

EXHIBIT C
EPIC University (UC/CSU) TERMS AND CONDITIONS

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EXHIBIT C

EPIC University (UC/CSU) CONTRACT TERMS AND CONDITIONS

1. *Contract Agreement*

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

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

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

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

2. *Attachments and References*

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

- A. The funding solicitation for the project supported by this Agreement
- B. The Contractor's proposal submitted in response to the solicitation, but in the event of a conflict between the proposal and this Agreement, this Agreement prevails
- C. Confidentiality Exhibit (if applicable)
- D. Intellectual Property Exhibit (if applicable)
- E. Special Conditions (if applicable)

The federal regulations identified below are incorporated by reference as part of this Agreement. These Terms and Conditions and any Special Conditions take precedence over the regulations:

2 CFR Part 200 (See cost principles in Subpart E, Sections 200.400 et seq. See procurement standards in Subpart D, Sections 200.317 et seq.)

3. *Applicable Laws*

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

Contractor also asserts that it follows the Information Practices Act (“IPA”) as codified at California Civil Code sections 1798 et seq. To the extent that Contractor will collect or otherwise have access to Personal Information as defined in the IPA in carrying out the Scope of Work of this Agreement, Contractor will follow the requirements of the IPA. Subject to applicable IPA disclosure restrictions, other applicable pre-existing use and disclosure restrictions identified in Attachment 1, or any other provisions in this Agreement, including but not limited to Confidentiality, Contractor may provide the Commission access to Personal Information collected under this Agreement only for the purpose of verifying aspects of the Contractor’s analysis. The Commission takes no ownership interest in or license to the Personal Information.

4. *Due Diligence*

The Contractor is required to take timely actions which, taken collectively, move this project to completion. The Commission Agreement Manager will periodically evaluate the schedule for completion of Scope of Work tasks. If the Commission Agreement Manager determines (1) the Contractor is not being diligent in completing the tasks in the Scope of Work or (2) the time remaining in the funding award is insufficient to complete all project work tasks not later than the Agreement term date, the Project Manager shall consult with the Contractor to determine whether the tasks will be completed according to schedule. If completion cannot be completed on schedule or by a mutually agreeable extension in time, the Energy Commission may, without prejudice to any of its remedies, terminate this Agreement in accordance with the Termination provisions stated in Section 12.

5. *Deliverables*

Unless otherwise directed, draft copies of all Deliverables identified in the Scope of Work shall be submitted to the Energy Commission’s Accounting Office at the address below. The Accounting Office will forward Deliverables to the Commission Agreement Manager for review and comment. The Contractor will submit an original and two copies of the final version of all Deliverables to the Accounting Office.

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

6. Reports

A. Submission of Reports

All Reports will be submitted to the Accounting Office at the address listed in Section 5 above. The Commission Agreement Manager (CAM) will provide the reporting components, style, and formatting requirements to the Principal Investigator.

B. Progress Reports

The Contractor shall prepare progress Reports on the schedule provided and in the manner and form specified in the Scope of Work. The Contractor shall prepare progress Reports, which summarize all contract activities conducted by the Contractor for the reporting period, including an assessment of the ability to complete the project within the current budget and any anticipated cost overruns.

C. Final Reports

The Contractor shall prepare a final Report outline, draft final Report and final Report on the schedule provided in the Scope of Work. The final Report shall describe the original purpose, approach, results and conclusions of the work done under this Agreement.

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

D. Rights in Reports

The Energy Commission retains ownership and copyright rights in all Reports produced and delivered pursuant to this Agreement, including the right to grant others any or all copyright rights in such materials. The Energy Commission grants Contractor a fully paid-up, royalty-free, nonexclusive, nontransferable, nonsublicensable, irrevocable license to reproduce, prepare derivative works, distribute copies, perform publicly, and display publicly such Reports for educational and research purposes and to allow other educational and nonprofit institutions to do so for educational and research purposes.

E. Failure to Comply with Reporting Requirements

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

7. Legal Statement on Reports and Deliverables

No Deliverable or Report produced as a result of work funded by this program shall be represented to be endorsed by the Energy Commission, and all such Deliverables or Reports shall include the following statement:

LEGAL NOTICE

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

8. Amendments

A. Procedure for Requesting Changes

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

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

B. Approval of Changes

Certain changes to the Agreement (e.g., changes that increase the Agreement amount or substitute one Contractor for another) must be approved at a Commission business meeting or by the Executive Director (or his/her designee). Generally, changes that are not significant to the Agreement may be documented in an email that is approved by both parties.

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

C. Personnel or Subcontractor Changes

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

i. Replacement of Key Personnel, Subcontractors, and Vendors

The Commission Agreement Manager must provide advance written approval of the replacement of Key Personnel, Key Subcontractors, and Key Vendors who are both identified in the Agreement and are critical to the outcome of the project, such as the Project Manager.

ii. Assignment of New Personnel to an Existing Job Classification

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

- iii. Promotion of Existing Personnel to an Existing Job Classification
Contractor or subcontractor personnel that are identified in Exhibit B may be assigned to a higher-paying job classification identified in Exhibit B.
- iv. Addition of Subcontractors
In order to add subcontractors to Exhibit B, the Commission Agreement Manager must submit a "Subcontractor Addition" form to the Commission Agreement Officer. The form identifies the new subcontractor, bidding method used (competitive or non-competitive), and the tasks the new subcontractor will perform.
- v. Addition of Job Classifications
- vi. Increased Rates that Exceed the Rates Identified in Exhibit B.
- vii. Increased total costs above the total contract award amount. The Commission will not be liable for expenses exceeding the total contract award amount, unless an amendment has been approved.

9. Contracting and Procurement Procedures

This section provides general requirements for an agreement between the Contractor and a third party ("subcontractor").

Subcontracting criteria are specified in the applicable federal regulations incorporated by reference in this Agreement. The Energy Commission will defer to the Contractor's own regulations and procedures as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in this Agreement and any Code of Federal Regulations incorporated by reference in this Agreement.

Any substitution or addition of subcontractors identified in this Agreement must be approved in writing by the Energy Commission in advance of assigning work to substitute or new subcontractors. Contractor acknowledges that the State must comply with State Contracting Manual (SCM Volume I) Section 3.06 when it enters into contracts utilizing the rules for an interagency agreement (as opposed to when a contract is awarded through a competitive solicitation or the Energy Commission's sole source authority, to which Section 3.06 does not apply). If this Agreement was awarded as an interagency agreement, the Energy Commission will decide whether to seek authorization to allow the Contractor to proceed with the proposed substitute or additional subcontractor, and the Contractor will provide assistance to the Energy Commission upon request in order to meet these requirements.

Upon request, the Contractor must submit to the Commission Agreement Manager a copy of all solicitations for services or products required to carry out the terms of this Agreement, copies of the proposals or bids received, and copies of subcontracts executed.

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

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

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

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

- A. Standard of Performance
- B. Nondiscrimination
- C. Indemnification

- D. Pre-Existing Intellectual Property, Independently Funded Intellectual Property, and Pre-existing Data
- E. Intellectual Property
- F. Royalty Payments to the Energy Commission
- G. Travel and Per Diem
- H. Equipment
- I. Recordkeeping, Cost Accounting, and Auditing
- J. Access to Sites and Records
- K. Legal Notice
- L. Survival of the following sections:
 - i. Recordkeeping, Cost Accounting and Auditing
 - ii. Equipment
 - iii. Pre-Existing Intellectual Property, Independently Funded Intellectual Property, and Pre-existing Data
 - iv. Intellectual Property
 - v. Royalty Payments to the Energy Commission
 - vi. Access to Sites and Records

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

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

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

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

10. Permits and Clearances

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

11. Equipment

Equipment purchases shall comply with Department of General Services State Contracting Manual (SCM) Section 7.29 – Equipment Purchases.

For the purposes of this Agreement, “damage” as used in paragraph B of SCM 7.29 – Equipment Purchases is defined as physical harm that is sustained by the equipment that prevents its functioning as designed or manufactured.

12. Termination

A. Default

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

B. For Cause

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

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

- i. Loss or redirection of State or Federal funding for this Agreement;
- ii. Significant change in State or Commission policy such that the work or Deliverable being funded would not be supported by the Commission;
- iii. Change in Commission’s staffing such that the work or Deliverable being funded can be done by staff of the Commission.

C. Allowable Costs

The federal regulations incorporated into this Agreement shall be used to determine allowable termination costs, but not in excess of the total amount of the Agreement.

13. Travel and Per Diem

- A. Contractor shall be reimbursed for travel and per diem for trips in accordance with the University-approved rates for University of California and California State University (Contractor) employees. Contractor shall provide a copy of the current University-approved rates to the Energy Commission upon request. Travel expenses in excess of University-approved rates cannot be reimbursed.

- B. Those trips already identified in the Budget section as Pre-Approved Travel are considered approved when this Agreement goes into effect. Travel listed as Non Pre-Approved Travel or not listed in the Budget section of this Agreement shall require prior written authorization from the Commission Agreement Manager. When requesting such approval, Contractor will identify who shall travel, the purpose of travel and the destination.
- C. Any Department of Energy (DOE) authorized travel shall be reimbursed on the same basis as the DOE approved rates in effect during this Agreement.
- D. Contractor must document travel expenses in its financial records as follows:
 - i. Expenses must be detailed using the current Contractor / DOE-approved rates.
 - ii. Expenses must be listed by trip, including dates and times of departure and return.
 - iii. Contractor/DOE must retain receipts for travel expenses claimed for audit and verification.

14. Standard of Performance

- A. Contractor, its subcontractors and their employees in the performance of Contractor's work under this Agreement shall be responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures used in scientific and engineering research fields.
- B. The failure of a project to achieve the technical or economic goals stated in the Scope of Work is not a basis for the Energy Commission to determine that the work is unacceptable, unless the work conducted by the Contractor or its subcontractors is deemed by the Energy Commission to have failed the foregoing standard of performance.
- C. In the event that Contractor or its subcontractor fails to perform in accordance with the foregoing standard of performance, the Commission Agreement Manager and the Contractor Project Manager shall seek to negotiate in good faith an equitable resolution satisfactory to both parties.
- D. Nothing contained in this section is intended to limit any of the rights or remedies which the Energy Commission may have under law.

15. Payment of Funds

- A. Payment Requests

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

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

University will maintain financial records and supporting documentation of all costs incurred in the performance of this Agreement. If the Energy Commission or State Controller's Office requires clarification of any expenditure prior to payment of an invoice, University will provide documentation of such expenditure to support its allowability. If any expenditures are disputed by the State, pending resolution, State agrees to pay all other undisputed invoiced costs.

Nothing herein contained shall preclude a ten-percent payment withhold pursuant to Section 10346 of the Public Contracts Code.

Funds in this award have a limited period in which they must be expended. All Contractor expenditures must occur within the approved term of this Agreement. For many reasons, it is important to the Energy Commission that all aspects of projects are timely completed. This includes invoicing for final payment (e.g., liquidation deadlines, re-appropriation timeframes, and program and project accounting and reporting). **Accordingly, the final invoice must be received by the Energy Commission no later than ninety (90) calendar days after the Agreement end date, or in addition to any other rights and remedies available to the Energy Commission, the Contractor will not receive payment.**

B. Advance Payment

- i. Contractor may make advance payments to Contractor campuses, Federal Laboratories, California State Agencies, the UC, CSU and Community College systems, and Federal Agencies. Contractor shall not provide advance payment without prior written approval from both the Commission Agreement Manager and the Commission Agreement Officer.
- ii. Contractor can submit the first invoice for advance payment at any time. Thereafter, Contractor shall submit all invoices for advance payment on a quarterly basis.

- iii. If the estimated period of performance exceeds ninety (90) days and the estimated cost exceeds \$25,000, the Commission shall advance funds incrementally. In such a case, Contractor will initially invoice the Commission in an amount sufficient to permit the work to proceed for one hundred and eighty (180) days and thereafter invoice the Commission to maintain approximately a ninety (90) day period that is funded in advance.
- iv. A reconciliation report, reflecting actual costs, shall be submitted every quarter after the initial advance payment. This report is due within 30 days after the end of each quarter. The reconciliation report shall include detail as provided in the Payment Request Format clause below.
- v. Other than the initial advance payment, the Commission Agreement Manager will approve advance payments provided that the Commission Agreement Manager has received and accepted the Reports, and any other required Deliverables for the previous period.
- vi. Upon completion or termination of this Agreement, Contractor shall refund any excess funds to the Commission within sixty (60) calendar days.

C. Payment Request Format

i. Invoices shall:

- a. Bear the University's name as shown on the Agreement
- b. Include the Agreement number and University fund/reference number
- c. Identify the billing and/or performance period covered by the invoice and provide a detailed transaction ledger, including payroll detail, for the same period
- d. Provide University invoice contact, telephone number and/or email address
- e. Be prepared in accordance with the approved cost categories identified in Exhibit B and the following elements:

Summary Invoice – includes either on the invoice or in a separate summary document – by approved budget category (Exhibit B) – expenditures for the invoice period, approved budget, cumulative expenditures and budget balance available.

- Personnel (salary and fringe benefits)
- Equipment
- Travel
- Subcontracts
- Subcontracts – Subcontract
- Materials/Miscellaneous

- Other Direct Costs
 - TOTAL DIRECT COSTS
 - Indirect Costs and Profit
 - TOTAL DIRECT and INDIRECT COSTS
- f. Be certified as true and correct in ink or by an electronically scanned copy of a signature by the University's Authorized Financial Contact identified in Exhibit D.
- ii. A copy of the invoice/detailed transaction ledger shall be certified in ink or by an electronically scanned copy of a signature by the PI for costs incurred, with the following statement: "I have reviewed the expenditure detail for this invoice to determine the allowability of the charges to this project and certify that the salaries and wages included on this invoice and ledger are an accurate representation of actual time worked." This certified document may be transmitted electronically to the Energy Commission's Agreement Manager identified in Exhibit D.

Detailed transaction ledger and/or payroll ledger for the invoice period to include:

- Univ Fund OR Agency Award # (to connect to invoice summary)
 - Invoice/Report Period (matching invoice summary)
 - GL Account/Object Code
 - Doc Type (or subledger reference)
 - Transaction Reference#
 - Transaction Description, Vendor and/or Employee Name
 - Transaction Posting Date
 - Time Worked
 - Transaction Amount
- iii. A report of Match Funds expenditures (actual cash and in-kind services).
- iv. A report of the in-State expenditures associated with the request for payment and the cumulative-to-date of in-State expenditures for the project. This report can be listed on the request for payment, appended to it as an attachment or documented using the Total Energy Commission Reimbursable Funds Spent in California and Total Energy Commission Reimbursable Funds to California Based Entities form at <http://www.energy.ca.gov/research/contractors.html>.
- v. A sample invoice template that contains all the required information is located at: <http://www.energy.ca.gov/contracts/>.

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

Contractor shall submit all invoices to the following address:

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

D. Release of Funds

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

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

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

E. Indirect Costs

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

F. State Controller's Office

Payments are made by the State Controller's Office.

16. Recordkeeping, Cost Accounting, and Auditing

A. Cost Accounting

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

B. Accounting Procedures

The Contractor's costs shall be determined on the basis of the Contractor's accounting system procedures and practices employed as of the effective date of this Agreement, provided that the Contractor shall use generally accepted accounting principles and cost reimbursement practices. The Contractor's cost accounting practices used in accumulating and reporting costs during the performance of this Agreement shall be consistent with the practices used in estimating costs for any proposal to which this Agreement relates; provided that such practices are consistent with the other terms of this Agreement and provided, further, that such costs may be accumulated and reported in greater detail during performance of this Agreement. The Contractor's accounting system shall distinguish between direct costs and indirect costs. All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to costs incurred under this Agreement.

C. Allowability of Costs

i. Allowable Costs

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

ii. Unallowable Costs

The following is a description of some specific items of cost that are unallowable; provided, however, that the fact that a particular item of cost is not included shall not mean that it is allowable. Details concerning the allowability of costs are available from the Energy Commission's Accounting Office.

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

D. Audit Rights

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

Contractor agrees that the Energy Commission, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting source documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the state to audit records and interview staff in any subcontract related to performance of this Agreement.

E. Refund to the Energy Commission

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

F. Match Funds

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

17. Indemnification

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

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

18. Workers' Compensation Insurance

- A. Contractor hereby warrants that it carries Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this Agreement, and agrees to furnish to the Commission Agreement Manager satisfactory evidence of this insurance at any time the Commission Agreement Manager may request.
- B. If Contractor is self-insured for worker's compensation, it hereby warrants such self-insurance is permissible under the laws of the State of California and agrees to furnish to the Commission Agreement Manager satisfactory evidence of this insurance at any time the Commission Agreement Manager may request.

19. Confidentiality

A. Identification of Confidential Information

- i. For purposes of this Agreement, “**Confidential Information**” means any data or information that is proprietary to the Disclosing Party, allowed to be kept confidential under the California Public Records Act (Government Code §6250 et seq.) or other applicable law, and not publicly known at the time of disclosure to the receiving party. The obligations contained in this clause shall not apply to any confidential information which:
 - a. After disclosure becomes publicly known otherwise than through a breach by the receiving party, its officers, employees, agents or contractors;
 - b. Can be shown by reasonable proof by the receiving party to have reached its hands otherwise than by being communicated by the other party including being known to it prior to disclosure, or having been developed by or for it wholly independently of the other party or having been obtained from a third party without any restriction on disclosure on such third party of which the Contractor is aware, having made due enquiry;
 - c. Is required by law, regulation or order of a competent authority (including any regulatory or governmental body or securities exchange) to be disclosed by the receiving party, provided that, where practicable, the disclosing party is given reasonable advance notice of the intended disclosure and provided that the relaxation of the obligations of confidentiality shall only last for as long as necessary to comply with the relevant law, regulation or order and shall apply solely for the purposes of such compliance; or
 - d. Is approved for release, in writing, by an authorized representative of the disclosing party.
- ii. Attachment 1 to this Exhibit contains a description of the Deliverables and Reports which contain Confidential Information, per agreement of the Contractor and the Energy Commission. The Energy Commission will not disclose the Confidential Information, except as provided in subsection B. The parties shall redact the Confidential Information from these Deliverables and Reports prior to any public disclosure of the Deliverables.
- iii. If additional Confidential Information is developed or collected during the course of this Agreement (beyond that described in Attachment 1), the Contractor will follow the procedures for a request for designation of Confidential Information as specified in Title 20 California Code of Regulations (CCR) Section 2505.

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

- iv. When submitting Deliverables and Reports containing Confidential Information, the Contractor will mark each page of any document containing Confidential Information as "confidential", and present it in a sealed package to the Energy Commission Contracts, Grants, and Loans Office.

The Commission Agreement Manager may require the Contractor to submit a non-confidential version of the Deliverable or Report, if it is feasible to separate the Confidential Information from the non-confidential information. The Contractor is not required to submit such Deliverables in a sealed package.

B. Disclosure of Confidential Information

Disclosure of Confidential Information by the Energy Commission may only be made pursuant to 20 CCR 2506, 2507, and 2508. All confidential data, records, Deliverables, or Reports that are legally disclosed by the Contractor or any other entity become public records and are no longer subject to the above confidentiality designation.

20. Pre-Existing Intellectual Property, Independently Funded Intellectual Property, and Pre-existing Data

A. Ownership

The Energy Commission makes no ownership, license, or royalty claims to Pre-existing Intellectual Property, Independently Funded Intellectual Property, Pre-existing Data, Project-relevant Pre-existing Intellectual Property, Project-relevant Independently Funded Intellectual Property, or Project-relevant Pre-existing Data.

B. Project-relevant Pre-Existing Intellectual Property, and Project-relevant Independently Funded Intellectual Property (collectively, "Project-relevant Intellectual Property") and Project-relevant Pre-existing Data

- i. Identification of Project-relevant Intellectual Property and Project-relevant Pre-existing Data

- a. All Project-relevant Pre-existing Intellectual Property of Key Personnel that is owned or controlled by Contractor is listed in Attachment 1 to this Exhibit. Within sixty (60) days of becoming aware that additional Project-relevant Pre-existing Intellectual Property of Key Personnel that is owned or controlled by Contractor has been or will be used in the performance of this Agreement, Contractor will notify the Energy Commission. Attachment 1 may be amended by a Letter of Agreement (see the “Amendments” section).
 - b. All Project-relevant Independently Funded Intellectual Property of Key Personnel that is owned or controlled by Contractor and the source of funding for such Intellectual Property is described in Attachment 1 to this Exhibit. Within sixty (60) days of becoming aware that additional Project-relevant Independently Funded Intellectual Property of Key Personnel that is owned or controlled by Contractor has been or will be used in the performance of this Agreement, Contractor will notify the Energy Commission. Attachment 1 may be amended by a Letter of Agreement (see the “Amendments” section).
 - c. During the term of this Agreement, Contractor will use reasonable efforts to notify the Energy Commission of any Project-relevant Intellectual Property of Key Personnel that is owned or controlled by Contractor that Contractor becomes actually aware of, with the qualification that Contractor is not in a position to guarantee that all potential Project-relevant Intellectual Property has been identified.
 - d. If Contractor will be using Project-relevant Pre-existing Data of Key Personnel that is owned or controlled by Contractor in the performance of this Agreement that have restrictions on use, such data and use restrictions will also be identified in Attachment 1, which may be amended by a Letter of Agreement (see the “Amendments” section).
- ii. Access to Project-Relevant Intellectual Property and Project-relevant Pre-existing Data

The Energy Commission and California Public Utilities Commission may access Project-relevant Intellectual property identified in Attachment 1, and Project-relevant Pre-existing Data of Key Personnel that is owned or controlled by Contractor, whether or not it is identified in Attachment 1, but only to the extent that such access is limited to that reasonably necessary to: (a) demonstrate the validity of any premise, postulate, or conclusion referred to or expressed in any Deliverable or Report; or (b) establish a baseline for repayment purposes. No express or implied licenses or other rights are provided to the Energy Commission and CPUC under any patents, patent applications, or other proprietary rights of the Contractor.

Upon the Commission Agreement Manager's request, the Contractor will provide the Commission Agreement Manager and any reviewers designated by the Energy Commission or the CPUC with access to review the Contractor's Project-relevant Intellectual Property and Project-relevant Pre-existing Data. If such Project-relevant Intellectual Property or Project-relevant Pre-existing Data has been designated as Confidential Information 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.

iii. Preservation of Project-Relevant Intellectual Property

The Contractor will preserve any of its Project-relevant Intellectual Property at its own expense for at least five (5) years from the Agreement's end date or until the timeframe in Contractor's retention policy, whichever is longer. Notwithstanding the foregoing, Contractor has the sole right but not the obligation to prosecute or maintain patent protection for any of its Project-relevant Intellectual Property at any time.

The Energy Commission and the CPUC will have reasonable access to the Project-relevant Intellectual Property and Project-relevant Pre-existing Data throughout the retention period for purposes specified in this Section 20 of the Agreement.

- C. All terms of this Section 20 above will be flowed down to Subcontractors, including the access rights to Project-relevant Intellectual Property and Project-relevant Pre-existing Data in part B.ii.

21. Intellectual Property

A. Ownership

Except as otherwise specified in this Agreement, the Contractor owns all Intellectual Property created, conceived or reduced to practice, discovered, made, developed, or altered by Contractor in the performance of this Agreement.

B. Data Rights

- i. Pre-existing Data that will be included as a deliverable under this Agreement will be identified in Attachment 1. If the Commission provides its own pre-existing data, the Commission shall mark all such data, and Contractor and its subcontractors may only use it for purposes of the Scope of Work of this Agreement, unless such data is otherwise publicly available.
- ii. At the Commission's expense for actual cost of duplication and delivery, Contractor shall deliver additional Project Data that is specifically requested by the Commission.
- iii. The Commission and CPUC shall have the unrestricted right to use the Deliverable Data and delivered Project Data, subject to applicable pre-existing use and disclosure restrictions identified in Attachment 1 and other provisions in this Agreement, including but not limited to Confidentiality.
- iv. The Contractor shall have the unrestricted right to use Project Data, subject to applicable use and disclosure restrictions identified in Attachment 1 and other provisions in this Agreement, including but not limited to, Confidentiality.

C. Copyrights

- i. All rights in Copyrightable Works delivered under this Agreement, other than Reports first created by the Contractor (refer to section 6.D), are the property of the Contractor. Unless pre-existing restrictions are listed under Attachment 1, the Contractor grants The State of California, including the Commission, a fully paid-up, royalty-free, non-exclusive, non-transferable, non-sublicensable, irrevocable license to reproduce, prepare derivative works, distribute copies, perform publicly, and display publicly Copyrightable Works specified for delivery to the Commission in the Scope of Work, to fulfill the State of California's governmental purposes, including the Commission's statutory objectives.
- ii. Notwithstanding C.i. directly above, when the purpose of the Scope of Work is specifically to create a Copyrightable Work for use by the Commission and that fact is indicated in the Scope of Work, then all rights in such Copyrightable Work will be the property of the Commission. The Commission grants to Contractor a fully paid-up, royalty-free, non-exclusive, non-transferable, non-sublicensable, irrevocable license to reproduce, prepare derivative works, distribute copies, perform publicly, and display publicly such Copyrightable Work for educational and research purposes and to allow other educational and nonprofit institutions to do so for educational and research purposes.

- iii. Upon written request and subsequent amendment, the Commission may request delivery of computer software that is not identified as a Deliverable, but was first created by the Contractor in the performance of the Scope of Work. To the extent the Contractor is legally able to do so, Contractor shall grant the State of California, including the Commission, a fully paid-up, royalty-free, nonexclusive, non-transferable, non-sublicensable, irrevocable license to reproduce, prepare derivative works, distribute copies, perform publicly, and display publicly such software to fulfill the State of California's governmental purposes, including the Commission's statutory objectives, subject to restrictions, if any, identified in Attachment 1.
- iv. Copyrightable Works that may be patentable are also subject to the Patent Rights clause, which will take precedence in case of a conflict.
- v. The Commission may direct Contractor to issue a no-cost, non-exclusive, non-sublicensable, irrevocable, royalty-free, worldwide, perpetual license to Copyrightable Works described in subparagraphs i. and iii. above to Load-serving entities and/or the third parties working with a Load-serving entity, for the Load-serving entity's use in enhancing its service to EPIC ratepayers. This license is for **non-commercial purposes**, meaning that it does not allow Load-serving entities to sell, commercially offer or distribute Copyrightable Works to others or in the marketplace. For example, if the Contractor creates copyrightable software, the Commission can give a Load-serving entity the right to use the software as part of its operations of providing service to EPIC ratepayers, but the Load-serving entity cannot sell or distribute the software.

D. Patent Rights

- i. Subject to the requirements of law, all rights to any Subject Inventions shall belong to the Contractor. The State of California, including the Commission, shall have a no-cost, non-exclusive, non-transferable, non-sublicensable, irrevocable, royalty-free, worldwide, paid-up license to practice, or have practiced, such Subject Invention for governmental purposes, including the Commission's statutory objectives. A confirmatory license will be executed by the Contractor to provide said license to any such Subject Invention, within ninety (90) days after filing of patent application. Notwithstanding the foregoing and except if the Commission exercises March-in Rights, Contractor has the sole right but not the obligation to prosecute or maintain patent protection for any Subject Invention at any time.

- ii. The Commission may direct Contractor to issue a no-cost, non-exclusive, non-sublicensable, irrevocable, royalty-free, worldwide, paid-up license to Subject Inventions to Load-serving entities and/or third parties working with a Load-serving entity, solely to practice Subject Inventions for non-commercial purposes, so as to enhance the Load-serving entities' service to EPIC ratepayers. This license is for **non-commercial purposes**, meaning that it does not allow Load-serving entities to sell, commercially offer or distribute patentable works to others or in the marketplace. For example, if the Contractor creates patentable software, the Commission can give a Load-serving entity the right to use the software as part of its operations of providing service to EPIC ratepayers, but the Load-serving entity cannot sell or distribute the software.
- iii. If any Subject Invention that is subject to the licenses above has been designated as Confidential Information as specified in Section 19, all license holders will only disclose the Subject Invention 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 Subject Invention are informed of and abide by the disclosure limitations in Section 19.
- iv. Copyrightable Works that may be patentable are also subject to the Patent Rights clause, which will take precedence in case of a conflict.

E. Energy Commission's Rights to Subject Inventions

i. March-in Rights

With respect to any Subject Invention in which Contractor has title and to the extent permissible under Federal laws and regulations, the Energy Commission shall have the right to require Contractor or Contractor's Licensee to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant, upon terms that are reasonable under the circumstances, if the Energy Commission determines that: a) the Contractor or Contractor's Licensee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the Invention; or b) action is necessary to alleviate health or safety needs that are not reasonably satisfied by Contractor or Contractor's Licensee. If the Contractor or Contractor's Licensee refuses such request, the Commission may grant such a license itself. The parties may refer to the Federal Government's procedures for handling march-in rights.

ii. Notice of Patent

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

iii. Legal Notice

The Contractor and all persons and/or entities obtaining an ownership interest in Subject Inventions 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 contract number XXX-XX-XXX. The Energy Commission has certain rights to this invention.”

F. Access to and Preservation of Subject Inventions and Copyrightable Works

i. Access

Upon the Commission Agreement Manager’s request, the Contractor will provide the Commission Agreement Manager and any individuals designated by the Commission or the CPUC with access to the Contractor’s Subject Inventions and to Copyrightable Works which are subject to Sections 21.C.i and 21.C.iii., in order to exercise the licenses described above, and to determine any royalty payments due under the Agreement.

ii. Preservation

The Contractor will preserve Subject Inventions and Copyrightable Works which are subject to Sections 21.C.i and 21.C.iii, in order to exercise the licenses described above, at its own expense for at least ten (10) years from the Agreement’s end date or until the timeframe in Contractor’s retention policy, whichever is longer. Notwithstanding the foregoing, Contractor is not obliged under this Agreement to obtain or maintain any intellectual property protection for Subject Inventions. Contractor has the sole right but not the obligation to file a patent application for a Subject Invention, but Contractor will file and prosecute a patent application for any Subject Invention which a Licensee has a license under Section 21.D.ii., upon written request by such Licensee and at Licensee’s expense.

G. All terms of this Section 21 above will be flowed down to Subcontractors.

22. Royalty Payments to the Energy Commission

- A. In consideration of the Commission providing funding to the Contractor, Contractor agrees to pay the Commission a portion of either Net Revenues or Net Royalties under the terms and conditions hereinafter set forth. If federal funds are used in the conception or reduction to practice of a Subject Invention, such Net Revenues or Net Royalties shall be used by the State of California in a manner consistent with Title 35 United States Code (USC), Section 202, subdivision (c)(7) to the extent this USC Section applies).
- i. Net Royalties. The Contractor's obligation to make payments to the Commission shall commence from the date that the Net Royalties calculation is positive and extend until ten (10) years from the Agreement's end date. Payments are payable in annual installments and are due the first day of March for Net Royalties calculation made for the Contractor's prior fiscal year. Contractor agrees to pay to Commission an amount equivalent to 10% of the total cumulative Net Royalties, less payments made by Contractor to Commission in previous years when Net Royalties were positive. Payments shall be made by check and made payable to the California Energy Commission, EPIC Fund.
 - ii. Net Revenues. If the Contractor is the licensee, the Contractor's obligation to make payments to the Commission shall commence upon the first sale of the Licensed Product. Payments are payable in annual installments and are due the first day of March for the prior fiscal year of the Contractor and extend until ten (10) years from the Agreement's end date. Contractor agrees to pay an amount equivalent to 1.5% of the Net Revenues by check made payable to the California Energy Commission, EPIC Fund.
- B. If a Licensed Product was developed in part with Match Funds during the Agreement term, the Net Royalty payments will be reduced in accordance with the percentage of such development activities that were funded with Match Funds. For example, if 20% of the development activities were funded with Match Funds during the Agreement and total cumulative Net Royalties equaled \$100,000 in one year, the Contractor would owe the Energy Commission \$8,000 for the year (10% of \$100,000 = \$10,000; 80% of \$10,000 = \$8,000 (the 80% coming from 100% - 20% in match funds)).

If the Energy Commission is providing funds to the Contractor under this Agreement as a project match partner and Energy Commission funds are used in part to develop a Licensed Product, the Net Royalty payments will be reduced in accordance with the percentage of such development activities that were funded with non-Energy Commission funds during the Agreement term. For example, if 80% of the development activities were funded with Contractor and/or third party funds during the Agreement and Net Royalties totaled \$100,000 in one year, the Contractor would owe the Energy Commission \$2,000 for the year (10% of \$100,000 = \$10,000; 20% of \$10,000 = \$2,000 (the 20% coming from 100% - 80% in match funds)).

- C. Unless the Contractor makes an early buyout, total Net Royalty or Net Revenue payments will be limited to three (3) times the amount of funds paid by the Energy Commission under the Agreement. The Contractor may make an early buyout payment to the Energy Commission without a pre-payment penalty, as an alternative to making annual royalty payments for ten (10) years following the Agreement's end date. The payment must be in a lump sum amount equal to one and a half (1.5) times the amount of funds paid by the Energy Commission under the Agreement and made within five (5) years of the Agreement's end date. The payment amount due under the early buyout option will not be reduced by the percentage of Match Funds as described above.
- D. Contractor agrees not to make any sale, license, lease, gift or other transfer of any Project Data Subject Invention, Copyrightable Work or Licensed Product with the intent of, or for the purpose of, depriving Commission of Net Royalties or Net Revenues hereunder. Generally, this means that the Contractor will not make any sale, license, lease or other transfer of Project Data, Subject Invention, Copyrightable Work or Licensed Product for consideration other than fair market value except for research, educational, or other mutually agreed to purposes intended to serve the public benefit.
- E. Contractor shall maintain separate accounts within their financial and other records for purposes of tracking royalties and revenues due to the Commission under this Agreement.
- F. Audits on Payments to Commission. Payments to the Commission are subject to the Audit clause.
- G. Defaults. In the event of default hereunder, the Commission shall be free to exercise all rights and remedies available to it herein, and under law and at equity. Contractor's failure to pay when due, absent any prior written authorization by the Commission to delay payment, any amount due and payable under the terms of this contract constitutes a default under this Agreement.

23. General Provisions

- A. Governing Law

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

B. Independent Capacity

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

C. Assignment

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

D. Timeliness

Time is of the essence in this Agreement.

E. Unenforceable Provision

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

F. Waiver

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

G. Assurances

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

H. Notification of Important Occurrences

Contractor shall promptly notify the Energy Commission of the occurrence of any of the following:

- i. A change of address.
- ii. The existence of any litigation or other legal proceeding affecting the project.
- iii. The occurrence of any casualty or other loss to project personnel, equipment or third parties.
- iv. Receipt of notice of any claim or potential claim against Contractor for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the Energy Commission's rights.

I. Access to Sites and Records

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

J. Survival of Terms

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

- i. "Payments of Funds"
- ii. "Equipment"
- iii. "Notification of Important Occurrences"
- iv. "Termination"
- v. "Recordkeeping, Cost Accounting, and Auditing"
- vi. "Indemnification"
- vii. "Pre-Existing Intellectual Property, Independently Funded Intellectual Property, and Pre-existing Data"
- viii. "Intellectual Property"
- ix. "Royalty Payments to the Energy Commission"
- x. "Access to Sites and Records"

24. Certifications and Compliance

A. Federal, State & Local Laws

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

B. Nondiscrimination Statement of Compliance

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

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

C. Drug Free Workplace Certification

By signing this Agreement, the Contractor hereby certifies under penalty of perjury under the laws of the State of California that the Contractor 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:

- i. 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).
- ii. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. The person's or organization's policy of maintaining a drug-free workplace;
 - c. Any available counseling, rehabilitation, and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations.
- iii. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed project:
 - a. Will receive a copy of the company's drug-free policy statement;
 - b. 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 Contractor may be ineligible for any future state awards if the Energy Commission determines that any of the following has occurred: 1) the Contractor 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)

Contractor, by signing this Agreement, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal Court has been issued against the Contractor within the immediately preceding two year period because of the Contractor's failure to comply with an order of a Federal Court which orders the Contractor 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 Contractor acknowledges that:

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

F. Air or Water Pollution Violation

Under the state laws, the Contractor shall not be:

- i. In violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;
- ii. Subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
- iii. 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, Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA.

H. Union Activity

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

I. Payment

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

25. Definitions

- A. **Agreement Period** is the length of this Agreement between the Energy Commission and the Contractor. The Contractor's Project may coincide with or extend outside the Agreement Period.
- B. **Confidential Information** any data or information that is proprietary to the Disclosing Party, allowed to be kept confidential under the California Public Records Act (Government Code §6250 et seq.) or other applicable law, and not publicly known at the time of disclosure to the receiving party.
- C. **Copyrightable Work** means any copyrighted work as defined under U.S. copyright law to which the Contractor, a Subcontractor, or a Match Fund Partner has acquired title that is first created in the performance of the Scope of Work under this Agreement and is not a scholarly work.
- D. **Data** means information, regardless of the form or medium including, but not limited to drawings, lists, findings, computations, notes, diagrams, data files, statistical records and other research data.
- E. **Pre-existing Data** means Data possessed or owned by the Contractor or by a third party (including Subcontractors) that exists prior to the Agreement start date or developed during the Agreement without Commission or Match Funds.
- F. **Project-relevant Pre-existing Data** means Pre-existing Data used by Contractor or Subcontractors in the performance of the Scope of Work conducted under this Agreement
- G. **Project Data** means Data that is first produced in the performance of this Agreement by Contractor, a Subcontractor or a Match Funds partner. Project Data does not include a researcher's laboratory notebook, but may include the Data contained therein.
- H. **Deliverable Data** means Project Data that is identified in the Scope of Work and required to be delivered to the Commission.

- I. **Equipment** is defined as having a useful life of at least one year, having an acquisition unit cost of at least \$5,000, and purchased with Energy Commission funds. **Equipment** means any products, objects, machinery, apparatus, implements or tools purchased, used or constructed within the Project, including those products, objects, machinery, apparatus, implements or tools from which over thirty percent (30%) of the equipment is composed of Materials purchased for the Project. For purposes of determining depreciated value of equipment used in the Agreement, the Project shall terminate at the end of the normal useful life of the equipment purchased, funded and/or developed with Energy Commission funds. The Energy Commission may determine the normal useful life of such equipment.
- J. **Key Personnel** are employees of the Contractor who are both listed in the Agreement and critical to the outcome of the project. For example, they may have expertise in the particular field or have experience that is not available from another source. Replacing these individuals may affect the outcome of the project.
- K. **Independently Funded Intellectual Property** means Intellectual Property created, conceived, discovered, made, developed, altered, or reduced to practice by the Contractor or a third party during or after the Agreement term without Energy Commission or Match Funds, and any associated proprietary rights to these items that are obtained without Energy Commission or Match Funds, such as patent and copyright.
- L. **Intellectual Property** means inventions, technologies, designs, drawings, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, logos, and any associated proprietary rights to these items, such as patent and copyright, including and any upgrades or revisions to these items.
- M. **Licensed Product** means any product commercialized by a Licensee that embodies or utilizes Project Data, a Subject Invention, or Copyrightable Work.
- N. **Licensee** means the organization (or its affiliates, joint venture or sublicensee) that is granted commercial rights to Project Data, a Subject Invention or Copyrightable Work to develop any of these into a commercial product that is made available to the public in the marketplace or otherwise sold.
- O. **Load-serving entity** means a company or other organization that provides electricity to EPIC ratepayers.
- P. **Match Funds** means cash or in-kind (non-cash) contributions shown in the approved budget, Exhibit B, and provided by Contractor, Subcontractors, or other parties that will be used in performance of this Agreement.
- Q. **Match Fund Partner** means an entity providing Match Funds that does not receive any Commission funds.

- R. **Materials** means the substances used in constructing a finished object, commodity, device, article or product.
- S. **Net Revenues** means the total of the gross invoice prices of Licensed Product sold, less the sum of the following actual and customary deductions where applicable: cash; quantity discounts; sales, use, tariff, import/export duties or other excise taxes imposed upon particular sales; transportation charges; and allowance or credits to customers because of rejections or returns.
- T. **Net Royalties** means gross licensing income, including royalties and fees, received by Contractor from a Licensee as consideration for commercially licensing any Subject Invention, Copyrightable Work, or Project Data, less the following:
- i. Legal or other direct expenses (that are not otherwise reimbursed under an option or license agreement from a third party) of patenting, protecting and preserving patent, copyright and related property rights, maintaining patents and other such costs, taxes, or reimbursements as may be necessary or required by law, except patent infringement expenses;
 - ii. Inventor or author shares in accordance with Contractor's, patent or copyright policy; and
 - iii. Direct expenses include operating expenses of Contractor which are customarily reimbursed by royalty payments.

Net Royalties do not include any payments to joint holders nor research funding accepted by Contractor or a Subcontractor in association with an option or licensing agreement. Net Royalties shall be aggregated cumulatively, over time for each disclosed Subject Invention, Copyrightable Work, or Project Data.

- U. **Ownership** means exclusive possession and control of all rights to property, including the right to use and transfer property.
- V. **Subcontractor** is the same as a Subrecipient and means an entity that is performing research and has received Agreement funds via a subaward arrangement appropriate for that entity from the prime Contractor location awarded this contract Agreement. A Subcontractor may include not-for-profit and for-profit organizations, Federal laboratories, or any part of the University of California, such as a campus or the Lawrence Berkeley National Laboratory. This definition does not include vendors providing goods and services.
- W. **Key Subcontractor** is a Subcontractor that is critical to the outcome of the project. For example, the Subcontractor may have expertise in the particular field or have experience that is not available from another source. Replacing these entities may affect the outcome of the project.

- X. **Pre-existing Intellectual Property** means Intellectual Property that the Contractor or a third party owned or possessed prior to the effective date of this Agreement and that have not been developed, altered, or reduced to practice with Energy Commission or Match Funds, and any associated proprietary rights to these items that are obtained without Energy Commission or Match Funds, such as patent and copyright.
- Y. **Deliverables** mean all tangible research products first made by Contractor, Subcontractors, or Match Fund Partners in the performance of this Agreement and specified for delivery to the Commission in the Scope of Work, but not a Subject Invention nor a Copyrightable Work.
- Z. **Project** refers to the entire effort undertaken and planned by the Contractor under this Agreement and consisting of the work co-funded in whole or in part by the Energy Commission.
- AA. **Project-relevant Pre-existing Intellectual Property** means Pre-existing Intellectual Property used by Contractor, Subcontractors, or Match Fund Partners in the performance of the Scope of Work conducted under this Agreement.
- BB. **Project-relevant Independently Funded Intellectual Property** means Independently Funded Intellectual Property used by Contractor, Subcontractors, or Match Fund Partners in the performance of the Scope of Work conducted under this Agreement.
- CC. **Report** means all required reports specified for delivery to the Commission in the Scope of Work.
- DD. **Sale** means the act of selling, leasing or otherwise transferring, providing, or furnishing for use for any consideration.
Sell means to make or cause to be made a Sale.
- EE. **Sold** means to have made or caused to be made a Sale.
- FF. **Sales Price** means the price at which Licensed Product is sold, excluding sales tax.
- GG. **Subject Invention** means any patentable invention or discovery that is either:
- i. Conceived and first actually reduced to practice (actually reduced to practice or constructively reduced to practice by the filing of a patent application) in the performance of the Scope of Work;
 - ii. Conceived in the performance of the Scope of Work and first reduced to practice in the performance of the Scope of Work conducted under this Agreement or within forty-two (42) months after the completion of the Scope of Work;

- iii. Conceived prior to the effective date of this Agreement or conceived without Energy Commission funds and reduced to practice in the performance of the Scope of Work, provided that such conception is not encumbered by any obligations owed to a third party other than the U.S. Government.
- HH. **Technology** refers to the general subject area where the product or innovation will be used. For example, solar thermal electric generation is a Technology area; direct steam generation is an innovation in this Technology area.
- II. **Trade Secret** is any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented and which is generally known only to certain individuals with a commercial concern and are using it to fabricate, produce or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.
- JJ. **Contractor** is used to refer to the one legal entity of The Regents of the University of California or The California State University, or any subdivision or campus thereof.
- KK. **Vendor**. A dealer, distributor, merchant or other seller providing goods or services that are required for the performance of the Scope of Work. Vendors are not considered Subcontractors and are subject to the normal terms and conditions of the University's procurement process.
- LL. **Key Vendor** is a Vendor that is critical to the outcome of the project. For example, the Vendor may have expertise in the particular field or have experience that is not available from another source. Replacing these entities may affect the outcome of the project.