

b. Accounting Procedures

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

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

c. Audit Rights

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

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

The Contractor will allow the auditor(s) to access such records during normal business hours, and will allow interviews of any employees who might reasonably have information related to such records. The Contractor will include a similar right of the state to audit records and interview staff in any subcontract related to the performance of this Agreement.

d. Refund to the Energy Commission

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

e. Audit Cost

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

f. Match or Cost Share

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

15. Workers' Compensation Insurance

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

16. Permits and Clearances

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

17. Equipment

a. Title and Disposition

The Energy Commission has title to equipment acquired by the Contractor with Agreement funds. The Contractor may not sell, lease, or encumber the property (i.e., place a legal burden on the property such as a lien) without the Commission Agreement Manager's prior written approval.

Upon termination of the Agreement, the Energy Commission may:

- 1) Authorize the continued use of the equipment to further project goals;
- 2) Allow the Contractor to purchase the equipment for an amount that does not exceed its residual value as of the Agreement's end date; or
- 3) Request delivery of the equipment to the Energy Commission at the Commission's expense.

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

b. Financing Statement

The Commission Agreement Officer will file a Uniform Commercial Code (UCC.1) Financing Statement with the California Secretary of State's Office for equipment purchased with Agreement funds. Invoices for such equipment will not be processed until the statement has been filed.

c. Liability

The Contractor will assume all risk for maintenance, repair, destruction, and damage to the equipment while it is in the Contractor's possession or is subject to its control. The Contractor is not required to repair or replace equipment that is intended as part of the project to undergo significant modification or testing to the point of damage or destruction.

18. Conflicts of Interest

See Exhibit G.

19. Disputes

In the event of an Agreement dispute or grievance between the Contractor and the Energy Commission, both parties may follow the procedure detailed below. The Contractor will continue with its responsibilities under this Agreement during any dispute.

a. Commission Agreement Manager/Commission Agreement Officer

- The Contractor must first discuss the problem informally with the Commission Agreement Manager.
- If the problem cannot be resolved at this stage, the Contractor must submit a Contractor Dispute Statement, along with any evidence, to the Commission Agreement Officer. The statement must include: (1) a summary of the issues in dispute; (2) the legal authority or other basis for the Contractor's position; and (3) the remedy sought.

b. Commission Agreement Officer/Commission Agreement Manager/Program Branch Manager

- The Commission Agreement Officer, the Commission Agreement Manager, and the Program Branch Manager must make a determination on the problem within ten (10) working days of receipt of the Contractor's Dispute Statement.
- The Commission Agreement Officer will submit a Dispute Finding to the Contractor that includes: (1) a decision; and (2) an explanation of the decision.
- The Contractor may appeal to the Commission's Executive Director if it disagrees with the Commission Agreement Officer's decision.

c. Executive Director

- The Contractor must submit an Appeal to the Commission's Executive Director within ten (10) working days of receipt of the Commission Agreement Officer's Dispute Finding. The Appeal must explain why the Commission Agreement Officer's decision is unacceptable. The Contractor must include the following as attachments to the Appeal: (1) the Contractor Dispute Statement; (2) any supporting documents; and (3) the Dispute Finding.
- The Executive Director or his/her designee will meet with the Contractor to review the issues raised.
- A written decision signed by the Executive Director or his/her designee will be sent to the Contractor within twenty (20) working days of receipt of the Appeal. The Executive Director may exercise the option of presenting the decision to the Commission at a business meeting.
- If the Contractor disagrees with the Executive Director's decision, it may appeal to the Commission at a regularly scheduled business meeting. The Commission Agreement Officer will inform the Contractor of the procedure for placing the appeal on a Commission Business Meeting Agenda.

20. Stop Work

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

- a. Compliance. Upon receipt of a stop work order, the Contractor must immediately take all necessary steps to comply with the order and to minimize the incurrence of costs allocable to the work stopped.
- b. Equitable Adjustment. The Energy Commission will make an equitable adjustment based upon a written request from the Contractor. The Contractor must make the adjustment request within thirty (30) days from the date of the stop work order.
- c. Canceling a Stop Work Order. The Contractor may resume the work only upon receipt of written instructions from the Commission Agreement Officer.

21. Termination

a. Purpose

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

b. Breach

The Energy Commission will provide the Contractor written notice of intent to terminate due to the Contractor's breach. The Contractor will have fifteen (15) calendar days to fully perform or cure the breach. If the Contractor does not cure the breach within fifteen (15) days, the Energy Commission may, without prejudice to any of its other remedies, terminate this Agreement upon five (5) calendar days written notice to the Contractor. In this event, the Energy Commission will pay the Contractor only the reasonable value of the services performed satisfactorily by the Contractor before the notice of termination, as may be agreed upon by the parties or determined by a court of law, but not to exceed the maximum payable Agreement amount.

c. For Cause

The Energy Commission may, for cause, terminate this Agreement upon giving thirty (30) calendar days advance written notice to the Contractor. In this event, the Contractor will use all reasonable efforts to mitigate its expenses and obligations. The Energy Commission will pay the Contractor for any services rendered and expenses incurred within thirty (30) days after notice of termination that the Contractor could not have avoided by reasonable efforts, in an amount not to exceed the maximum payable Agreement amount. The Contractor will relinquish possession of equipment purchased for this Agreement with Energy Commission funds to the Commission, or the Contractor may purchase the equipment as provided by the terms of this Agreement, with approval of the Energy Commission.

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

- Partial or complete loss of match funds;
- Reorganization to a business entity unsatisfactory to the Energy Commission;
- Retention or hiring of subcontractors, or replacement or addition of personnel, that fail to perform to the standards and requirements of this Agreement;

- The Contractor's inability to pay its debts as they become due and/or the Contractor's default of an obligation that impacts its ability to perform under this Agreement; or
- Significant change in state or Energy Commission policy such that the work or product being funded would not be supported by the Commission.

d. Without Cause

The Energy Commission may terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance written notice to the Contractor. In this event, the Contractor will use all reasonable efforts to mitigate its expenses and obligations. Also, the Energy Commission will pay the Contractor for all satisfactory services rendered and expenses incurred within thirty (30) calendar days after notice of termination that the Contractor could not avoid by reasonable efforts, in an amount not to exceed the maximum payable under this Agreement.

22. Indemnification

To the extent allowed under California law, the Contractor will indemnify, defend, and hold harmless the state (including the Energy Commission) and state officers, agents, and employees from any and all claims and losses in connection with this Agreement.

23. Confidentiality

a. Identification of Confidential Information

- 1) Prior to the effective date of this Agreement, the Contractor will identify all deliverables (or information contained within deliverables) that it considers to be confidential, in addition to the legal basis for confidentiality, in Attachment 2 to this Exhibit. If the Energy Commission agrees that the information is confidential, it will not disclose it except as provided in subsection (b).
- 2) During the Agreement, if the Contractor develops additional deliverables (or information contained within deliverables) not originally anticipated as confidential, it will follow the procedures for a request for designation of confidential information specified in Title 20 California Code of Regulations (CCR) Section 2505.

The Energy Commission's Executive Director will make the confidentiality determination. Following this determination, the confidential information must be added to Attachment 1 through an amendment (see the "Amendments" section). The Energy Commission will not disclose information subject to an application for confidential designation except as provided in subsection (b).

- 3) When submitting deliverables 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 Contracts, Grants, and Loans Office.

The Commission Agreement Manger may require the Contractor to submit a non-confidential version of the deliverable, 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

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

c. Waiver of Consequential Damages

In no event will the Energy Commission, the California Public Utilities Commission, or the state of California be liable for any special, incidental, or consequential damages based on breach of warranty, breach of contract, negligence, strict tort, or any other legal theory for the disclosure of the Contractor's confidential information, even if the Commission has been advised of the possibility of such damages.

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

d. Limitations on the Contractor's Disclosure of Deliverables

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

24. Pre-Existing and Independently Funded Intellectual Property

a. Ownership

The Energy Commission makes no ownership, license, or royalty claims to pre-existing intellectual property, independently funded intellectual property, or project-relevant pre-existing or independently funded intellectual property. **"Ownership"** means exclusive possession and control of all rights to property, including the right to use and transfer property. Intellectual property licenses are discussed in Section 25.

- 1) **"Pre-existing intellectual property"** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes,

techniques, works of authorship, trademarks, service marks, and logos that the 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 (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.

- 2) **“Independently funded intellectual property”** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice by the Contractor or a third party during or after the Agreement term without Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.

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

- 3) **“Project-relevant pre-existing intellectual property”** and **“project-relevant independently funded intellectual property”** mean pre-existing and independently funded intellectual property used to support a premise, postulate, or conclusion referred to or expressed in any deliverable under this Agreement.

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

1) Identification of Property

- a) The Contractor will identify all project-relevant pre-existing intellectual property in Attachment 1 to this Exhibit prior to the effective date of the Agreement, or within sixty (60) days of becoming aware that the property has been or will be used to support a premise, postulate, or conclusion referred to or expressed in any deliverable under this Agreement. Attachment 1 must be amended by an amendment (see the “Amendments” section).
- b) The Contractor will identify all project-relevant independently funded intellectual property and the source of funding for the property in Attachment 1 to this Exhibit within sixty (60) days of becoming aware that the property has been or will be used to support a premise, postulate, or conclusion referred to or expressed in any deliverable under this Agreement.
- c) Failure to identify project-relevant pre-existing or independently funded intellectual property in Attachment 1 to this Exhibit may result in the property’s designation as “intellectual property” that is subject to licenses, as described in Section 25.

2) Access to Property

The extent of Energy Commission access to project-relevant pre-existing and independently funded intellectual property is limited to that reasonably necessary to: (a) demonstrate the validity of any premise, postulate, or conclusion referred to or expressed in any deliverable; or (b) establish a baseline for repayment purposes.

The California Public Utilities Commission has the same access rights as the Energy Commission to project-relevant pre-existing and independently funded intellectual property that is used to support a premise, postulate, or conclusion referred to or expressed in any deliverable funded in whole or in part by EPIC or Gas R&D under this Agreement.

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 California Public Utilities Commission, if applicable) with access to review the Contractor's project-relevant pre-existing and independently funded intellectual property. If the property has been designated as confidential as specified in Section 23, the Energy Commission will only disclose it under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508.

3) Preservation of Property

The Contractor will preserve any project-relevant pre-existing or independently funded intellectual property at its own expense for at least ten (10) years from the Agreement's end date, unless the Contractor agrees to a longer retention period.

The Energy Commission will have reasonable access to the project-relevant pre-existing or independently funded property throughout the retention period. The California Public Utilities Commission has the same access rights as the Energy Commission to property used to support a premise, postulate, or conclusion referred to or expressed in any deliverable funded in whole or in part by EPIC or Gas R&D under this Agreement.

25. Intellectual Property

- a. **"Intellectual property"** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice with Agreement or match funds during or after the Agreement term; (b) any associated proprietary rights to these items, such as patent and copyright; and (c) any upgrades or revisions to these items.
- b. Rights in Deliverables First Produced Under Contract
 1. "Deliverable" means any tangible item specified for delivery to the Energy Commission in the Scope of Work first produced or composed by Contractor or Subcontractors under this Contract and specified for delivery to the Energy Commission under this Contract or a work authorization shall become the property of the Energy Commission. The Energy Commission may use, modify, translate, publish, reproduce, display, disseminate and dispose of these deliverables. The preparation of deliverables by Contractor or Subcontractors shall be considered work for hire for copyright purposes. To the extent the preparation of deliverables under this Contract is not considered work for hire under federal law, Contractor, for itself and on behalf of its Subcontractors, hereby assigns all rights and interests in said deliverables, including any and all copyrights and rights of reproduction to works of fine art pursuant to state law, to the Energy Commission. Contractor shall secure the necessary assignments from its Subcontractors or other third parties to effectuate the transfer of others' rights and interests to the Energy Commission.

2. The Contractor is hereby granted a license to use, modify, translate, republish, reproduce, display and disseminate any deliverables, excluding reports, first produced or composed under this Contract or a work authorization for the limited purposes of furthering the energy efficiency education activities of this Contract and in accordance with the requirements of this Contract. In consideration for the Energy Commission's funding under this Contract, neither the Contractor nor any Subcontractor/third party shall use any deliverable first produced under the Contract, or the underlying copyrights therein, in a manner that is inconsistent with or contrary to the purpose, goals, or spirit of the activities of this Contract.

3. Contractor, by signing this Contract, expressly conveys to the Energy Commission all ownership of the physical works of art and fine art produced under this Contract pursuant to state law. Contractor agrees it does not reserve any rights to the physical works of art and fine art produced under this Contract.

d. Contractor-Owned Intellectual Property Licenses

1) If the contractor-owned intellectual property is funded in whole or in part by EPIC, both the Energy Commission and the California Public Utilities Commission have a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce the intellectual property for governmental purposes.

If the contractor-owned intellectual property is funded exclusively by Gas R&D or ERPA, only the Energy Commission has the license described above. Energy Commission and California Public Utilities Commission licenses are transferable only to load-serving entities for the purpose described below.

2) If the contractor-owned intellectual property is funded in whole or in part by EPIC, both the Energy Commission and the California Public Utilities Commission may grant load-serving entities a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce the intellectual property to enhance the entities' service to EPIC ratepayers. "Load-serving entity" means a company or other organization that provides electricity to EPIC ratepayers.

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

3) The Energy Commission may grant the Contractor a license to use, publish, translate, modify, and/or reproduce intellectual property. Such intellectual property will be identified in Attachment 1 to this Exhibit and will be designated as "**Contractor-licensed intellectual property.**"

4) If any intellectual property that is subject to the licenses above has been designated as confidential as specified in Section 23, all license holders will only disclose the intellectual property under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508.

All license holders will ensure that their officers, employees, and subcontractors who have access to the intellectual property are informed of and abide by the disclosure limitations in Section 23.

e. Energy Commission's Rights to Inventions

"Invention" means contractor-owned intellectual property that is patentable.

1) March-In Rights

At the Energy Commission's request, the Contractor will forfeit and assign to the Energy Commission all rights to any invention (with the exception of U.S. Department of Energy reserved rights) if the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the invention. The Energy Commission will have the unfettered right to use and/or dispose of the rights in whatever manner it deems most suitable to help transfer the invention into the marketplace, including but not limited to seeking patent protection or licensing the invention.

2) Notice of Patent

If any patent is issued for an invention, the Contractor will send the Commission Agreement Manager 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 invention.

3) Legal Notice

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

"This invention was made with State of California support under California Energy Commission agreement number XXX-XX-XXX. The Energy Commission has certain rights to this invention."

f. Access to and Preservation of Contractor-Owned Intellectual Property

1) Access to Intellectual Property

Upon the Commission Agreement Manager's request, the Contractor will provide the Commission Agreement Manager and any individuals designated by the Energy Commission with access to contractor-owned intellectual property in order to exercise the license and march-in rights described above. .

If the contractor-owned intellectual property is funded in whole or in part by EPIC or Gas R&D, the Contractor will provide the California Public Utilities Commission with the same access rights as the Energy Commission.

2) Preservation of Intellectual Property

The Contractor will preserve intellectual property at its own expense for at least ten (10) years from the Agreement's end date, unless the Contractor agrees to a longer retention period.

g. Software

In the event software is developed that is funded directly or indirectly by this Contract but is not a deliverable under the Contract or a work authorization, and Contractor copyrights and/or patents such software, Contractor shall notify the Energy Commission in writing of said software and grant the Energy Commission and the California Public Utility Commission a royalty-free, paid-up, no-cost, non-exclusive, irrevocable, nontransferable, worldwide, perpetual license to use, modify, translate,

republish, reproduce, display, disseminate and dispose of the software for governmental purposes.

h. Intellectual Property Indemnity

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

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

26. General Provisions

a. Governing Law

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

b. Independent Capacity

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

c. Assignment

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

d. Timeliness

Time is of the essence in this Agreement.

e. Severability

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

f. Waiver

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

g. Assurances

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

h. Change in Business

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

i. Access to Sites and Records

Energy Commission staff and representatives will have reasonable access to all project sites and records related to this Agreement. California Public Utilities Commission staff and representatives will have reasonable access to all project sites and records related to the EPIC and Gas R&D-funded work completed under this Agreement.

j. Prior Dealings, Custom, or Trade Usage

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

k. Survival of Terms

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

- Legal Statements on Deliverables (included in Section 6, "Deliverables")
- Payment of Funds (Section 10)
- Recordkeeping, Cost Accounting, and Auditing (Section 14)
- Equipment (Section 17)
- Disputes (Section 19)
- Termination (Section 21)
- Indemnification (Section 22)
- Pre-Existing and Independently Funded Intellectual Property (Section 24)

- Intellectual Property (Section 25)
- Change in Business (see this section)
- Access to Sites and Records (see this section)

27. Certifications and Compliance

a. Federal, State, and Local Laws

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

b. General Terms and Conditions

The Contractor will comply with all state general terms and conditions incorporated by reference in Exhibit C, including the Contractor Certification Clauses (CCC 307).

28. Executive Order N-6-22 Russia Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the CEC determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement. The CEC shall provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination of this Agreement shall be at the sole discretion of the CEC.

If the CEC determines a subcontractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of the subcontract. Contractor shall provide subcontractor advance written notice of such termination, allowing subcontractor at least 30 calendar days to provide a written response. Termination of the subcontract shall be at the sole discretion of the CEC.

The rights and remedies in this section are in addition to, and do not prevent the CEC from utilizing, any other rights and remedies available to the CEC.

29. Definitions

- **Agreement Term** means the length of this Agreement, as specified on the Agreement signature page (form STD 213).
- **Budget Reallocation** means the movement of funds between tasks identified in the budget (Exhibit B).
- **Confidential Information** means information that the Contractor has satisfactorily identified as confidential in Attachment 1 to this Exhibit and that the Energy Commission has agreed to designate as confidential under Title 20 California Code of Regulations Section 2505.
- **Contractor-Licensed Intellectual Property** means intellectual property licensed from the Energy Commission to the Contractor. Contractor-licensed intellectual property must be identified in Attachment 1 to this Exhibit.

- **Contractor-Owned Intellectual Property** means intellectual property that is owned by the Contractor, with the Energy Commission's permission. Contractor-owned intellectual property must be identified in Attachment 1, Section 4 of this Exhibit.
- **Data** means any recorded information that relates to the project funded by the Agreement, whether created or collected before or after the Agreement's effective date.
- **Deliverable** means any tangible item specified for delivery to the Energy Commission in the Scope of Work.
- **Disabled Veteran Business Enterprise (DVBE)** means a business that is certified by the California Department of General Services as meeting the requirements of California Military and Veterans Code Section 999(b)(7).
- **Effective Date** means the date on which this Agreement has been signed by the last party required to sign, provided that the Agreement has been approved by the Energy Commission at a business meeting (or by the Executive Director or his/her designee), and by the California Department of General Services.
- **EPIC** means the Electric Program Investment Charge, an electricity ratepayer-funded surcharge authorized by the California Public Utilities Commission in December 2011.
- **Equipment** means products, objects, machinery, apparatus, implements, or tools that are purchased or constructed with Energy Commission funds for the project, and that have a useful life of at least one year and an acquisition unit cost of at least \$5,000. "Equipment" includes products, objects, machinery, apparatus, implements, or tools that are composed by over thirty percent (30%) of materials purchased for the project. For purposes of determining depreciated value of equipment used in the Agreement, the project will terminate at the end of the normal useful life of the equipment purchased and/or developed with Energy Commission funds. The Energy Commission may determine the normal useful life of the equipment.
- **Independently Funded Intellectual Property** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice by the Contractor or a third party during or after the Agreement term without Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.

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

- **Load-serving entity** means a company or other organization that provides electricity to EPIC ratepayers.
- **Match Funds** means cash or in-kind (i.e., non-cash) contributions provided by the Contractor or a third party for a project funded by the Energy Commission. If this Agreement resulted from a solicitation, refer to the solicitation's discussion of match funding for guidelines specific to the project.
- **Materials** means the substances used to construct a finished object, commodity, device, article, or product, such as equipment.
- **Ownership** means exclusive possession of all rights to property, including the right to use and transfer property.
- **Pre-existing Intellectual Property** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that the 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 (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.
- **Project means the** entire effort undertaken and planned by the Contractor and consisting of the work funded by the Energy Commission. The project may coincide with or extend beyond the Agreement term.
- **Project-Relevant Pre-existing Intellectual Property and Project-Relevant Independently Funded Intellectual Property** mean pre-existing and independently funded intellectual property used to support a premise, postulate, or conclusion referred to or expressed in any deliverable under this Agreement.
- **State** means the state of California and all California state agencies within it, including but not limited to commissions, boards, offices, and departments.
- **Work Authorization** means a contract that supplements the Scope of Work and budget of an existing contract that is broadly drafted to meet the Energy Commission's future, undetermined needs.

EXHIBIT E
INFORMATION PRACTICES ACT
SPECIAL TERMS AND CONDITIONS

1. Priority of these Special Terms

In the event of a conflict between these Special Terms and other terms in this Agreement, these Special Terms shall govern.

2. Contractor and All Subcontractors shall comply with the Information Practices Act

The Information Practices Act (“IPA”) is codified at California Civil Code sections 1798 et seq. Personal Information is defined in the IPA at Civil Code section 1798.3(a). **<Insert Contractor Name>** (“Contractor”), shall comply and ensure that all of its subcontractors and project partners shall comply with the IPA relative to the activities under this Agreement. This includes but is not limited to complying with Section 1798.16 (Personal Information; maintaining sources of information) and Section 1798.17 (Notice; periodic provision; contents). For example:

- A. Sources of information. Contractor, and Contractor’s subcontractors and project partners, shall maintain a record of the source of an individual’s Personal Information in accordance with § 1798.16. Per IPA § 1798.16, this requirement does not apply if the data subject is the source of the Personal Information.
- B. Use of information. Pursuant to IPA § 1798.14, the Contractor, and Contractor’s subcontractors and project partners shall only use Personal Information for the purposes of this Agreement. Contractor, and Contractor’s subcontractors and project partners shall not disclose any Personal Information to any person or entity other than the Energy Commission and Energy Commission employees.
- C. Security. Pursuant to IPA § 1798.21, Contractor, and Contractor’s subcontractors and project partners, shall employ appropriate and reasonable safeguards to ensure the security and confidentiality of Personal Information and to protect against anticipated threats or hazards to their security or integrity which could result in any injury.
- D. Notice. On or with any form used to collect Personal Information from individuals, the Contractor, and Contractor’s subcontractors and project partners, shall provide the notice required in § 1798.17. At the time of executing this agreement, § 1798.17 requires the following:
 - (a) The name of the agency and the division within the agency that is requesting the information.
 - (b) The title, business address, and telephone number of the agency official who is responsible for the system of records and who shall, upon request, inform an individual regarding the location of his or her records and the categories of any persons who use the information in those records.
 - (c) The authority, whether granted by statute, regulation, or executive order which authorizes the maintenance of the information.
 - (d) With respect to each item of information, whether submission of such information is mandatory or voluntary.
 - (e) The consequences, if any, of not providing all or any part of the requested information.

(f) The principal purpose or purposes within the agency for which the information is to be used.

(g) Any known or foreseeable disclosures which may be made of the information pursuant to subdivision (e) or (f) of Section 1798.24.

(h) The individual's right of access to records containing personal information which are maintained by the agency.

3. Contractor has no Ownership or other Rights to the Personal Information

The Contractor has, and the Contractor shall ensure that its subcontractors and project partners have, no ownership, license, or other rights in Personal Information or in any form in which it is used (e.g., Products). In this regard, the Personal Information shall NOT be treated like Data, Products, Intellectual Property, or other provisions in the Agreement that may indicate that Contractor has ownership, license, or other rights.

4. Rights to Anonymized Information Derived from Personal Information

To the extent that the Contractor uses Personal Information to derive anonymized information that no longer meets the definition of Personal Information, the rights to derived anonymized information follow the rights in Exhibit C. For example, if the Contractor uses Personal Information to derive anonymized figures that are included in a Product, and the Product contains no Personal Information, the rights to the Product flow from Exhibit C, Section 5, like they do for all other Products.

5. Retention and Destruction of Personal Information

Upon the request of the Energy Commission, or upon termination of this Agreement, whichever is earlier, the Contractor and all subcontractors and project partners shall promptly deliver to the Energy Commission or destroy all Personal Information, regardless of form (e.g., written or electronic) and all copies, abstracts, media, and backups thereof, however stored in Contractor's and all of its subcontractors' and project partners' possession. No Personal Information shall remain with Contractor, its subcontractors, or its project partners upon request of the Energy Commission or after the termination of this Agreement, whichever occurs first.

6. Survival

The terms of this Exhibit shall remain in full force and effect in perpetuity.

7. Flow-down

The Contractor shall flow-down the terms in this Exhibit to its subcontractors and project partners.

EXHIBIT F Agreement Contacts

<p>Commission Agreement Manager: <i>(For Progress Reports and Non-Confidential Deliverables)</i></p> <p>(Name) California Energy Commission 715 P Street, MS- Sacramento, CA 95814 Phone: (916) XXX-XXXX email: @energy.ca.gov</p>	<p>Contractor Project Manager:</p> <p>(Name) (Contractor Name) (Address) Phone: (xxx) email:</p>
<p>Confidential Deliverables:</p> <p>Email a request to submit Confidential Products to: CGLfiles@energy.ca.gov</p> <p>Subject line should read:</p> <p style="text-align: center;"><i>Request to Submit Confidential Products: [Recipient Name and CEC Agreement]</i></p>	<p>Contractor Administrator/Officer:</p> <p>(Name) (Contractor Name) (Address) Phone: (xxx) xxx-xxxx email:</p>
<p>Invoices:</p> <p>Email PDF of Payment Request invoice packet to: invoices@energy.ca.gov</p>	<p>Accounting Officer:</p> <p>(Name) (Contractor Name) (Address) Phone: (xxx) xxx-xxxx email:</p>
<p>Commission Legal Notices:</p> <p>Adrienne Winuk, Manager California Energy Commission Contracts, Grants and Loans Office 715 P Street, MS-18 Sacramento, CA 95814 Phone: (916) 891-8629 email: adrienne.winuk@energy.ca.gov</p>	<p>Legal Notices:</p> <p>(Name) (Title) (Business Name) (Address) Phone: (xxx) xxx-xxxx email:</p>

EXHIBIT G Conflict of Interest

These Special Terms and Conditions prevail over any conflicting terms in this Agreement _____ [CAO enter Agreement number XXX-XX-XXX], “_____” [CAO enter Agreement title], (Agreement) between _____ [CAO enter Contractor’s name] (Contractor) and the California Energy Commission (Energy Commission), of which this Exhibit is a part, including the General Terms and Conditions.

1. Applicability of Laws and Definitions.
 - a. Contractor agrees that California conflict of interest laws, including but not limited to Government Code sections 81000 *et seq.* and 1090 *et seq.*, apply to Contractor, its subcontractors and project partners, and their employees under this Agreement.
 - b. The term “subcontractor” in this Exhibit G means not only the direct subcontractors to Contractor but also any lower tier level of subcontractor (e.g., sub-subcontractors, sub-sub-subcontractors, etc.).
 - c. Unless specifically otherwise provided, the term “employees” or “their employees” as used in this Exhibit G, means the employees of the Contractor, subcontractors, and project partners.
 - d. The phrase “working under this Agreement” and similar phrases in this Exhibit G include work by Contractor, subcontractors, project partners, and their employees.

2. Contractor’s Responsibility for Compliance. Contractor shall avoid, and shall ensure all subcontractors, project partners, and their employees avoid, all conflicts of interest in the performance of this Agreement. Contractor, subcontractors, project partners, and their employees are responsible for compliance with California conflict of interest laws, including but not limited to Government Code sections 81000 *et seq.* (Political Reform Act) and 1090 *et seq.*, as well as all other applicable laws, ordinances, regulations, and standards.
 - a. Contractor shall make subcontractors, project partners, and their employees aware of the provisions in the Political Reform Act and in this Exhibit, and shall enforce them. Contractor shall ensure that these provisions are included in all subcontracts and agreements with project partners, and shall enforce them.

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

 - c. Individuals Designated as Consultants. All employees working on Subtask 1.6 and Tasks 2 - 6 are “consultants” assigned to Disclosure Category 1. A description of the disclosure categories in Title 20 California Code of Regulations sections 2401 and 2402 is located at:
<https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=IC23FEB00D44E11DEA95CA4428EC25FA0>. Consultants are subject to the requirements and restrictions of the Political Reform Act,

and shall file an original Form 700 with the Energy Commission (See Government Code sections 82019 and 87302), except those employees working in strictly administrative job classifications. Contractor and the Commission Agreement Manager may work together to narrow the list of consultants as job duties are more specifically defined. The following job classifications are strictly administrative:

- i. Administrative Assistant
- ii. Clerical

Employees working only on strictly administrative tasks, including Task 1 excluding Subtask 1.6, is not consultants and do not need to file a Form 700 unless directed to do so by the Energy Commission.

- d. Contractor is responsible for having consultants complete Form 700s and Contractor is responsible for reviewing each Form 700 at multiple points: 1) within 30 business days from the date a consultant begins work under the Agreement; 2) at least every twelve months until the Agreement end date; and 3) within 30 days of the end date of the Agreement or after the consultant ends their work under the Agreement. These points of review will ensure that each employee, subcontractor, and project partner has considered their relationship with the Contractor and other project entities, as such entities are subject to change over the life of the project.
- e. Contractor is responsible for ensuring that consultants complete the online ethics training within six months of beginning work under this Agreement, and at least once every two years thereafter, as required by Government Code section 11146 *et seq.* The training is provided by the Fair Political Practices Commission and the California Office of the Attorney General and is available at <https://oag.ca.gov/ethics/course>. Contractor shall provide records to the Energy Commission Filing Officer indicating each consultant's name, job classification, and date of completion of the course.
- f. **Failure to file a Form 700, or failure to meet training requirements of Government Code 11146 *et seq.*, can result in automatic daily fines and other consequences.**

- 3. Reservation of Right to Require Form 700 from Any Employee. The Energy Commission reserves the right to require any individual working under this Agreement to file Form 700s.
- 4. Form 700. Each individual designated as a consultant under this Agreement (see section 2.c. of this exhibit), or other individual required by the Energy Commission to do so, shall file a Form 700. The Form 700 is available at <http://www.fppc.ca.gov/Form700.html>.
 - a. Form 700s shall be (i) submitted electronically through the AutoHR system at <https://autohr.energy.ca.gov/HRPortal>, or (ii) filed in person at, or mailed to, the following address (e-mails and faxes are not acceptable):
Energy Commission Filing Officer – Form 700 Filing

Selection & Equal Employment Opportunity Office
715 P St., MS-52
Sacramento, CA 95814

- b. A Form 700 must be filed at the times required under the Political Reform Act, which include the following:
 - i. Assuming Office Statement. Must be filed within 30 days of beginning work under the Agreement. Beginning work means when the employee actually performs work under the Agreement; it does not mean the start date of the Agreement unless the employee starts work on the start date.
 - ii. Annual Statement. Must be filed annually, no later than April 1.
 - iii. Leaving Office Statement. Must be filed within 30 days of ceasing to perform work under the Agreement (e.g., removed as a subcontractor, completion of assigned tasks) or within 30 days after the Agreement ends.
 - c. Failure to file the Form 700 when required can result in automatic daily fines and other consequences.**
 - d. When completing the Form 700, each consultant must disclose financial interests that fit within the disclosure categories assigned to them (see section 2.c. of this exhibit). A description of the disclosure categories is set forth in the Energy Commission's Conflict of Interest Code at Cal. Code Regs., tit. 20, § 2402.
5. Form 805. Contractor shall:
- a. Provide the CAM with a Fair Political Practices Commission Form 805, Agency Report of Consultant, within 5 days of the Agreement start date. Form 805 is available at: <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Agency%20Reports/805.pdf>.
 - i. The Contractor shall complete Section 2, Firm Information.
 - ii. Under Section 3, Consultant Information, the Contractor shall write the name, job classification and email address for every employee working on Subtask 1.6 and Tasks 2-6, along with the date that individual began work on the Agreement.
 - iii. The Contractor shall leave the remaining parts of the Form 805 blank.
 - b. Within 30 days of the Contractor's submittal of the Form 805, the CAM may return the completed Form 805 to the Contractor for use in completing the Form 700(s). In the event the Form 805 is not returned by the CAM to the Contractor before an individual's Assuming Office Form 700 is due, the individual shall report under the broadest disclosure of the Energy Commission's Conflict of Interest Code at Cal. Code Regs., tit. 20, § 2402 which is Category 1.
 - c. Submit to the CAM an amended Form 805 whenever a new consultant begins work under the Agreement, or whenever a consultant ceases to perform work under the Agreement, within 5 days after the consultant begins or ceases work.
6. Restrictions on Outside Work.

a. Prohibition on Participating in or Sharing Information about Energy Commission Funding Opportunities.

Under this Agreement, if the Contractor, subcontractors, or project partners assist the Energy Commission to develop agreements, develop competitive solicitations or score applications, then the Contractor, subcontractors, project partners, and their employees are prohibited from participating and agree not to participate (e.g., through development of an application, as an applicant, subcontractor, or match-fund partner), in any Energy Commission solicitation or other funding opportunity that solicits or includes work that is related to work done under this Agreement. Except with prior written permission of the CAM, the Contractor, subcontractors, project partners, and their employees shall not share any non-public information about applicants, applications, solicitations, other funding mechanisms, or any other non-public information related to Energy Commission funding opportunities with any other person or entity.

b. Contractor, Subcontractor and Project Partner Financial Interests.

The Contractor, subcontractors, project partners and their employees shall not negotiate, make arrangements, or enter into any other agreement or working relationship with an individual or entity who is interested in or is likely to be interested in EPIC or Gas R&D under this Agreement.

If such an agreement or working relationship began prior to and exists at the start of this Agreement, the Contractor, subcontractor, project partner, or their employees shall complete the agreement or working relationship as soon as possible. And during the pendency of the pre-existing relationship or working relationship, the Contractor, subcontractor, project partner, or their employees shall not provide advice or guidance to the individual or entity regarding EPIC or Gas R&D under this Agreement.

c. Restrictions Following Agreement Term.

All individuals identified as consultants are subject to restrictions of the Political Reform Act on post-governmental activity. Contractor shall ensure that all consultants are aware of these restrictions. Guidance published by the Fair Political Practices Commission on these restrictions can be found at: http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Public%20Officials%20and%20Employees/Leaving_State_Employment.pdf

7. Avoidance of Appearance of Conflict. Contractor acknowledges that in governmental contracting even the appearance- or perception- of a conflict of interest can be harmful to the interests of the State. Thus, Contractor agrees to refrain from, and shall ensure subcontractors, project partners, and their employees refrain from, any practices, activities, or relationships that appear to conflict with obligations under this Agreement. In the event Contractor is uncertain whether the appearance of a conflict of interest may exist, Contractor shall submit to the CAM a written description of the relevant details, and shall

avoid the activity in question until receiving written approval from the Energy Commission to carry out that activity.

8. Notification of Potential Problems. Contractor shall immediately inform the CAM of any potential problems in compliance with this Exhibit.
9. Flow-Down. Contractor shall flow-down the terms in this Exhibit to its subcontractors and project partners.
10. Section 8, Notification of Potential Problems, and to the extent applicable, all other terms in this Exhibit G survive the end of this Agreement.

Exhibit H

Confidential Products and Project-Relevant Pre-Existing and Independently Funded Intellectual Property

1. Instructions

Identification of Confidential Information

- **Prior to the effective date of the Agreement**, the Contractor must identify in Section 2 of this attachment any products (or information contained within products) that it considers to be confidential. If the Energy Commission agrees that the information is confidential, it will not disclose it except as provided in Section 23 (Confidentiality) of these terms and conditions.
- **During the Agreement**, if the Contractor develops additional information not originally anticipated as confidential, it must follow the procedures for a request for designation of confidential information specified in Title 20 California Code of Regulations (CCR) Section 2505.

The Energy Commission's Executive Director will make the confidentiality determination. Following this determination, the confidential information may be added to this attachment through a Letter of Agreement (see Section 6 (Amendments) and Attachment 2 (Sample Letter of Agreement)). The Energy Commission will not disclose information subject to an application for confidential designation except as provided in Section 23.

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

The Commission Agreement Manager may require the Contractor to submit a non-confidential version of the product, if it is feasible to separate the confidential information from the non-confidential information.

Identification of Project-Relevant Independently Funded and Pre-Existing Intellectual Property

- The Contractor must identify all project-relevant pre-existing intellectual property and project-relevant independently funded intellectual property in Section 3 of this attachment prior to the effective date of the Agreement, or within sixty (60) days of becoming aware that the property has been or will be used to support a premise, postulate, or conclusion referred to or expressed in any product under the Agreement. This attachment may be amended by a Letter of Agreement (see Section 7 (Amendments) and Attachment 2 (Sample Letter of Agreement)).
 - **"Project-relevant pre-existing intellectual property" and "project-relevant independently funded intellectual property"** mean pre-existing and independently funded intellectual property used to support a premise, postulate, or conclusion referred to or expressed in any product under the Agreement.

- **“Pre-existing intellectual property”** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that the 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 (b) associated proprietary rights to these items
- that are obtained without Energy Commission or match funds, such as patent and copyright.
- **“Independently funded intellectual property”** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice by the Contractor or a third party during or after the Agreement term without Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.

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

- **Failure to identify project-relevant pre-existing or independently funded intellectual property** in this attachment may result in the property’s designation as “intellectual property” that is subject to licenses, as described in Sections 25 (Intellectual Property).

2. Confidential Products and/or Confidential Information Contained within Products

The Energy Commission designates the following products (or information contained within products) as confidential, in accordance with Title 20 California Code of Regulations Section 2505(c)(2)(B).

Product name	NONE
Task/subtask number	
Information to be kept confidential	<input type="checkbox"/> Entire product
	<input type="checkbox"/> Selected information within product (<i>describe below; be as specific as possible</i>):
Legal basis for confidentiality designation	<input type="checkbox"/> California Public Records Act, located in California Government Code Sections 6250 et seq. (<i>identify the relevant section(s) and subsections(s) below</i>):
	<input type="checkbox"/> Other law (<i>identify below, including the relevant section(s) and subsections(s)</i>):
Term of confidentiality	MM-DD-YY to MM-DD-YY

Trade secrets only

Answer the following questions if the product/information described above is considered a trade secret (i.e., confidential business information that provides the business with a competitive advantage):

1. What is the nature of the competitive advantage provided by the product/information?
2. How would the competitive advantage be lost by disclosure? (generally describe the value of the product/information and the ease or difficulty with which it may be legitimately acquired or duplicated by others).

3. Project-Relevant Pre-Existing Intellectual Property and Project-Relevant Independently Funded Intellectual Property

The Contractor has identified the following items as “project-relevant pre-existing intellectual property” and/or “project-relevant independently funded intellectual property,” as defined in Sections 24 (Pre-Existing and Independently Funded Intellectual Property) and 29 (Definitions) of these terms and conditions. The Commission makes no ownership, license, or royalty claims to this property, and may only access it for the purposes described in Section 24.

Name/Title of Intellectual Property	NONE
Type of Intellectual Property	<input type="checkbox"/> Project-relevant pre-existing intellectual property <input type="checkbox"/> Project-relevant independently funded intellectual property
	<input type="checkbox"/> Invention <input type="checkbox"/> Process <input type="checkbox"/> Technology <input type="checkbox"/> Technique <input type="checkbox"/> Design <input type="checkbox"/> Work of Authorship <input type="checkbox"/> Drawing <input type="checkbox"/> Trademark/ Service mark <input type="checkbox"/> Data <input type="checkbox"/> Logo <input type="checkbox"/> Software <input type="checkbox"/> Formula
Registered or Pending Intellectual Property (i.e., copyrights, patents, or trademarks that are registered or pending with the U.S. Copyright Office or the U.S. Patent and Trademark Office)	<input type="checkbox"/> Copyright <input type="checkbox"/> Patent <input type="checkbox"/> Trademark/ Service mark Name of owner: Number and date: <i>For pending applications</i> Name of applicant: Application number and date:

Unregistered Intellectual Property	<input type="checkbox"/> Copyright <input type="checkbox"/> Trademark/ Service mark <input type="checkbox"/> Trade Secret Name of owner:
Description of how the property will be or has been used to support a premise, postulate, or conclusion referred to or expressed in any product under the Agreement	