

Cody Goldthrite
Secretariat