

EXHIBIT C

GAS RESEARCH AND DEVELOPMENT STANDARD GRANT TERMS AND CONDITIONS

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

EXHIBIT C

TERMS AND CONDITIONS

1. INTRODUCTION

This grant agreement (Agreement) between the California Energy Commission (Energy Commission, Commission, or CEC) and the Recipient is funded by the Gas Research and Development Program (Gas R&D), a natural gas ratepayer surcharge authorized by the California Public Utilities Commission (CPUC).

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

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

2. DOCUMENTS INCORPORATED BY REFERENCE

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

Solicitation Documents (if award is made through a competitive solicitation)

- a. The funding solicitation for the project supported by this Agreement
- b. The Recipient's proposal submitted in response to the solicitation

CPUC Decision

- A. **DECISION 04-08-010 (DECISION ESTABLISHING A NATURAL GAS SURCHARGE)**

HTTP://DOCS.CPUC.CA.GOV/PUBLISHEDDOCS/WORD_PDF/FINAL_DECISION/39314.PDF

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

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

Federal Acquisition Regulations (*applicable to commercial organizations*)

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

Nondiscrimination

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

General Laws

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

3. STANDARD OF PERFORMANCE

In performing work under the Agreement, the Recipient, its Subrecipients, and any lower tiered level of Sub-Subrecipients, and Vendors, and their employees are responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures for the type of work performed.

4. DUE DILIGENCE

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

5. PRODUCTS

- a. **“Products”** are any tangible item specified for delivery to the CEC in the Scope of Work, such as reports and summaries.

If the CAM determines that a product is substandard given its description and intended use as described in this Agreement, the CAM, without prejudice to any of the CEC’s other remedies, may refuse to authorize payment for the product and any subsequent products that rely on or are based upon the product under this Agreement.

- b. Confidential Products

Please see Section 18 (Confidential Recipient Information) for instructions regarding confidential recipient information in products.

c. Rights in Products

The CEC owns all products identified in the Scope of Work, with the exception of products that fall within the definition of “intellectual property.” As between the CEC and the Recipient, the Recipient owns all intellectual property developed under this Agreement (please see the “Intellectual Property” section).

The Recipient has a non-exclusive, non-transferable, irrevocable, worldwide, perpetual license to use, publish, translate, modify, and reproduce products that do not fall within the definition of “intellectual property.”

d. Failure to Submit Products

A Recipient’s failure to submit a product required in the Scope of Work may be considered material noncompliance with the Agreement terms. Without prejudice to any other remedies, noncompliance may result in CEC actions such as the withholding of future payments or awards, or the suspension or termination of the Agreement.

e. Final Report and Payment

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

f. Legal Statements on Products

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

LEGAL NOTICE

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

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

“©[Year of first publication of product] [the Copyright Holder’s name]. All Rights Reserved.”

6. **AMENDMENTS**

a. Procedure for Requesting Changes

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

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

b. Approval of Changes

Unless otherwise allowed in this Agreement, no amendment or variation of this Agreement shall be valid unless made in writing and signed by both of the parties except for the CEC’s unilateral termination rights in Section 16 of these terms. No oral understanding or agreement is binding on any of the parties. Changes to the Agreement must be approved at a CEC business meeting or by the Executive Director (or his/her designee).

Upon Recipient’s request, the CAM or Commission Agreement Officer will provide the Recipient with a document titled “Changes to Grants – Level of Approval and Notification Chart” commonly referred to as the “Changes Chart.” This document explains the level of CEC approval required for a proposed change.

c. Personnel Changes

Except when replacing “key personnel,” the Recipient, Subrecipients, and any lower-tiered level of Sub-Subrecipient, and Vendors can make changes to their respective personnel without written approval. Although changes to “key personnel” do require written approval, that approval can be requested and granted through an email communication or other form of written communication.

Recipients may be reimbursed for actual expenses incurred by new “key personnel” during the term of the Agreement, even if written approval comes after an individual begins work on the project. However, if the replacement is not approved, then the CEC will not reimburse for any expenses charged for the individual. Accordingly, Recipients are strongly encouraged to obtain advance written approval for “key personnel” or risk not being reimbursed for their work.

Recipient must keep the CAM informed of personnel changes through monthly calls and quarterly progress reports. In addition to any other rights and remedies available to the CEC, the CEC retains its authority to issue a Stop Work Order if it becomes clear that the personnel, key or otherwise, of the Recipient, a Subrecipient, any lower-tiered level of Sub-Subrecipient, or Vendor are unable to fulfill their responsibilities under the Agreement. In addition to all other rights and remedies, the CEC shall not pay (or may require Recipient to repay if the CEC has already paid) for personnel who are unnecessary to complete the scope of work or otherwise perform under the Agreement.

d. Budget Reallocations

No CEC approval is needed for a Recipient, Subrecipient, or any lower-tiered level of Sub-Subrecipient to move funds **within** each of the following Budget Categories listed in Exhibit B: Direct Labor, Fringe Benefits, Travel, Equipment, Materials and Miscellaneous, Subrecipients and Vendors, and Indirect Costs. However, please note per parts e. and h., directly below in this Section 6, any new Materials and Miscellaneous, Equipment, Subrecipient, Sub-Subrecipient or any lower-tiered level of Sub-Subrecipient or Vendor not listed in the Exhibit B does need approval prior to reimbursement. If the Recipient wants to move funds between Budget Categories or submits an invoice that if paid would exceed a Budget Category, the Recipient has at least the following choices:

- 1) Request an amendment from the CEC. The CEC shall not pay the invoice if and until an amendment is executed. In its sole discretion, the CEC might pay the portion of the invoice that does not involve the amount that goes beyond the Budget Category.
- 2) Retract the invoice and resubmit a corrected one that keeps within Budget Categories. The Recipient can treat the amount paid beyond the Budget Category as match funds if the expenditure meets all of the applicable Agreement requirements for match funds.

Neither this nor any other flexibility in these terms for approval without executing an amendment allows the Recipient, Subrecipient, Sub-Subrecipient, any lower-tiered level of Sub-Subrecipient, or Vendor to exceed the overall Agreement amount.

e. New Items Under Materials and Miscellaneous, and Equipment

Without having to execute an amendment to this Agreement, the CAM must approve in writing of any new materials and miscellaneous expenses of \$5,000 or more or new equipment the Recipient, Subrecipient, any lower-tiered level of Sub-Subrecipient, or Vendor plans to purchase and be reimbursed under this Agreement that is not already listed in Exhibit B, Budget. To accomplish this, the Recipient can submit either prior to

invoicing or with its invoice a completed form titled “NEW EQUIPMENT/M&M FORM” which includes a description of the item and a brief explanation of the need for the item. The CAM will approve items that he or she determines to be necessary to the Agreement and do not exceed budgeted amounts for each Budget Category unless Recipient follows the process in this Section 6, part d. directly above.

Any restrictions in the solicitation or elsewhere in the Agreement still apply to the specific items under Materials and Miscellaneous, and Equipment that can be purchased using CEC Funds or Match Share Funds. The restrictions still apply even though a CAM does not have to approve new materials and miscellaneous expenses under \$5,000.

f. Assignment of New Personnel to a New or Existing Job Classification

The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can assign new personnel to a new or existing job classification without CEC approval. However, the Recipient shall keep the CAM informed of all personnel changes and provide any information requested by the CAM during monthly calls and/or quarterly progress reports.

g. Promotion of Existing Personnel to a New or Existing Job Classification

The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can promote existing personnel to a new or existing job classification without CEC approval. However, the Recipient shall keep the CAM informed of all personnel changes and provide any information requested by the CAM during monthly calls and/or quarterly progress reports. However, as stated in section 8.c. below, the CEC will not pay more than the total amount in each Budget Category, including Direct Labor, without an amendment.

h. Replacing Subrecipients or Vendors

Under these Terms, all changes of Subrecipients and Vendors require advance written approval by at least the CAM. A higher level of approval may be required based on CEC policy. Required approvals are included in the “Changes to Grants – Level of Approval and Notification Chart” commonly referred to as the “Changes Chart.”

Recipients may be reimbursed for actual expenses incurred by a new Vendor during the term of this Agreement, even if CEC written approval comes after the entity has completed work on the project. However, if the new Vendor is not approved by the CEC, the CEC will not reimburse for any expenses charged for the entity. Accordingly, Recipients are strongly encouraged to obtain **advance** written approval for new Vendors or risk not being reimbursed for their work.

However, any work completed by an entity that may replace an existing Subrecipient WILL NOT BE REIMBURSED for any work completed prior to advance written approval. If a Subrecipient expends funds prior to approval, they can only be claimed as Match Funds.

7. CONTRACTING AND PROCUREMENT PROCEDURES

This section provides general requirements for Subawards entered into between the Recipient and Subrecipients and Vendors for the performance of this Agreement.

a. Recipient's Obligations to Subrecipients and Vendors

- 1) The Recipient is responsible for handling all contractual and administrative issues arising out of or related to any Subawards it enters into for the performance of this Agreement.
- 2) Except for the "CEC as Third-Party Beneficiary" term (see section 22.m), nothing contained in this Agreement or otherwise creates any contractual relation between the CEC and any Subrecipients and Vendors, and no Subaward may relieve the Recipient of its responsibilities under this Agreement. The Recipient agrees to be as fully responsible to the CEC for the acts and omissions of its Subrecipients and Vendors or persons directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Recipient.

The Recipient's obligation to pay its Subrecipients and Vendors is an independent obligation from the CEC's obligation to make payments to the Recipient. As a result, the CEC has no obligation to pay or enforce the payment of any funds to any Subrecipient or Vendor.

- 3) The Recipient is responsible for establishing and maintaining Subawards with and reimbursing each Subrecipient and Vendor for work performed in accordance with the terms of this Agreement.
- 4) A Subrecipient is defined as a person or entity that receives grant funds directly from the Recipient and is entrusted by the Recipient to make decisions about how to conduct some of the Agreement's activities. A Subrecipient's role involves discretion over grant activities and is not merely just selling goods or services.

Characteristics that support the classification of the entity as a Subrecipient include when the entity:

- Has its performance measured in relation to whether objectives of a CEC program were met;

- Has responsibility for programmatic decision-making;
- Is responsible for adherence to applicable CEC program requirements specified in the CEC award agreement;
- In accordance with its agreement, uses the CEC funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the Recipient or Subrecipient; or,
- Provides match share funding contributions to this Agreement.

A Sub-Subrecipient has the same meaning as a Subrecipient except that it receives grant funds from a Subrecipient. There can also be further levels below of Sub-Subrecipients.

5) A Vendor is defined as a person or entity that sells goods or services to the Recipient, Subrecipient, or any lower-tiered level of Sub-Subrecipient, in exchange for some of the grant funds, and does not make decisions about how to perform the Agreement's activities. The Vendor's role is ministerial and does not involve discretion over Agreement activities. A Vendor is an entity selected through a competitive process or is otherwise providing a product or service at a fair and reasonable price. Characteristics indicative of a procurement relationship between the Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient and a Vendor are when the Vendor:

- Provides the goods and services within normal business operations;
- Provides similar goods or services to many different purchasers;
- Normally operates in a competitive environment;
- Provides goods or services that are ancillary to the operation of the CEC program; and
- May not be subject to compliance with all of the requirements of the CEC program as a result of the agreement, though similar requirements may apply for other reasons.

b. Subrecipient Flow-Down Terms

Subrecipients funded in whole or in part by this Agreement must include language conforming to the terms below, unless the Subawards are entered into by the University of California (UC) or the U.S. Department of Energy (DOE) national laboratories. UC may use the terms and conditions negotiated by the CEC with UC for its Subawards. DOE national laboratories may use the terms and conditions negotiated with DOE (please contact the Commission Grants Officer for these terms).

- Standard of Performance (Section 3)

- Legal Statements on Products (included in Section 5, “Products”). This term does not have to be included if the Subrecipient will not generate any Products.
- Profit (Section 7.g.)
- Travel and Per Diem (Section 9). This term does not have to be included if the Subrecipient will not be reimbursed for travel with CEC funds.
- Prevailing Wage (Section 10)
- Recordkeeping, Cost Accounting, and Auditing (Section 11)
- Equipment (Section 14). This term does not have to be included if the Subrecipient will not be reimbursed for equipment with CEC funds.
- Indemnification (Section 17)
- Confidential Recipient Information (Section 18). This term does not have to be included if the Subrecipient will not have access to or generate Confidential Recipient Information as defined in Section 18.
- Pre-Existing and Independently Funded Intellectual Property (Section 19)
- Intellectual Property (Section 20)
- Royalty Payments to the Commission (Section 21)
- Access to Sites and Records (included in Section 22, “General Provisions”)
- CEC as Third-Party Beneficiary (included in Section 22, “General Provisions”)
- Nondiscrimination (included in Section 23, “Certifications and Compliance”)
- California Taxpayer Access to Publicly Funded Research Act (Section 24)
- Receipt of Confidential Information and Personal Information (Section 26)
- Survival of the following sections:
 - Equipment (Section 14)
 - Recordkeeping, Cost Accounting, and Auditing (Section 11)
 - Pre-Existing and Independently Funded Intellectual Property (Section 19)
 - Intellectual Property (Section 20)
 - Royalty Payments to the Commission (Section 21)
 - Access to Sites and Records (included in Section 22, “General Provisions”)
 - CEC as Third Party Beneficiary (included in Section 22, “General Provisions”)
 - California Taxpayer Access to Publicly Funded Research Act (Section 24)
 - Receipt of Confidential Information and Personal Information (Section 26)

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

- A clear and accurate description of the material, products, or services to be procured.

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

c. Vendor Flow-Down Terms

The flow-down requirements either come from the CEC or the law. Recipient does not have to include any of the CEC-created Subrecipient flow-down terms in its Subawards with Vendors unless it is necessary for the Recipient to meet its obligations to the CEC under this Agreement. But the Recipient is still required to make sure Vendors comply with all applicable laws. For example, the Recipient still must ensure any Vendor complies with applicable Public Work Requirements, including the payment of prevailing wage, and also with the Nondiscrimination clause. These are requirements under the law.

The Recipient does not have to include in its Subawards with Vendors, CEC-created terms, such as Equipment, Travel and Per Diem, Retention of Records, and Audits, if the Recipient does not need them to fulfill its obligations to the CEC. An example of when the Recipient might need to include a CEC-created term in a Vendor Subaward is if intellectual property and royalty payments are involved. The Recipient must ensure the CEC has the intellectual property rights required under this Agreement and receives royalty payments due. If, for example, a Vendor creates intellectual property that the Recipient provides to the CEC as part of this Agreement, the Recipient shall ensure its Vendor Subaward secures the appropriate rights. Another example is the receipt of confidential information of personal information. If a vendor will have access to confidential information of personal information provided by the Energy Commission or a third-party for the performance of this Agreement, the Recipient must ensure its agreement with the vendor includes the Energy Commission's special terms and conditions for the receipt of confidential information and personal information before the vendor has access to any such information.

d. Audits

All Subawards entered into for the performance of this Agreement are subject to examination and audit by the CEC and/or Bureau of State Audits for a period of three (3) years after payment of the Recipient's final invoice under this Agreement. The CEC may audit Subawards that are relevant to the Recipient's royalty payment obligations (see Section 21) for a period of ten (10) years after this Agreement's end date.

e. Copies of Subawards

The Recipient must provide a copy of its Subawards upon request by the CEC.

f. Conflicting Subcontract Terms

Prior to the execution of this Agreement, the Recipient will notify the CAM of any known or reasonably foreseeable conflicts between this Agreement and any of its Subawards (e.g., conflicting intellectual property or payment terms). If the Recipient discovers any such conflicts after the execution of this Agreement, it will notify the CAM of the conflict within fifteen (15) days of discovery. The CEC may, without prejudice to its other remedies, terminate this Agreement if any conflict impairs or diminishes its value.

g. Profit

- 1) Recipient shall ensure that only Subrecipients, Sub-Subrecipients, and Vendors meeting the definition of an "Unrelated Company" include in their budgets, invoice for, and receive a profit.
- 2) For purposes of this Agreement, an Unrelated Company is defined as a for-profit business, appropriately licensed and in good standing, that does NOT meet any of the following criteria:
 - a) Directly or indirectly, partially or fully owns or controls Recipient. This includes, but is not limited to, owning 5% or more of Recipient's stock.
 - b) Is directly or indirectly, partially or fully owned or controlled by Recipient. This includes, but is not limited to, having 5% or more of stock owned by Recipient.
 - c) Has one or more common employees, including, but not limited to, owners, officers, directors, or managers, with Recipient.
 - d) Shares a Parent Company with Recipient. For purposes of this Agreement, Parent Company is defined as an entity that directly or indirectly, partially or fully owns or controls both the Recipient and the Subrecipient or Sub-Subrecipient or shares the same employees with them. This includes, but is not limited to,

owning 5% or more of stock in both the Recipient and Subrecipient or Sub-Subrecipient.

e) Does not, for any other reason, have an arm's-length relationship (e.g., a relationship involving independent, competing interests) with the Recipient. This could be due to any reason, including but not limited to, both entities being part of the same business group or could stem from family or personal ties between officials of the two entities.

3) Recipient shall further ensure the profit to each Unrelated Company that is a Subrecipient or a Sub-Subrecipient does not exceed 10% of only the CEC funds the Unrelated Company will receive. None of the following count towards the 10% profit maximum:

a) The Profit Amount Itself. For example, assume Recipient and its Subrecipient SubX agree to a total, all inclusive, budget amount of \$200,000 in CEC funds. SubX cannot claim \$20,000 of this as profit. If \$180,000 is the base for expenses on which profit is calculated, 10% is only \$18,000 and not \$20,000.

b) Non-CEC Funds in any Form. Only CEC funds a recipient will receive can count towards profit. For example, assume Recipient's Subrecipient SubX has a budget showing it receiving \$100,000 in CEC funds (not including the profit amount) and \$50,000 in federal funds with the federal funds counting as match under the CEC's grant. The maximum SubX can be paid with CEC funds for profit is 10% of \$100,000 CEC funds, or \$10,000 (assuming the \$100,000 CEC base does not include any of the other expenses that cannot be included in calculating profit). The \$50,000 in federal funds does not count towards the profit calculation because it is not CEC funds.

c) Equipment. Continuing the example from b), assume SubX's \$100,000 CEC budget shows \$10,000 earmarked for equipment. The maximum SubX can be paid with CEC funds for profit is 10% of \$90,000, or \$9,000 (assuming the \$90,000 base does not include any of the other expenses that cannot be included in calculating profit).

d) Amounts Paid to Sub-Subrecipients and Vendors. Continuing the example from b) and c), assume SubX's \$100,000 CEC budget also shows \$20,000 earmarked to pay Sub-SubY. SubX cannot include in its profit calculation the \$20,000 to Sub-SubY. The maximum SubX can be paid with CEC funds for profit is 10% of \$70,000 (\$100,000 in CEC funds minus \$10,000 in equipment from c) above and minus \$20,000 to Sub-SubY) or \$7,000.

Vendor Unrelated Companies do not have a 10% profit maximum and also do not have to adhere to the same restrictions in a) through d) directly above. However, as stated in the requirements for Vendors in Section 7.a.5) in this Exhibit C, Recipient must be able to demonstrate that the Vendor was selected through a competitive process or is otherwise providing a product or service at a fair and reasonable price.

- 4) Profit can only be paid by the CEC as the amounts on which it is based are invoiced and paid. Profit will NOT be advanced. Continuing the example from 2.d) above, assume SubX submits an invoice for \$5,000 (of its \$70,000) in costs on which profit is based, and the Recipient includes SubX's invoice as part of its invoice to the CEC. The Recipient can include in the invoice, and the CEC will pay, assuming other Agreement requirements are met, \$500 in profit on this particular invoice. Please realize that Retention (see Section 8.n. in these Terms) may reduce the CEC's overall payment on the invoice.
- 5) Budget changes may affect an Unrelated Company's profit. For example, funds moved from a Subrecipient's direct labor, a category counting towards the profit calculation, to a Sub-Subrecipient, a category that does not count towards the profit calculation, would reduce the allowable profit.

h. Penalties for Noncompliance

Without limiting the CEC's other remedies, failure to comply with the above requirements may result in the termination of this Agreement and repayment of any profit amounts in violation of these terms.

8. **PAYMENT OF FUNDS**

a. Definitions

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

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

Incurred Costs for equipment DO NOT include purchase orders unless accompanied by an invoice, bill, or receipt that shows the payment amount due to the seller for the equipment.

- “Paid Cost” means an expense for which the Recipient has already made payment.

b. Advance Payments

Recipients can receive Advance Payments only for Subrecipients or any lower-tiered level of Sub-Subrecipient with the U.S. Department of Energy laboratories. Otherwise, Advance Payments are NOT allowed under this Agreement. The CEC in its sole discretion, and not the Recipient, decides if the CEC will make an Advance Payment.

c. Reimbursable Cost Requirements

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

The only exception to the CEC paying actual expenses is rounding to the nearest cent. The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient shall round invoiced amounts to the nearest cent (\$0.01) using standard rounding, which is rounding down from \$0.000 through \$0.004, and rounding up for \$0.005 through \$0.009. Rounding cannot be used to exceed the amount in any Budget Category or exceed the total Agreement amount.

In Exhibit B, the Budget, the rates for Direct Labor and Fringe Benefits are treated as estimates and not capped rates. The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can invoice at higher rates as long as it is only invoicing for actual expenditures it has made. However, the CEC will not pay more than the total amount in each Budget Category without an amendment, or for more than the total Agreement amount.

Please note that rates listed in Exhibit B, the Budget, are NOT “negotiated rates” that can be charged – documentation must be made available upon request to show that the rates charged reflect actual costs incurred.

This Exhibit C’s terms allow the Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient to receive reimbursement for actual Indirect Costs. A Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient may choose among three options described below. However, the option selected cannot increase the Indirect Cost amount included in the application upon which the application was scored. Once the Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient has received payment for Indirect Costs for one of the options, it cannot switch. It is locked into that option.

Option 1: De Minimis

The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can elect to invoice and receive a de minimis amount at the set rate of 10% of the Modified Total Direct Costs (MTDC) for Indirect Costs. This cannot be combined with any other Indirect Rate option.

MTDC is defined for purposes of this Agreement as all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, rental costs, tuition remission, scholarships and fellowships, and the portion of each subaward in excess of \$25,000. This is the same definition used in federal grants. Keeping this the same as the federal definition should make it easy for entities that have both federal and CEC grants and elect this option.

Entities choosing this de minimis option for Indirect Costs will not have to provide backup documentation for the de minimis amount and will not be audited on it.

Option 2: Defense Contract Audit Agency (DCAA) or other Federally Approved Indirect Rate

A Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient that has a federally approved indirect rate from DCAA or another Federal agency may use the approved indirect rate for this Agreement. A copy of the Federal agency's letter must be provided, and the letter, or the letter together with other supporting documentation, must allow the CEC to verify that the rates charged to the CEC are the federally-approved rates.

This rate will typically shift annually, and this shift is generally acceptable. This is the only Indirect Cost option that is not strictly subject to the maximum rate cap that typically applies to Indirect Costs. If the federal rate decreases from year to year, that will be a cost savings under this budget category. If the federal rate increases from year to year, this will require a budget reallocation. If the CEC, in its sole discretion, determines that a budget reallocation to accommodate an increased Indirect Rate would risk the ultimate success of this Agreement, or is otherwise not in its best interest, the CEC reserves, in addition to all of its other rights and remedies, the right to either propose a smaller increase that would not risk the ultimate success of the project, or refuse to increase the Indirect Rate. For any increase the CEC will not reimburse from CEC Funds, the entity can choose to charge the increase as Match Funds.

If this Option 2 is chosen, the entity will not be audited on this budget category.

Option 3: Indirect Costs based on Cost Allocation Plan

A Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient may choose to budget for Indirect Costs based on the entity's cost allocation plan. The amount of Indirect Costs included in Exhibit B cannot be increased through a budget reallocation. If this option is selected, Indirect Costs are subject to audit, and the entity is required to provide backup documentation upon request proving the actual amount of their Indirect Costs.

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

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

The Recipient shall only invoice the CEC, Subrecipients shall only invoice the Recipient (and so on for any lower-tiered level of Sub-Subrecipients), for Incurred Costs it will pay within 14 calendar days of receiving payment of CEC funds. For example, assume the Recipient has an Incurred Cost for a piece of equipment that costs \$300,000 and will pay in three installments of \$100,000 each over three months. The Recipient shall only invoice the Commission for \$100,000 each month. The Recipient shall not invoice for the entire \$300,000 and retain the balance over the three months.

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

California Energy Commission
Accounting Office
715 P Street, MS-2
Sacramento, CA 95814

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

e. Payment Requests

The Recipient may request payment from the CEC at any time during the term of this Agreement but no more frequently than monthly. The final payment request, including retention, MUST be received by the CEC no later than the Agreement end date.

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

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

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

f. Invoice Approval and Disputes:

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

The invoice will be disputed if the invoice is inaccurate or if it does not comply with the terms of this Agreement. If the invoice is disputed, the Recipient will be notified in writing.

g. Recipient's headquarters:

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

h. Multiple Non-Energy Commission Funding Sources:

No payment will be made for costs identified in Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient invoices that have been or will be reimbursed by another source, including but not limited to an agreement with another government entity.

"Government Entity" means: (1) a state governmental agency; (2) a state college or university; (3) a local government entity or agency, including those created as a Joint Powers Authority; (4) an auxiliary organization of the California State University or a California community college; (5) the federal

government; (6) a foundation organized to support the Board of Governors of the California Community Colleges; and (7) an auxiliary organization of the Student Aid Commission established under California Education Code Section 69522.

i. Reduced funding:

If the CEC does not receive sufficient funds under the Budget Act or from the investor-owned utility collectors of the natural gas surcharge to fully fund the work identified in Exhibit A (Scope of Work), the following will occur:

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

j. Allowability of Costs

1) Allowable Costs

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

2) Unallowable Costs

Recipient shall not invoice or obtain from the CEC any profit for itself under this Agreement. This Agreement is a grant for the Recipient's project. This is not a services contract to the state. The Recipient is already receiving the benefit of the grant funds. The CEC shall not pay profit to the Recipient on top of the benefit it is receiving from the grant funds in this Agreement. Some Subrecipients and Sub-Subrecipients may be able to receive up to 10% profit (please refer to section 7.g. in these terms).

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

- a) Contingency costs;
- b) Imputed costs (e.g., cost of money);
- c) Fines and penalties;
- d) Losses;
- e) Excess profit taxes; and
- f) Unapproved, increased rates and fees for this Agreement.

3) Except as provided for in this Agreement or applicable California law or regulations, the Recipient will use the federal cost principles and/or acquisition regulations incorporated by reference in Section 2 of this Agreement when determining allowable and unallowable costs. In the event of a conflict, this Agreement takes precedence over the federal cost principles and/or acquisition regulations.

k. Payment Request Format

The Recipient, and any Subrecipients or lower-tiered level of Sub-Subrecipient with a total budget of \$100,000 or more, shall use the Invoice Template and any further modifications to it, provided by the CAM. The CAM can change the Invoice Template without amending this Agreement.

Please submit invoices electronically per the instructions included in the document entitled "Procedures for Submitting and Reviewing Grant Invoices Electronically" available at <https://www.energy.ca.gov/media/4469>.

Recipient shall provide documentation showing the Recipient's payment of Incurred Costs as soon as possible and not later than three working days from a request from CEC personnel.

l. Certification

The Recipient, and any Subrecipients or lower-tiered level of Sub-Subrecipient with a total budget of \$100,000 or more shall include and sign the certification provided by the CAM in the Invoice Template. The CAM can change this certification without amending this Agreement.

m. Retention

The CEC shall retain 10 percent of any payment request or 10 percent of the total CEC award at the end of the Agreement. The CEC has the sole discretion to decide which of these methods of retention will be used in this Agreement. The Recipient must submit a completed payment request requesting release of the retention within the required timeframe (see part e. "Payment Requests" above in this term). The Commission Agreement Manager will review the project file and, when satisfied that the terms of the funding Agreement have been fulfilled, will authorize release of the retention.

Retention may be released upon completion of tasks that are considered separate and distinct (i.e., the task is a stand-alone piece of work and could

be completed without the other tasks). Tasks for administration or management of the Agreement and/or subcontractors are not considered separate and distinct tasks. The tasks for which retention may be released prior to the end of the Agreement must be identified in Exhibit B (budget) or elsewhere in this Agreement.

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

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

These requirements apply to all levels of Subrecipients (e.g., any lower-tiered level of Sub-Subrecipients).

9. TRAVEL AND PER DIEM

- a. Travel not listed in Exhibit B, the Budget, can be added without an amendment via CAM approval. CAM approval can come in one of two forms: written authorization from the CAM prior to the trip being taken, or through the invoice review. Outside of a budget reallocation, additional travel requests are submitted using the CEC's [Travel Form](#). Any travel taken that is not listed in Exhibit B, the Budget, or not pre-approved by the

CAM in writing, is at the financial risk of the Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient taking the trip. Please note that the Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient cannot invoice and be paid for more than the total amount in the Travel Budget Category without an amendment, or for more than the total Agreement amount.

- b. No reimbursement for food or beverages will be made other than for allowable per diem charges.
- c. The Recipient will be reimbursed for authorized travel and per diem up to, but not to exceed, the rates listed on the ECAMS Resources webpage. Because the rates on the ECAMS Resources webpage can change over time, Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient will be allowed to be reimbursed for the rates in the Grant Manual when the trip expenses become an Incurred Cost. The CEC shall notify the Recipient in writing by way of the Active Agreements listserve if the travel rates in the Grant Manual change. Please sign up for the Active Agreements listserve to stay informed of all updates.

d. Lodging

The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can invoice at standard room rates. The CEC will not reimburse for luxury accommodations.

e. Airfare

The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can invoice at coach rates on commercial flights. The CEC will not pay for upgrades on flights.

f. Rental Car

The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can invoice for vehicles appropriate for the purpose of the travel. The CEC will not reimburse expenses for luxury vehicles.

g. Bus/Train

The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can invoice for standard coach rates. The CEC will not reimburse for upgrades.

h. Per Diem

Per diem is allowable for actual costs incurred up to the total daily maximum for the following combined expenses:

- Meals

- Incidentals (i.e., tips for hotel staff and taxi/ride share drivers)
- Parking
- Tolls
- Taxi/ride share

The CEC will not reimburse any expenses under this Agreement for alcoholic beverages. In addition, the daily per diem is for the individual expenses of those traveling and working on the Agreement only. It cannot be used to pay expenses of others (e.g., it cannot be used to buy a meal for someone else).

10. **PREVAILING WAGE**

a. Requirement

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

b. Determination of Project’s Status

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

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

- 1) Timely obtain a legally binding determination from DIR or a court of competent jurisdiction before work begins on the project that the proposed project is not a public work; or
- 2) Assume that the project is a public work and ensure that:
 - Prevailing wages are paid unless and until DIR or a court of competent jurisdiction determines that the project is not a public work;

- The project budget for labor reflects these prevailing wage requirements; and
- The project complies with all other requirements of prevailing wage law, including but not limited to keeping accurate payroll records and complying with all working hour requirements and apprenticeship obligations.

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

c. Subrecipient and Vendor Flow-down Requirements

The Recipient will ensure that its Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors also comply with the public works/prevailing wage requirements above. As applicable, the Recipient will ensure that all agreements with its Subrecipients and Vendors to perform work related to this Project contain the above terms regarding payment of prevailing wages on public works projects, and also as applicable that Subrecipients and Vendors also contain these terms. The Recipient is responsible for any failure of its Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors to comply with California prevailing wage and public works laws.

d. Indemnification and Breach

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

e. Budget

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

f. Covered Trades

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

g. Questions

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

h. Certification

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

Prior to the release of any retained funds under this Agreement, the Recipient will submit to the CEC the above-described certificate signed by the Recipient and all Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors performing public works activities on the project. Absent this certificate, the Recipient will have no right to any funds under this Agreement, and CEC will be relieved of any obligation to pay any funds.

11. RECORDKEEPING, COST ACCOUNTING, AND AUDITING

a. Cost Accounting

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

b. Accounting Procedures

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

provided that such practices are consistent with the other terms of this Agreement and that such costs may be accumulated and reported in greater detail during performance of this Agreement.

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

c. Audit Rights

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

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 CEC of the Recipient's final invoice. However, performance of any such interim audits by the CEC does not preclude further audit. The CEC may audit books, records, documents, and other evidence relevant to the Recipient's royalty payment obligations (see Section 21) for a period of ten (10) years after payment of the Recipient's final invoice.

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

d. Refund to the Energy Commission

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

e. Audit Cost

The Recipient will bear its cost of participating in any audit (e.g., mailing or travel expenses). The CEC will bear the cost of conducting the audit unless the audit reveals an error detrimental to the CEC that exceeds more than ten percent (10%) or \$5,000 (whichever is greater) of: (1) the

amount audited; or (2) if a royalty audit, the total royalties due in the period audited. The Recipient will pay the refund as specified in subsection (d), and will reimburse the CEC for reasonable costs and expenses incurred by the CEC in conducting the audit.

f. Match or Cost Share

If the budget includes a match share requirement, the Recipient's commitment of resources, as described in this Agreement, is a required expenditure for receipt of CEC funds. The funds will be released only if the required match percentages are expended concurrently or in advance of the CEC funds. The Commission Agreement Manager, in writing and with supervisor approval, can authorize a Recipient to spend CEC funds in advance of Match Funds pursuant to a Match Fund Spending Plan. The Plan must estimate how Match funds and CEC funds will be spent over each quarter and briefly explain why it is not practical to spend Match Funds concurrent with CEC funds. While this term allows flexibility, the Recipient agrees to spend the agreed match as soon as practical during the Agreement in order to resume proportionality between CEC funds and Match funds spent. The Recipient must maintain accounting records detailing the expenditure of the match (actual cash and in-kind, non-cash services), and report on match share expenditures on its request for payment.

12. WORKERS' COMPENSATION INSURANCE

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

13. PERMITS AND CLEARANCES

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

14. EQUIPMENT

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

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

15. STOP WORK

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

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

16. TERMINATION

- a. Purpose

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

- b. With Cause

The CEC may, for cause, terminate this Agreement upon giving five (5) calendar days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations. The Recipient will relinquish possession of equipment purchased for this Agreement with CEC funds to the CEC, or the Recipient may purchase the equipment as provided by the terms of this Agreement or otherwise by the CEC, with approval of the CEC. 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 Subrecipients or Vendors, or replacement or addition of personnel, that fail to perform to the standards and requirements of this Agreement;
- The Recipient’s inability to pay its debts as they become due and/or the Recipient’s default of an obligation that impacts its ability to perform under this Agreement; or
- Significant change in state or CEC policy such that the work or product being funded would not be supported by the Commission.

c. Without Cause

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

d. 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 State determine Recipient 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 State shall provide Recipient advance written notice of such termination, allowing Recipient at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.

17. INDEMNIFICATION

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

18. CONFIDENTIAL RECIPIENT INFORMATION

a. Identification of Confidential Recipient Information

- 1) For the purposes of this Section, “Confidential Recipient Information” refers to information belonging to the Recipient that the Recipient has satisfactorily identified as confidential and the Energy Commission has agreed to designate as confidential under Title 20 California Code of Regulations Section.
- 2) Prior to the effective date of this Agreement, the Recipient will identify all products (or information contained within products) it considers Confidential Recipient Information, and provide the legal basis for confidentiality, in Attachment 1 to this Exhibit. If the CEC agrees the information is confidential, it will not disclose it except as provided in subsection (b).
- 3) During the Agreement, if the Recipient obtains or develops additional products (or information contained within products) not originally identified as Confidential Recipient Information in Attachment 1 to this Exhibit, the Recipient will follow the procedures for a request for designation of confidential information as specified in Title 20 California Code of Regulations (CCR) Section 2505.

The CEC’s Executive Director will make the confidentiality determination. Such subsequent determinations may be added to the list of confidential deliverables in the Attachment 1 to this Exhibit. The CEC will not disclose information subject to an application for confidential designation except as provided in subsection (b).

- 4) When submitting products containing Confidential Recipient Information, the Recipient will mark each page of any document containing Confidential Recipient Information as “confidential” and present it in a sealed package to the Contracts, Grants, and Loans Office.

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

b. Disclosure of Confidential Recipient Information

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

c. Waiver of Consequential Damages

In no event will the CEC, 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 Confidential Recipient Information, even if the CEC has been advised of the possibility of such damages.

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

d. Limitations on the Disclosure of Products

During the Agreement, the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors must receive written approval from the CAM prior to disclosing the contents of any draft product to a third party. However, if the CEC makes a public statement about the content of any product provided by the Recipient and the Recipient believes the statement is incorrect, the Recipient may state publicly what it believes is correct.

19. PRE-EXISTING AND INDEPENDENTLY FUNDED INTELLECTUAL PROPERTY

a. Ownership

The CEC 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 and royalties are discussed in Sections 20 and 21.

- 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 Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, Vendors, 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 CEC or match funds; and (b) associated proprietary rights to these items that are obtained without CEC 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 Recipient Subrecipients, any lower-tiered level of Sub-Subrecipients, Vendors, or a third party during or after the Agreement term without CEC or match funds; and (b) associated proprietary rights to these items that are obtained without CEC 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 CEC owns such products 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 product under this Agreement.

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

a. Identification of Property

- a) The Recipient 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 product under this Agreement. Attachment 1 may be amended (see the “Amendments” section).

- b) The Recipient 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 product 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 and royalties, as described in Sections 20 and 21.

2) Access to Property

The extent of CEC and California Public Utilities 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 product; or (b) establish a baseline for repayment purposes.

Upon the CAM's request, the Recipient will provide the CAM and any reviewers designated by the CEC or the California Public Utilities Commission with access to review the Recipient's project-relevant pre-existing and independently funded intellectual property. If the property has been designated as confidential as specified in Section 18, the CEC will only disclose it under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508.

3) Preservation of Property

The Recipient will preserve any 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 Recipient agrees to a longer retention period.

The CEC and the California Public Utilities Commission will have reasonable access to the project-relevant pre-existing or independently funded property throughout the retention period.

20. INTELLECTUAL PROPERTY

a. Ownership

- 1) The Recipient owns all intellectual property, subject to the licenses described in subsection b.

"Intellectual property" means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made,

developed, altered, or reduced to practice with Agreement or match funds during or after the Agreement term; (b) any associated proprietary rights to these items, such as patent and copyright; and (c) any upgrades or revisions to these items.

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

- 2) The CEC owns all products identified in the Scope of Work, with the exception of products that fall within the definition of “intellectual property.”

“**Product**” means any tangible item specified for delivery to the CEC in the Scope of Work.

- 3) Nothing in this Agreement gives the Contractor any rights to “Confidential Information” and “Personal Information” as defined in Section 25, other than using Confidential Information and Personal Information for the limited purpose of performing Contractor’s work under this Agreement in accordance with Section 25.

b. Intellectual Property Licenses

- 1) Both the CEC 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 intellectual property for governmental purposes.
- 2) Reserved.
- 3) The Recipient has a non-exclusive, non-transferable, irrevocable, worldwide, perpetual license to use, publish, translate, modify, and reproduce written products created for Agreement reporting and management purposes, such as reports and summaries.
- 4) If any intellectual property that is subject to the licenses above has been designated as confidential as specified in Section 18, 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 18.

c. Energy Commission’s Rights to Inventions

“**Invention**” means intellectual property that is patentable.

1) March-In Rights

At the CEC's request, the Recipient will forfeit and assign to the CEC all rights to any invention (with the exception of U.S. Department of Energy reserved rights) if the Recipient 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 CEC 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 Recipient will send the CAM 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 Recipient and all persons and/or entities obtaining an ownership interest in patentable intellectual property must include the following statement within the specification of any United States patent application, and any subsequently issued patent for the invention:

“This invention was made with State of California support under California Energy Commission grant number PIR-xx-xxx. The Energy Commission has certain rights to this invention.”

b. Access to and Preservation of Intellectual Property

1) Access to Intellectual Property

Upon the CAM's request, the Recipient will provide the CAM and any individuals designated by the CEC or the California Public Utilities Commission with access to the Recipient's intellectual property in order to exercise the license and march-in rights described above, and to determine any royalty payments due under the Agreement.

2) Preservation of Intellectual Property

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

c. Intellectual Property Indemnity

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

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

21. ROYALTY PAYMENTS TO THE COMMISSION

“Sale,” “sales,” and **“sold”** mean the sale, license, lease, or other transfer of intellectual property. **“Sales Price”** means the price at which intellectual property is sold, excluding sales tax.

- a. The Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors will pay the Energy Commission a royalty of one and one-half percent (1.5%) of the sales price of all sales for which the entity receives a payment, beginning on the Agreement's effective date and extending for ten (10) years from the Agreement's end date.
- b. The Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors will make payments in annual installments due on the first day of March in the calendar year immediately following the year during which the Recipient received any payment for sales.
- c. The Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors is not required to make a royalty payment for any calendar year in which payments for sales are less than \$1000. Total royalty payments will be limited to three (3) times the **total** amount of funds paid by the CEC under the Agreement (and not the amount of CEC funds received by the entity). For example, if the CEC has paid \$1 million total under the Agreement, but a Subrecipient has only received \$200,000 of the CEC funds and owes royalties, the royalty payments are capped at \$3 million, and not \$600,000.

- d. If intellectual property was developed in part with match funds during the Agreement term, the royalty payment owed by the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors will be reduced in accordance with the percentage of intellectual property development activities that were funded with match funds that the entity itself provided. For example, if 10% of the development activities were funded by the Recipient with match funds during the Agreement and the Recipient's payments for sales totaled \$100,000 in one year, the Recipient would owe the Energy Commission \$1,350 for the year ($1.5\% \text{ of } \$100,000 = \$1,500$; $10\% \text{ of } \$1,500 = \150 ; $\$1,500 - \$150 = \$1,350$).

If the CEC is providing funds to the Recipient under this Agreement as a project match partner and CEC funds are used in part to develop intellectual property, the royalty payments will be reduced in accordance with the percentage of intellectual property development activities that were funded with non-CEC funds during the Agreement term. For example, if 80% of the development activities were funded with Recipient and/or third-party funds during the Agreement and payments for sales totaled \$100,000 in one year, the Recipient would owe the CEC \$300 for the year ($1.5\% \text{ of } \$100,000 = \$1,500$; $80\% \text{ of } \$1,500 = \$1,200$; $\$1,500 - \$1,200 = \$300$).

- e. The Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors 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 total funds paid by the CEC under the entire 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. It is also not reduced because a Subrecipient, any lower-tiered level of Sub-Subrecipient, or Vendor that owes royalties received less than the total CEC funds paid out under the agreement. For example, if a Subrecipient only received 25% of the total CEC funds paid out (because the rest went to the Recipient or other Subrecipients, this early buyout 1.5 times is based on the total CEC funds paid under the Agreement and not the lower, 25% received by the Subrecipient.
- f. The Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors may not make any sale, transfer, license, or any other conveyance or even allowed use, of intellectual property except than fair market value. Such activity constitutes breach of this Agreement, and will obligate the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors to repay within sixty (60) days the early buyout amount due. In the event of breach, the CEC may exercise all rights and remedies available to it under law and at equity.

- g. Royalty payments not made within fifteen (15) days of the due date will constitute breach of this Agreement. The payments will become debt obligations of the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors to the CEC, due upon demand and bearing interest at the maximum interest rate allowed by law.
- h. The Recipient will maintain separate accounts within its financial and other records for the purpose of tracking components of sales and royalties due to the CEC under this Agreement.
- i. Payments to the CEC are subject to audit as provided for under the Recordkeeping, Cost Accounting, and Auditing section.
- j. The Recipient shall include these royalty provisions in its agreements with all Subrecipients and Vendors and ensure they in turn include them in their agreements with all lower-tiered level of Sub-Subrecipients and Vendors, who develop or assist with the development of intellectual property.

22. GENERAL PROVISIONS

a. Governing Law

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

b. Independent Capacity

In the performance of this Agreement, the Recipient and its agents, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors, and their respective employees will act in an independent capacity and not as officers, employees, or agents of the CEC or the State of California.

c. Assignment

This Agreement is not assignable or transferable by the Recipient either in whole or in part without the consent of the CEC 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 CEC reserves the right to seek further written assurances from the Recipient and its team that the work under this Agreement will be performed in accordance with the terms of the Agreement.

h. Change in Business

1) The Recipient will promptly notify the Energy Commission of the occurrence of any of the following:

- a) A change of address.
- b) A change in business name or ownership.
- c) The existence of any litigation or other legal proceeding affecting the project or Agreement.
- d) The occurrence of any casualty or other loss to project personnel, equipment, or third parties.
- e) Receipt of notice of any claim or potential claim against the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors for patent, copyright, trademark, service mark, and/or trade secret infringement that could affect the CEC's rights.

2) The Recipient must provide the CAM 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 CEC 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 CEC is not satisfied that the new entity can perform in the same manner as the Recipient), it may terminate this Agreement as provided in the "Termination" section.

i. Access to Sites and Records

CEC California Public Utilities Commission staff and representatives will have reasonable access to all project sites and to all records related to this Agreement.

j. Prior Dealings, Custom, or Trade Usage

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

k. Survival of Terms

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

- Legal Statements on Products (included in Section 5, “Products”)
- Payment of Funds (Section 8)
- Recordkeeping, Cost Accounting, and Auditing (Section 11)
- Equipment (Section 14)
- Termination (Section 16)
- Indemnification (Section 17)
- Pre-Existing and Independently Funded Intellectual Property (Section 19)
- Intellectual Property (Section 20)
- Royalty Payments to the Commission (Section 21)
- California Taxpayer Access to Publicly Funded Research Act (Section 24)
- Receipt of Confidential Information and Personal Information (Section 26)
- Change in Business (see this section)
- Access to Sites and Records (see this section)
- Venue (see this section)
- CEC as Third-Party Beneficiary (see this section)

l. Venue

Any court action to enforce any part of this Agreement shall be venued in Sacramento County.

m. CEC as Third-Party Beneficiary

The Recipient shall ensure that in all of its agreements with Subrecipients and in all Subrecipient agreements with Sub-Subrecipients (and so forth through every lower-tiered level of Sub-Subrecipients) that the CEC is specifically named as a third-party beneficiary to the agreement. In addition, the term shall state the entity agrees that if the CEC brings a court action, the entity agrees to venue in Sacramento County.

23. CERTIFICATIONS AND COMPLIANCE

a. Federal, State, and Local Laws

The Recipient is responsible for obtaining all required permits and shall comply with all applicable federal, state, and local laws, codes, rules, and regulations for all work performed under the Agreement.

b. Nondiscrimination Statement of Compliance

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

The Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full. The Recipient Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors shall give written notice of their obligations under this section to labor organizations with which they have a collective bargaining or other Agreement.

The Recipient will include the nondiscrimination and compliance provisions of this section in all agreements with Subrecipients, that perform work under this Agreement.

c. Drug-Free Workplace Certification

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

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

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

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

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

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

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

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

f. Air or Water Pollution Violation

Under state laws, the Recipient shall not be:

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

g. Americans With Disabilities Act

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

24. CALIFORNIA TAXPAYER ACCESS TO PUBLICLY FUNDED RESEARCH ACT

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

- 1) “Peer-Reviewed Manuscript” means a manuscript after it has been peer reviewed and in the form in which it has been accepted for publication in a scientific journal.
 - 2) “Research Grant” in the Act and “this Agreement” in this section mean this Agreement.
 - 3) “State Agency” in the Act means the Energy Commission.
- c. The Recipient shall provide for free public access to any Peer-Reviewed Manuscript developed within the scope of this Agreement.
- d. The Recipient shall ensure that any publishing or copyright agreements concerning Peer-Reviewed Manuscripts:
- 1) Fully comply with California Government Code section 13989.6;
 - 2) Do not conflict with the Energy Commission’s rights under this Agreement;
 - 3) Secure for the Energy Commission the rights provided under this Agreement, including the rights to Intellectual Property as specified in Section 20; and
 - 4) Recognize the free public access to the Peer-Reviewed Manuscript.
- e. The Recipient shall report to the CEC the final disposition of any Peer-Reviewed Manuscript, including but not limited to if it was published; when it was published; where it was published; and, when the 12-month time period expires, where the Peer-Reviewed Manuscript will be available for open access.
- f. Not later than 12 months after the official date of publication, or sooner if specified in the Schedule of Products, the Recipient shall make available to the CEC an electronic version of any Peer-Reviewed Manuscript that is developed within the scope of this Agreement.
- g. The Recipient shall make publicly accessible an electronic version of any Peer-Reviewed Manuscript that is developed within the scope of this Agreement, not later than 12 months after the official date of publication, on a repository approved in writing by the CEC, including but not limited to the University of California’s eScholarship Repository at the California Digital Library; the California State University’s ScholarWorks at the Systemwide Digital Library; or PubMed Central. The Recipient shall notify the CEC when the Peer-Reviewed Manuscript is available on an CEC-approved repository.
- h. If the Recipient is unable to ensure that its Peer-Reviewed Manuscript is accessible on an CEC-approved, publicly accessible repository, the

Recipient may comply by providing the manuscript to the CEC not later than 12 months after the official date of publication.

- i. For any publications other than a Peer-Reviewed Manuscript, (herein referred to as “Other Publications”) including scientific meeting abstracts, developed within the scope of this Agreement, the Recipient shall:
 - 1) Provide an electronic version of the Other Publications to the CEC not later than 12 months after the official date of publication.
 - 2) Ensure that any publishing or copyright agreements concerning Other Publications:
 - a. Do not conflict with the CEC’s rights under this Agreement.
 - b. Secure for the CEC the rights provided under this Agreement, including the rights to Intellectual Property as specified in Section 20.
- j. The Act states that “Grantees are authorized to use grant money for publication costs, including fees charged by a publisher for color and page charges, or fees for digital distribution.” Recipient agrees that for purposes of this Agreement, the Recipient is only authorized to use funds under this Agreement, including Matching funds, for these purposes **if the expenses are included in the Agreement’s Budget and meet the other Agreement requirements for payment, including that the CEC will only reimburse the Recipient for expenditures incurred during the Agreement term. If these expenses are not included in the Budget, both parties must agree and amend the Budget to include such expenditures before Recipient is authorized to use Agreement funds, either reimbursable expenses or match, for these purposes.**
- k. Should a conflict exist between the terms in this Section 24 and other terms of this Agreement, the terms in this section prevail.

25. COMMISSION REMEDIES FOR RECIPIENT’S NON-COMPLIANCE

Without limiting any of its other remedies, the CEC may, for Recipient’s noncompliance of any Agreement requirement, withhold future payments, demand and be entitled to repayment of past reimbursements, or suspend or terminate this Agreement. The tasks in the Scope of Work are non-severable, and completion of all of them is material to this Agreement. Thus, the Commission, without limiting its other remedies, is entitled to repayment of all funds paid to Recipient if the Recipient does not timely complete all tasks in the Scope of Work.

If over the course of performing under this Agreement, the CEC and the Recipient agree that a change is warranted to the Scope of Work, the parties can amend this Agreement.

26. RECEIPT OF CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION

- a. For the purposes of this Section, “confidential information” refers to information the CEC has designated as confidential pursuant to Title 20 CCR Section 2505 et seq., information the CEC has otherwise deemed or stated to be confidential, and other information exempt from public disclosure under the provisions of the California Public Records Act or other applicable state or federal laws.
- b. For the purposes of this Section, “personal information” refers to information that meets the definition of “personal information” in California Civil Code section 1798.3(a) or one of the data elements set forth in California Civil Code section 1798.29(g)(1) or (g)(2). **Personal information is a type of confidential information and is therefore subject to all requirements for confidential information provided in this Agreement and applicable law. However, there are additional requirements specific to personal information.**
- c. For the purposes of this Section, “special terms for confidential information” refers to the CEC’s special terms and conditions for the receipt of confidential information and personal information. The CEC’s special terms for confidential information include, but are not limited to, having in place an Information Security Program Plan and obtaining nondisclosure agreements from all individuals who will be provided access to confidential information or personal information.
- d. If the Recipient will receive confidential information or personal information from the CEC or a third-party for the performance of this Agreement, the Recipient must first agree to and comply with the CEC’s special terms for confidential information.
- e. If any other individual or entity participating in any way with this Agreement, including but not limited to subcontractors, subawardees, vendors, and other project partners, will receive confidential information or personal information from the CEC or a third-party for the performance of this Agreement, that individual or entity must first agree to and comply with the CEC’s special terms for confidential information. The Recipient must flow-down the CEC’s special terms for confidential information into each subcontract, subaward, vendor agreement, or other project partner agreement that will be provided access to confidential information or personal information before the individual or entity has access to any such information. Recipient must also require all individuals and entities to flow-down this Section to any lower tier subcontractors, subawardees, vendors, project partners, and other individual or entity participating in any way with this Agreement that will be provided access to Confidential Information or Personal Information before the individual or entity has access to any such information.
- f. If this Agreement does not include the CEC’s special terms for confidential information and CEC determines the Recipient or any other individual or entity participating in any way with this Agreement will receive confidential information or personal information from the CEC or a third-party for the

performance of this Agreement, the CEC reserves the option to amend this Agreement to add its special terms for confidential information.

- g. Except as provided in Title 20 CCR Sections 2506, 2507, and 2508, and the CEC's special terms for confidential information, Recipient or any other individual or entity participating in any way with this Agreement may not disclose any information provided to it by the CEC or a third party 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.

27. DEFINITIONS

- **Agreement** means this grant agreement executed between the CEC and the Recipient.
- **Agreement Term** means the length of this Agreement, as specified on the Agreement signature page (form CEC-146).
- **Budget Categories** means the following categories in Exhibit B, Budget: Direct Labor, Fringe Benefits, Travel, Equipment, Materials and Miscellaneous, Subrecipients and Vendors, and Indirect Costs and Profit. Budget Category means one of these Budget Categories.
- **CAM** means Commission Agreement Manager.
- **CEC** means California Energy Commission.
- **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.
- **Effective Date** means the date on which this Agreement is signed by the last party required to sign, provided that signature occurs after the Agreement has been approved by the CEC at a business meeting or by the Executive Director or his/her designee.
- **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 CEC funds. The CEC may determine the normal useful life of the equipment.

- ***Incurred Costs*** means an expense for which the Recipient has become liable (legally obligated) to pay.
- ***Independently Funded Intellectual Property*** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice by the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, Vendors, or a third party during or after the Agreement term without CEC or match funds; and (b) associated proprietary rights to these items that are obtained without CEC 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 CEC owns such products regardless of their funding source.

- ***Intellectual Property*** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice with Agreement or match funds during or after the Agreement term; (b) any associated proprietary rights to these items, such as patent and copyright; and (c) any upgrades or revisions to these items.

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

- ***Invention*** means intellectual property that is patentable.
- ***Match Funds*** means cash or in-kind (i.e., non-cash) contributions provided by the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, Vendors, or a third party for a project funded by the CEC. If this Agreement resulted from a solicitation, refer to the solicitation’s discussion of match funding for guidelines specific to the project.
- ***Materials*** means the substances used to construct, or as part of, a finished object, commodity, device, article, or product and that does not meet the definition of Equipment.

- **MTDC (Modified Total Direct Costs)** means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of which subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, rental costs, tuition remission, scholarships and fellowships, and the portion of each subaward in excess of \$25,000.
- **Ownership** means exclusive possession of all rights to property, including the right to use and transfer property.
- **Paid Costs** means an expense for which the Recipient has already made payment.
- **Pre-existing intellectual property** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, Vendors, 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 CEC or match funds; and (b) associated proprietary rights to these items that are obtained without CEC or match funds, such as patent and copyright.
- **Product** means any tangible item specified for delivery to the CEC in the Scope of Work.
- **Project** means the entire effort undertaken and planned by the Recipient and consisting of the work funded by the CEC. The project may coincide with or extend beyond the Agreement term.
- **Project-relevant pre-existing intellectual property and project-relevant independently funded intellectual property** means pre-existing and independently funded intellectual property used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement.
- **Recipient** means the entity that executed this Agreement with the CEC.
- **Sale, Sales, and Sold** mean the sale, license, lease, or other transfer of intellectual property.
- **Sales Price** means the price at which intellectual property is sold, excluding normal returns and allowances such as sales tax.
- **State** means the state of California and all California state agencies within it, including but not limited to commissions, boards, offices, and departments.

- **Subaward** for the Recipient means all agreements it has with Subrecipients and Vendors. For a Subrecipient, a Subaward means all agreements it has with Sub-Subrecipients and Vendors. For any lower-tiered level of Sub-Subrecipient, a Subaward means all agreements it has with its own Sub-Subrecipients and Vendors.
- **Subrecipient (formerly Subcontractor)** means a person or entity that receives grant funds directly from the Recipient and is entrusted by the Recipient to make decisions about how to conduct some of this Agreement's activities. A Subrecipients role involves discretion over grant activities and is not merely just selling goods or services.
- **Sub-Subrecipient** has the same meaning as a Subrecipient except that it receives grant funds from a Subrecipient or any lower tier level of a Sub-Subrecipient.
- **Unrelated Company** has the meaning set forth in section 7.g. of this Exhibit C.
- **Vendor** means a person or entity that sells goods or services to the Recipient, Subrecipient, or any lower-tiered level of Sub-Subrecipient, in exchange for some of the grant funds, and does not make decisions about how to perform the grant's activities. The Vendor's role is ministerial and does not involve discretion over this Agreement's activities.