

STATE OF CALIFORNIA  
**GRANT AGREEMENT**

	AGREEMENT NUMBER
	REGISTRATION NUMBER

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

STATE AGENCY'S NAME

California Energy Commission, hereinafter referred to as "State"

CONTRACTOR'S NAME

, hereinafter referred to as "University"

2. The term of this Agreement is: \_\_\_\_\_ through \_\_\_\_\_

The effective date of this Agreement is either the start date or the date this agreement was signed by the California Energy Commission, whichever is later. No work shall commence until the effective date.

3. The maximum amount of this Agreement is: \$ \_\_\_\_\_

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

<b>Exhibit A – A5:</b> A–Scope of Work; A1–Deliverables; A2–Key Personnel; A3–Authorized Representatives; A4–Preexisting Data; A5–CV/Resumes	page(s)
<b>Other Exhibits A</b> (when applicable): A6–Current & Pending Support; A7–Third Party Confidential Information Requirement	page(s)
<b>Exhibit B – B–Budget;</b> B1–Budget Justification; B2–Subrecipient Budgets (if applicable); B3–Invoice Elements	page(s)
<b>Exhibit C*</b> – University Terms and Conditions	UTC-518

Check mark additional Exhibits below, and attach Exhibits or provide internet link:

- Exhibit D** – Additional Requirements Associated with Funding Sources page(s)
- Exhibit E** – Special Conditions for Security of Confidential Information 1 page(s)
- Exhibit F** – Access to State Facilities and Computing Resources page(s)
- Exhibit G** – If applicable 7 page(s)

Items shown with an Asterisk (\*) are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>.

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

<b>CONTRACTOR</b>	<i>California Department of General Services Use Only</i>	
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)		
BY (Authorized Signature)		DATE SIGNED (Do not type)
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME		
State Energy Resources Conservation and Development Commission		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
Michael Poe, Contracts, Grants, and Loans Office Acting Manager		
ADDRESS		
1516 Ninth Street, MS-18, Sacramento, CA 95814		

Exempt per:

# Exhibit A1

## SCHEDULE OF DELIVERABLES<sup>1</sup>

List all items that will be delivered to the State under the proposed Scope of Work. Include all reports, including draft reports for State review, and any other deliverables, if requested by the State and agreed to by the Parties. All Deliverables shall be delivered to the State's Contract Project Manager identified in Exhibit A3, unless otherwise stated in this Agreement.

Unless otherwise directed by the Energy Commission all Deliverables, including drafts, shall be submitted to the State Agency Accounting Contact identified in Exhibit A3 (which will then forward them to the State Agency Contract Project Manager for review and comment). The University will submit an original and two copies of the final version of all Deliverables to the State Agency Accounting Contact identified in Exhibit A3.

Deliverable <sup>2</sup>	Description	Due Date
<b>The following Deliverables<sup>3</sup>, to the extent not restricted by Exhibit A4, are subject to Exhibit C, Paragraph 18. Copyrights, subparagraph B</b>		
Progress Report #1		
Progress Report #2		
Final Report Outline (draft and final)		
Final Report (draft and final)		
In-state and California Based Entity Expenditures	A report documenting the Total Energy Commission Reimbursable Funds Spent in California and Total Energy Commission Reimbursable Funds to California Based Entities (CBE*) associated with the current request for payment and the cumulative-to-date must be provided with the University's request for payment. 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 CBEs form at <a href="http://www.energy.ca.gov/research/contractors.html">http://www.energy.ca.gov/research/contractors.html</a> .	
Match Funds Report	Provide a report on Match Funds expenditures with the University's request for payment.	

\* See Definitions in [Exhibit G](#).

<sup>1</sup> The term Deliverable includes Products as used in this Agreement, including the Scope of Work. Therefore, to the extent this Agreement uses the term "Product" it shall have the same meaning as "Deliverable" and vice versa.

<sup>2</sup> If use of any Deliverable is restricted or is anticipated to contain Preexisting Data or copyrightable works with any restricted use, it will be clearly identified in Exhibit A4, Use of Preexisting Data, Copyrighted Works and Deliverables. For deliverables entered in this first section, copyright shall remain with the University with a license to the State in accordance with Exhibit C, Paragraph 18.A.

<sup>3</sup> Deliverables entered below this line are specifically created as copyrightable works for the Energy Commission and all rights in such copyrightable work will be the property of the Energy Commission, with a reserved right for the University to use the deliverables in accordance with Exhibit C, Paragraph 18.B.



## Exhibit A2

### KEY PERSONNEL

List Key Personnel as defined in the Agreement starting with the PI, by last name, first name followed by Co-PIs. Then list all other Key Personnel in alphabetical order by last name. For each individual listed include his/her name, institutional affiliation, and role on the proposed project. Use additional consecutively numbered pages as necessary.

Last Name, First Name	Institutional Affiliation	Role on Project
<b>PI:</b>		
<b>Co-PI(s) – if applicable:</b>		
<b>Other Key Personnel (if applicable):</b>		

## Exhibit A3

### AUTHORIZED REPRESENTATIVES AND NOTICES

The following individuals are the authorized representatives for the State and the University under this Agreement. Any official Notices issued under the terms of this Agreement shall be addressed to the Authorized Official identified below, unless otherwise identified in the Agreement.

Changes in the University Principal Investigator are subject to the Key Personnel section of this Agreement. Changes in other contact information may be made by notification, in writing, between the parties.

<b>State Agency Contacts</b>	<b>University Contacts</b>
Agency Name: <b><i>Contract Project Manager (Technical)</i></b>  Name:  Address:   Telephone: Fax: Email:	University Name: <b><i>Principal Investigator</i></b>  Name:  Address:   Telephone: Fax: Email:
<b><i>Authorized Official (contract officer)</i></b>  Name:  Address:   Telephone: Fax: Email:  <b><i>Send notices to (if different):</i></b>  Name:  Address:   Telephone: Fax: Email:	<b><i>Authorized Official</i></b>  Name:  Address:   Telephone: Fax: Email:  <b><i>Send notices to (if different):</i></b>  Name:  Address:   Telephone: Fax: Email:

<p><b><i>Administrative Contact</i></b></p> <p>Name:</p> <p>Address:</p> <p>Telephone:</p> <p>Fax:</p> <p>Email:</p>	<p><b><i>Administrative Contact</i></b></p> <p>Name:</p> <p>Address:</p> <p>Telephone:</p> <p>Fax:</p> <p>Email:</p>
<p><b><i>Financial Contact/Accounting</i></b></p> <p>Name:</p> <p>Address:</p> <p>Telephone:</p> <p>Fax:</p> <p>Email:</p>	<p><b><i>Authorized Financial Contact/Invoicing</i></b></p> <p>Name:</p> <p>Address:</p> <p>Telephone:</p> <p>Fax:</p> <p>Email:</p>

## Exhibit A4

### USE OF PREEXISTING DATA, COPYRIGHTED WORKS, KNOWN PATENTS, TRADEMARKS, SERVICE MARKS, TRADE SECRETS AND DELIVERABLES

*If either Party will be using any third-party or pre-existing data, copyrighted works, known patents, trademarks, service marks, and trade secrets that have restrictions on use, then list all such data, copyrighted works, known patents, trademarks, service marks, and trade secrets and the nature of the restriction below. If no third-party or pre-existing data, copyrighted works, known patents, trademarks, service marks, or trade secrets will be used, check "none" in this section.*

A. State: Preexisting Data, known patents, trademarks, service marks, trade secrets, and/or copyrighted works to be provided to the University from the State or a third party for use in the performance in the Scope of Work.

None or  List:

Owner (State Agency or 3 <sup>rd</sup> Party)	Type of Data, copyrighted work, known patents, trademarks, service marks, or trade secrets	Description	If Restricted, nature of restriction. If unrestricted then "none."

B. University: Use of Preexisting Data, known patents, trademarks, service marks, trade secrets, and/or copyrighted works included in Deliverables identified in Exhibit A1.

None or  List:

Owner (University or 3 <sup>rd</sup> Party)	Type of Data, copyrighted work, known patents, trademarks, service marks, or trade secrets	Description	If Restricted, nature of restriction. If unrestricted then "none."

C. Anticipated restrictions on use of Project Data.

*If the University PI anticipates that any of the Project Data generated during the performance of the Scope of Work will have a restriction on use (such as subject identifying information in a data set) then list all such anticipated restrictions below. If there are no restrictions anticipated in the Project Data, then check "None" in this section.*

None or  List:

Owner (University or 3 <sup>rd</sup> Party)	Description	Nature of Restriction:


## Exhibit A5

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### CURRICULUM VITAE (CV) / RÉSUMÉS / BIOSKETCH

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*Attach CV/Résumé/Biosketch for Key Personnel listed in Exhibit A2.*

## Exhibit A6

### CURRENT & PENDING SUPPORT

*(Will be incorporated, if applicable.)*

University will provide current & pending support information for Key Personnel identified in Exhibit A2 at time of proposal and upon request from State agency. The "Proposed Project" is this application that is submitted to the State. Add pages as needed.

<b>PI: NAME</b>					
Status (currently active or pending approval)	Award # (if available)	Source (name of the sponsor)	Project Title	Start Date	End Date
Proposed Project					
CURRENT					
CURRENT					
PENDING					

<b>NAME</b>					
Status	Award #	Source	Project Title	Start Date	End Date
Proposed Project					
CURRENT					
CURRENT					
PENDING					

<b>NAME</b>					
Status	Award #	Source	Project Title	Start Date	End Date
Proposed Project					
CURRENT					
CURRENT					
PENDING					

<b>NAME</b>					
Status	Award #	Source	Project Title	Start Date	End Date
Proposed Project					
CURRENT					
CURRENT					
PENDING					

<b>NAME</b>					
Status	Award #	Source	Project Title	Start Date	End Date
Proposed Project					
CURRENT					
CURRENT					
PENDING					

## **Exhibit A7**

### **Third Party Confidential Information Confidential Nondisclosure Agreement**

*(Identified in Exhibit A, Scope of Work – will be incorporated, if applicable)*

*If the scope of work requires the provision of third party confidential information to either the State or the Universities, then any requirement of the third party in the use and disposition of the confidential information will be listed below. The third party may require a separate Confidential Nondisclosure Agreement (CNDA) as a requirement to use the confidential information. Any CNDA will be identified in this Exhibit A7.*

## **Exhibit B**

### **Budget Estimate for Project Period**

*Attach (or insert)*

# Exhibit B1

## Budget Justification

*The Budget Justification will include the following items in this format.*

### Personnel

**Name.** Starting with the Principal Investigator list the names of all known personnel who will be involved on the project for each year of the proposed project period. Include all collaborating investigators, individuals in training, technical and support staff or include as “to be determined” (TBD).

**Role on Project.** For all personnel by name, position, function, and a percentage level of effort (as appropriate), including “to-be-determined” positions.

### Fringe Benefits.

In accordance with University policy, explain the costs included in the budgeted fringe benefit percentages used, which could include tuition/fee remission for qualifying personnel to the extent that such costs are provided for by University policy, to estimate the fringe benefit expenses on Exhibit B.

### Travel

Itemize all travel requests separately by trip and justify in Exhibit B1, in accordance with University travel guidelines. Provide the purpose, destination, travelers (name or position/role), and duration of each trip. Include detail on airfare, lodging and mileage expenses, if applicable. Should the application include a request for travel outside of the state of California, justify the need for those out-of-state trips separately and completely.

### Materials and Supplies

Itemize materials supplies in separate categories. Include a complete justification of the project’s need for these items. Theft sensitive equipment (under \$5,000) must be justified and tracked separately in accordance with State Contracting Manual Section 7.29.

### Equipment

List each item of equipment (greater than or equal to \$5,000 with a useful life of more than one year) with amount requested separately and justify each.

### Consultant Costs

Consultants are individuals/organizations who provide expert advisory or other services for brief or limited periods and do not provide a percentage of effort to the project or program. Consultants are not involved in the scientific or technical direction of the project as a whole. Provide the names and organizational affiliations of all consultants. Describe the services to be performed, and include the number of days of anticipated consultation, the expected rate of compensation, travel, per diem, and other related costs.

### Subawardee (Consortium/Subrecipient) Costs

Each participating consortium organization must submit a separate detailed budget for every year in the project period in Exhibit B2 Subcontracts. Include a complete justification for the need for any subawardee listed in the application.

### Other Direct Costs

Itemize any other expenses by category and cost. Specifically justify costs that may typically be treated as indirect costs. For example, if insurance, telecommunication, or IT costs are charged as a direct expense, explain reason and methodology.

### Rent

If the scope of work will be performed in an off-campus facility rented from a third party for a specific project or projects, then rent may be charged as a direct expense to the award.

### Indirect (F&A) Costs

Indirect costs are calculated in accordance with the University budgeted indirect cost rate in Exhibit B.



## **Exhibit B2**

### **Budget Estimates Pertaining to Subcontractors (when applicable)**

[Attach \(or insert\)](#)

## **Exhibit B3**

### **Invoice and Detailed Transaction Ledger Elements**

In accordance with Section 14 – Payment and Invoicing, the invoice, summary report and/or transaction/payroll ledger shall be certified by the University’s Financial Contact and the PI.

**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
- Equipment
- Travel
- Subawardee – Consultants
- Subawardee – Subcontract/Subrecipients
- Materials & Supplies
- Other Direct Costs
  - TOTAL DIRECT COSTS (if available from system)
- Indirect Costs
  - TOTAL

#### **Detailed transaction ledger and/or payroll ledger for the invoice period**

- University 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

*\* If this information is not on the invoice or summary attachment, it may be included in a detailed transaction ledger.*

*\*\* For salaries and wages, these elements are anticipated to be included in the detailed transaction ledger. If all elements are not contained in the transaction ledger, then a separate payroll ledger may be provided with the required elements.*

## Exhibit D (if applicable)

### Additional Requirements Associated with Funding Sources

*If the Agreement is subject to any additional requirements imposed on the funding State agency by applicable law (including, but not limited to, bond, proposition and federal funding), then these additional requirements will be set forth in Exhibit D. If the University is a subrecipient, as defined in 2 CFR 200 (Uniform Guidance on Administrative Requirements, Audit Requirements and Cost Principles for Federal Financial Assistance), and the external funding entity is the federal government, the name of the federal agency, the prime award number (if available), and the Catalog of Federal Domestic Assistance (CFDA) program number will be listed in Exhibit D. (Please see sections 10.A and 10.B of the UTC.)*

<b>Agency</b> (Required for federal funding source)	<b>Prime Agreement Number</b> (if available)	<b>If Federal, CFDA Number</b>

## **Exhibit E (if applicable)**

### **Special Conditions for Security of Confidential Information**

*If the of work or project results in additional legal and regulatory requirements regarding security of Confidential Information, those requirements regarding the use and disposition of the information, will be provided by the funding State agency in Exhibit E. (Please see section 8.E of the UTC.)*

1. The Energy Commission has established regulations related to confidentiality. Accordingly, the University, or other submitting entity under this Agreement, will follow the procedures for a request for designation of confidential information as specified in Title 20 California Code of Regulations section 2505 and receive a determination of confidentiality before the Energy Commission is obligated to treat the material submitted to it as confidential.

## **Exhibit F (if applicable)**

### **Access to State Facilities or Computing Systems Agency Requirements/Agreement**

*If the scope of work or project requires that the Universities have access to State agency facilities or computing systems and a separate agreement between the individual accessing the facility or system and the State agency is necessary, then the requirement for the agreement and the agreement itself will be listed in Exhibit F. (Please see section 20 of the UTC.)*

## **Exhibit G – Negotiated Alternate UTC Terms**

### **CEC PIER NG**

#### **1. Precedence of this Exhibit G**

- A. The Energy Commission and the University have mutually determined that certain specified Agreement provisions from Exhibit C are inappropriate or inadequate for this Agreement and therefore have agreed to the following alternate UTC Terms as provided for in this Exhibit G – Negotiated Alternate UTC Terms.
- B. In the event of a conflict, the terms in this Exhibit G take precedence over other provisions of this Agreement, including Exhibit C.

#### **2. Patent Rights - University**

- A. Subject to the requirements of law, all rights to any patentable inventions or discoveries conceived and first actually reduced to practice in the performance of the Scope of Work, Exhibit A, conducted under this Agreement (“Patentable Inventions”) shall belong to the University. The State shall have a nonexclusive, sublicensable, irrevocable, paid-up license to practice or have practiced such Patentable Invention for government purposes.
- B. A State Confirmatory License (attached) will be executed by the University to provide said license to any such Patentable Invention, within ninety (90) days after filing of patent application.
- C. University shall file, prosecute and maintain a patent application claiming a Patentable Invention described in paragraph A above within two years of disclosure of a Patentable Invention to University by inventors and will diligently pursue broad application of such Patentable Invention. If State notifies University of a need that is not being met by University, University will take steps to meet such need or will offer sufficient field-of-use rights to State to address such unmet need.
- D. If University decides not to file a patent application within such two-year period or decides to abandon a patent or patent application claiming such Patentable Invention, and determines that it does not intend to pursue commercialization of such Patentable Invention, then University will notify the State in sufficient time to preserve patent rights, and upon State agency request, University agrees to assign title to State, subject to requirements of law, outstanding rights in third parties, and a reserved right to use the Patentable Invention for educational and research purposes and to allow other educational and nonprofit institutions to do so.
- E. Copyrightable works that may be patentable are also subject to the Patent Rights clause, which will take precedence in case of a conflict.

#### **3. Royalty Payments to the Energy Commission**

- A. In consideration of the Commission providing funding to the University, University 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 in a manner consistent with Title 35 United States Code (USC), Section 202, subdivision (c)(7) to the extent this USC Section applies).

- 1) Net Royalties. The University'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 University's prior fiscal year. University agrees to pay to Commission an amount equivalent to 10% of the total cumulative Net Royalties, less payments made by University to Commission in previous years when Net Royalties were positive. Payments shall be made by check and made payable to the California Energy Commission.
  - 2) Net Revenues. If the University is the Licensee, the University'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 University and extend until ten (10) years from the Agreement's end date. University agrees to pay an amount equivalent to 1.5% of the Net Revenues by check made payable to the California Energy Commission.
- 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 University 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 University 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 University and/or third party funds during the Agreement and Net Royalties totaled \$100,000 in one year, the University 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 University 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 University 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. University 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 University 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. University 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, Exhibit C, section 15.

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. University'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 Agreement constitutes a default under this Agreement.

#### 4. Travel

Exhibit C, section 13.C is replaced in its entirety as follows:

##### C. Travel Approval Requirements

- 1) Pre-Approved Travel: The Budget shall identify all travel and the costs of travel, including travel by subawardees, and shall itemize the rate, estimated cost and destination of the travel. The Budget Justification and/or Scope of Work shall identify the travelers and purpose of the travel. Travel identified in this manner is considered approved upon execution and approval of the Agreement.
- 2) Prior Approval Required: Travel that is: 1) identified as non-pre-approved travel; or 2) not identified in the Budget and/or Scope of Work shall require prior written (including fax or email) authorization from the State Contract Project Manager. The need for actual travel not identified in the proposed Budget and/or Scope of Work must be justified and all technological avenues of communication (e.g., teleconferencing, videoconferencing, or web conferencing) must be explored before travel will be approved.

#### 5. Equipment

Exhibit C, section 14.B.2 is replaced in its entirety as follows:

“Equipment” means any products, objects, machinery, apparatus, vehicles, implements or tools purchased, used or constructed within the Agreement, having a useful life of at least one year, an acquisition unit cost of at least \$5,000, and purchased in whole or part with Energy Commission funds.

During the Agreement term, the University shall use the Equipment for this Agreement.

The University shall be solely responsible for the possession, use, storage, and maintenance of the Equipment, for maintaining appropriate insurance on the Equipment sufficient to cover its replacement value in case of loss, and for complying with any and all laws, including environmental laws, applicable to the Equipment.

Equipment, which is purchased in whole or in part with Commission funds, may not be claimed as Match Funds. Likewise, Match Funds used for the purchase of equipment may not be claimed for reimbursement with Energy Commission funds.

As between the Energy Commission and the University, legal title to Equipment acquired by the University shall vest in the University. With the exception of pre-existing UCC-1 blanket liens during the Agreement term, the University shall not further encumber or sell the Equipment except for the sole purpose of using the proceeds of such sale or encumbrance for the direct benefit of this Agreement's activities. In such circumstance, the University shall provide written notice to the State's Contract Project Manager of such proposed sale or encumbrance at least 30 days in advance of any sale or encumbrance, stating the purpose of the sale or encumbrance, and specifying the amount, how the amount equates with the reasonable value of the Equipment, and how the proceeds of the sale or encumbrance will be used for this Agreement.

It is understood and agreed that this Section shall survive the completion or termination date of this Agreement for any reason.

#### 6. No Payment for Late Final Invoice

Exhibit C, section 14.E.5 is replaced in its entirety as follows:

The University shall submit the final invoice to the State, no later than ninety (90) calendar days after the Agreement completion date. If the University does not submit the final invoice within the 90-day required time period (or a greater period of time as agreed to by the Energy Commission in its sole and absolute discretion), in addition to any other rights and remedies available to the Energy Commission, the University will not receive payment.

It is understood and agreed that this Section shall survive the completion or termination date of this Agreement for any reason.

7. Default disclaimer on publications.

Exhibit C, section 16.C is replaced in its entirety by the following:

C. At the State's sole discretion, the State will require the University to use one or more of the following disclaimers in any publication, presentation or other public release:

- 1) "This project was funded by the California Energy Commission. The contents may not necessarily reflect the official views or policies of the State of California."
- 2) "**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."

Unless otherwise directed in writing by the State's Contract Project Manager, the University shall use the disclaimer in Section 6.C.1 above.

It is understood and agreed that this Section shall survive the completion or termination date of this Agreement for any reason.

8. Match Funds

If the Agreement budget includes a Match Funds requirement, University's commitment of resources, as described in this Agreement, is a required expenditure for receipt of Energy Commission funds. Agreement funds will be released only if the Match Funds are expended according to the Budget. University must maintain accounting records detailing the expenditure of the Match Funds (actual cash and in-kind services) and provide a Match Funds Report as required in Exhibit A1.

9. Additional Subaward Flow-Down Terms

Exhibit C, section 11.A is replaced in its entirety as follows:

- A. The University will perform the work contemplated with resources available within its own organization and no portion of the work shall be subawarded except for Subawards expressly identified in the proposal, the Scope of Work or the Budget, or any amendments to the foregoing. The University will incorporate into any Subaward for work identified in this Agreement all provisions and Exhibits in this Agreement applicable to the particular Subawardee, including, but not limited to the following:
  - 1) Conflict of Interest
  - 2) Confidential Information
  - 3) Budget Contingency

- 4) Patents (if applicable)
- 5) Copyrights (if applicable)
- 6) Data Rights (if applicable)
- 7) Audits
- 8) Invoicing and Payment
- 9) Indemnification
- 10) Exhibit G and any other Exhibits in this Agreement; and
- 11) Any other provisions required by statute, regulation or source of funds applicable to this Agreement.

#### 10. Notification of Important Occurrences

The University shall promptly notify the Energy Commission of the occurrence of any of the following connected with or affecting the project:

- A. A requested change of project location.
- B. The existence of any litigation or other legal proceeding affecting the project.
- C. The occurrence of any casualty or other loss to project personnel, Equipment or third parties.
- D. Receipt of notice of any claim or potential claim against University for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the Energy Commission's rights.

#### 11. Incorporation of Application and Solicitation

If this Agreement resulted from an Energy Commission competitive solicitation, University's submitted material in response to the solicitation (Application), and the solicitation itself are incorporated by reference into this Agreement. In the event of a conflict between the University's Application, the solicitation and this Agreement, all provisions in this Agreement, including this Exhibit G, shall take precedence.

#### 12. Definitions – the following additional definitions are added to Section 1 of Exhibit C.

- A. **California Based Entity (CBE)** is a corporation or other business form organized for the transaction of business that either:
  - Has its headquarters in California AND manufactures in California the product that is the subject of the award; OR
  - Has an office for the transaction of business in California AND substantially manufactures the product or substantially performs the research within California that is the subject of the award.
- B. **California Energy Commission, Energy Commission,** or just **Commission** means the State Energy Resources Conservation and Development Commission.
- C. **Funds Spent in California** means: (1) Funds under the "Direct Labor" category and all categories calculated based on direct labor (Prime and Subcontractor Labor Rates) are paid to individuals who pay California state income taxes on wages received for work performed under the agreement; and (2) Business transactions (e.g., material and equipment purchases, leases, rentals, and contractual work) are entered into with a business located in California. For funds not considered "spent in California," please refer to the definition stated in the associated solicitation under which this agreement was awarded.
- D. **Licensed Product** means any product commercialized by a Licensee that embodies or utilizes Project Data, a Subject Invention, or copyrightable work.
- E. **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.

- F. **Match Funds** means cash or in-kind (non-cash) contributions shown in the approved budget, Exhibit B, and provided by University, Subawardee, or other parties that will be used in performance of this Agreement.
- G. **Match Fund Partner** means an entity providing Match Funds that does not receive any Commission funds.
- H. **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.
- I. **Net Royalties** means gross licensing income, including royalties and fees, received by University from a Licensee as consideration for commercially licensing any Subject Invention, copyrightable work, or Project Data, less the following:
- 1) Legal or other direct expenses (that are not otherwise reimbursed under an option or license agreement from a third party) of patenting, protecting and preserving patent, copyright and related property rights, maintaining patents and other such costs, taxes, or reimbursements as may be necessary or required by law, except patent infringement expenses;
  - 2) Inventor or author shares in accordance with University's, patent or copyright policy; and
  - 3) Direct expenses include operating expenses of University which are customarily reimbursed by royalty payments.
- Net Royalties do not include any payments to joint holders nor research funding accepted by University 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.
- J. **Ownership** means exclusive possession and control of all rights to property, including the right to use and transfer property.
- K. **Sale** means the act of selling, leasing or otherwise transferring, providing, or furnishing for use for any consideration.
- L. **Sell** means to make or cause to be made a Sale.
- M. **Sold** means to have made or caused to be made a Sale.
- N. **Sales Price** means the price at which Licensed Product is sold, excluding sales tax.
- O. **Subject Invention** means any patentable invention or discovery that is either:
- 1) 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;
  - 2) 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; or
  - 3) 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.

**License to the State of California Attachment**

**Invention Title:** \_\_\_\_\_

**Inventor(s):** \_\_\_\_\_

**Patent or Application Serial No.:** \_\_\_\_\_ **US Filing/Issue Date:** \_\_\_\_\_

**Grant/Contract Identification Number(s):** \_\_\_\_\_

**Foreign Application filed/intended in (countries):** \_\_\_\_\_

The invention identified above is a Subject Invention under the Patent Rights – University clause which is included among the terms of the above-identified grant/contract award from the State of California. Subject to the requirements of federal funds, if any, this document is confirmatory of:

1. The nonexclusive, sublicensable, irrevocable, paid-up license to practice or have practiced for government purposes the invention described in any patent application and in any and all divisions and continuations, and in any and all patents and re-issues granted thereon throughout the world; and
2. All other rights acquired by the State by reason of the above identified grant/contract award and the laws and regulations which are applicable to the award.

The State is hereby granted the power to inspect and make copies of the above-identified patent application.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

By \_\_\_\_\_

Name and Title \_\_\_\_\_

For \_\_\_\_\_  
(Organization)

At \_\_\_\_\_

\_\_\_\_\_  
(Business Address)