**Note to Applicants**: Please read the following terms and conditions carefully. If an applicant is awarded a grant under this solicitation, the grant agreement will include the below terms and conditions that set forth the grant recipient’s rights and responsibilities.

**EXHIBIT C**

**GRANT TERMS AND CONDITIONS FOR**

**CALIFORNIA NATIVE AMERICAN TRIBES**

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1. ***Introduction***

This grant agreement (**Agreement**) between the California Energy Commission (**Energy Commission, CEC, or Commission**) and the [Recipient Name] (**Recipient**) is funded by the California Energy Commission, Senate Bill 170 (Skinner, Chapter 240, Statutes of 2021).

This Agreement includes: (1) the Agreement signature page (form CEC-146); (2) the scope of work (Exhibit A); (3) the budget (Exhibit B); (4) terms and conditions (Exhibit C);; (5) a contacts list (Exhibit D); (6) all attachments; and (7) all documents incorporated by reference.

All work and expenditure of Commission-reimbursed funds must occur prior to the Agreement term end date specified on the CEC-146 form.

1. ***Terms and Documents Incorporated by Reference***

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

**Federal Cost Principles *(applicable to state and local governments, California Native American tribes, institutions of higher education, and nonprofit organizations)***

1. 2 Code of Federal Regulations (CFR) Part 200, Subpart E (Sections 200.400 et seq.): <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200>

**Nondiscrimination**

1. 2 California Code of Regulations, Section 11099 et seq.: Contractor Nondiscrimination and Compliance: https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I6CACCEC05A0A11EC8227000D3A7C4BC3&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default)

**General Laws**

1. Any federal, state, or local laws or regulations applicable to the project that are not expressly listed in this Agreement
2. ***Standard of Performance***

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

1. ***Due Diligence***

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

1. ***Products***

a. **“Products”** are any tangible item specified for delivery to the Energy Commission in the Scope of Work, such as reports and summaries. These products may be shared with the Governor’s Office of Planning and Research (OPR) and may be incorporated into California’s Fifth Climate Change Assessment unless otherwise specified in an executed Data Sharing Agreement. The Recipient will submit all products identified in the Scope of Work to the Commission Agreement Manager, in the manner and form specified in the Scope of Work. The Energy Commission owns all products identified in the Scope of Work unless otherwise specified in an executed Data Sharing Agreement.

If the Commission Agreement Manager reasonably determines that a product is incomplete or inadequate given its description and intended use as described in this Agreement, the Commission Agreement Manager may work with the Recipient to cure any deficiency. Until the Commission Agreement Manager reasonably determines that the product is adequate, and without prejudice to any of the Commission’s other remedies, the Commission Agreement Manager may refuse to authorize payment for the product and any subsequent products that rely on or are based upon the product.

b. Failure to Submit Products

If Recipient fails to submit a product required in the Scope of Work, the Commission Agreement Manager may work with the Recipient to ensure delivery of the product. Further failure to submit a product may be considered material noncompliance with the Agreement terms. Without prejudice to any other remedies, noncompliance may result in actions such as the withholding of future payments or awards, or the suspension or termination of the Agreement.

c**.** Legal Statements on Products

All documents that result from work funded by this Agreement and are released to the public must include the following language to ensure no Commission endorsement of products.

**legal notice**

**This document was prepared as a result of work sponsored by the California Energy Commission. Notwithstanding the Energy Commission’s sponsorship, 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 considered or endorsed the accuracy of the information in this document.**

d. Copyright Notice

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

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

1. ***Amendments***
2. Procedure for Requesting Changes

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

* A brief summary of the proposed change; and
* A brief summary of the reason(s) for the change.

1. Approval of Changes

No amendment or variation of this Agreement shall be valid unless made in writing and signed by both of the parties except for the Commission’s unilateral termination rights in Section 16 of these terms. No oral understanding or agreement is binding on any of the parties.

1. ***Contracting and Procurement Procedures***

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

a. Contractor’s Obligations to Subcontractors

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

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

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

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

b. Flow-Down Provisions

Subcontracts funded in whole or in part by this Agreement must include language conforming to the provisions below, unless the subcontracts 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 Energy Commission with UC for its subcontracts. 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”)
* Travel and Per Diem (Section 9)
* Recordkeeping, Cost Accounting, and Auditing (Section 11)
* Equipment (Section 14)
* Indemnification (Section 17)
* Confidentiality and Data Sharing, if applicable to the subcontract (Section 18)
* Intellectual Property (Section 20)
* Access to Sites and Records (included in Section 22, “General Provisions”)
* Nondiscrimination (included in Section 23, “Certifications and Compliance”)
* Survival of the following sections:
* Equipment (Section 14)
* Recordkeeping, Cost Accounting, and Auditing (Section 11)
* Intellectual Property (Section 20)

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

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

c. Audits

Pursuant to Government Code 8546.7, all subcontracts entered into for the performance of this Agreement are subject to examination and audit by the Energy Commission and/or Bureau of State Audits for a period of three (3) years after payment of the Recipient’s final invoice under this Agreement.

d. Copies of Subcontracts

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

e. Conflicting Subcontract Terms

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

f. Penalties for Noncompliance

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

1. ***Payment of Funds***
2. Definitions

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

* **“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.

1. Timing of Payment

Recipient may request payment from the Energy Commission at any time during the term of this Agreement but no more frequently than monthly. Final payment will only be made after the Energy Commission: (1) receives and approves the Recipient’s final reporting (if applicable); and (2) receives and accepts all other required documentation necessary for the Energy Commission to determine the total final amount due to the Recipient, based on actual and allowable Incurred Costs and Paid Costs under this Agreement, up to the total grant award amount.

Without limiting any other rights and remedies available to the Energy Commission, Recipient must return funds to the Energy Commission received under this Agreement if, for example, the Recipient was overpaid in the first payment, or did not complete the project.

1. Reimbursable Cost Requirements

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

1. Payment Requests and Format

Recipient agrees and acknowledges that time is of the essence in submitting the final payment request. The final payment request, including retention (if applicable), MUST be submitted before the Agreement end date. Without prejudice to the Commission’s other rights, the Recipient risks not receiving any funds, and relieves the Commission of any duty and liability whatsoever to pay, for any payment requests received after the above due date.

Commission Agreement Manager will provide an invoice template to Recipient which Recipient shall use for all payment requests.

Recipient shall submit all payment requests electronically to: invoices@energy.ca.gov

1. Invoice Approval and Disputes:

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

The invoice will be disputed if all products due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. If the invoice is disputed, the Recipient will be notified by the CEC.

1. Multiple Non-Energy Commission Funding Sources:

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

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

1. Reduced funding:

If the Energy Commission does not receive sufficient funds under the Budget Act to fully fund the work identified in Exhibit A (Scope of Work), the following will occur:

a) If the Energy Commission has received a reduced amount of funds for the work, it may: (1) offer an Agreement amendment to the Recipient to reflect the reduced amount; or (2) cancel this Agreement (with no liability accruing to the CEC).

b) If the Energy Commission has received no funds for the work identified in Exhibit A: (1) this Agreement will be of no force and effect; (2) the State will have no obligation to pay any funds to the Recipient; and (3) the Recipient will have no obligation to perform any work under this Agreement.

1. Allowability of Costs
2. Allowable Costs

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

1. Unallowable Costs

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

a) Profit of the Recipient or fees (this restriction does not apply to subcontractors);

b) Contingency costs;

c) Imputed costs (e.g., cost of money);

d) Fines and penalties;

e) Losses;

f) Excess profit taxes; and

g) Unapproved, increased rates and fees for this Agreement.

1. Except as provided for in this Agreement or applicable California or Tribal 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.
2. Retention

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

1. Certification

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

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

1. ***Travel and Per Diem***
2. Travel not listed in the budget requires prior written authorization from the Commission Agreement Manager.
3. No reimbursement for food or beverages will be made other than for allowable per diem charges.
4. The Recipient will be reimbursed for authorized travel and per diem up to, but not to exceed, the rates allowed non-represented state employees. Current allowable travel reimbursement rates can be obtained from the Commission’s web site at <http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF>.
5. Travel expense claims must detail expenses using the allowable rates, and the Recipient must sign and date each travel expense claim before submitting it to the Commission for payment. Expenses must be listed by trip, including dates and times of departure and return. Travel expense claims supporting receipts and expense documentation must be attached to the Recipient’s payment request. A vehicle license number is required when claiming mileage, parking, or toll charges. Questions regarding allowable travel expenses or per diem should be addressed to the Commission Agreement Manager.
6. ***Reserved***
7. ***Recordkeeping, Cost Accounting, and Auditing***
8. 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.

Pursuant to Government Code 8546.7, the Recipient’s books of accounts related to the project funded under this Agreement shall be subject to examination and audit by the Energy Commission and/or the Bureau of State Audits to the extent necessary to verify the accuracy of the Recipient’s reports for a period of three (3) years after payment of the Recipient’s final invoice under this Agreement.

1. 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.

1. Refund to the Energy Commission

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

1. ***Worker’s Compensation Insurance***
2. The Recipient warrants that it carries Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this Agreement, and agrees to furnish to the Commission Agreement Manager satisfactory evidence of this insurance upon the Commission Agreement Manager’s request.
3. If the Recipient is self-insured for worker's compensation, it warrants that the self-insurance is permissible under the laws of the State of California and agrees to furnish to the Commission Agreement Manager satisfactory evidence of the insurance upon the Commission Agreement Manager’s request.
4. ***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.

1. ***Equipment***

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

1. ***Stop Work***

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

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

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

1. With Cause

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

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

1. Partial or complete loss of match funds (if applicable);
2. Reorganization to a business entity unsatisfactory to the Energy Commission (if applicable);
3. Retention or hiring of subcontractors, or replacement or addition of personnel, that fail to perform to the standards and requirements of this Agreement;
4. 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
5. Significant change in state or Energy Commission policy such that the work or product being funded would not be supported by the Commission.
6. Without Cause

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

1. ***Indemnification***

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

1. ***Confidentiality and Data Sharing***

If a Data Sharing Agreement has been executed by the parties to this Agreement, the terms of the Data Sharing Agreement shall govern the confidentiality of Products under this Agreement.

If a Data Sharing Agreement has not been executed by the parties to this Agreement, the following shall govern the confidentiality of Products under this Agreement:

1. Identification of Confidential Information

1) Prior to the effective date of this Agreement, the Recipient will identify all products (or information contained within products) that it considers to be confidential, in addition to the legal basis for confidentiality, in Attachment 1 to this Exhibit. If the Energy Commission agrees that the information is confidential, it will not disclose it except as provided in subsection (b) or as otherwise agreed to in a Data Sharing Agreement executed by the parties.

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

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

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

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

1. Disclosure of Confidential Information

The Energy Commission will only disclose confidential information under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508: https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=IDDA5ED205CCE11EC9220000D3A7C4BC3&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default)

All confidential information that is legally disclosed by the Recipient or any other entity will become a public record and will no longer be subject to the Energy Commission’s confidentiality designation.

1. Waiver of Consequential Damages

In no event will the Energy 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 Recipient’s confidential information, even if the Commission has been advised of the possibility of such damages.

Damages that the Energy 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.

1. Limitations on the Disclosure of Products
2. During the Agreement, the Recipient and subcontractors must receive approval from the Commission Agreement Manager prior to disclosing the contents of any draft product to a third party. However, if the Energy Commission makes a public statement about the content of any product provided by the Recipient and the Recipient believes the statement is incorrect, the Recipient may state publicly what it believes is correct.
3. Except as provided in Title 20 CCR Sections 2506, 2507, and 2508, the Recipient may not disclose any information provided to it by the Energy Commission for the performance of this Agreement if the information has been designated as confidential or is the subject of a pending application for confidential designation. At the election of the Commission Agreement Manager, the Recipient, its employees, and its subcontractors must execute a confidentiality agreement provided by the Commission Agreement Manager.
4. The Recipient will ensure that each of its officers, employees, and subcontractors who are involved in the performance of this Agreement are informed about these disclosure limitations and will abide by them.
5. ***Reserved***
6. ***Intellectual Property***

a. The Energy Commission makes no claim to Intellectual Property developed by Recipient under this Agreement that is not specified for delivery, except as otherwise provided in this Agreement.

**“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.

1. **“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 Energy Commission owns all Products identified in the Scope of Work, with the exception of Products that fall within the definition of Intellectual Property or as otherwise specified in a Data Sharing Agreement executed by the parties.

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

1. ***Reserved***
2. ***General Provisions***
3. Governing Law

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

1. Independent Capacity

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

1. Assignment

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

1. Timeliness

Time is of the essence in this Agreement.

1. 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.

1. 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.

1. Assurances

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

1. Changed Circumstances

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

1. A change of address.
2. The existence of any litigation or other legal proceeding affecting the project or Agreement.
3. The occurrence of any casualty or other loss to project personnel, equipment, or third parties.
4. Receipt of notice of any claim or potential claim against the Recipient for patent, copyright, trademark, service mark, and/or trade secret infringement that could affect the Energy Commission’s rights.
5. Prior Dealings, Custom, or Trade Usage

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

1. 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)
* Termination (Section 16)
* Confidentiality and Data Sharing (Section 18)
* Intellectual Property (Section 20)
* Changed Circumstances (see this section)

1. ***Certifications and Compliance***
2. Federal, State, Tribal, and Local Laws

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

1. Nondiscrimination Statement of Compliance

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

1. Drug-Free Workplace Certification

By signing this Agreement, the Recipient certifies under penalty of perjury 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.

1. Provide, as required by Government Code Section 8355(a)(3), that every employee who works on the proposed project:

* Will receive a copy of the company's drug-free policy statement; and
* Will agree to abide by the terms of the company's statement as a condition of employment on the project.

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

1. Air or Water Pollution Violation

Under state laws, the Recipient will not be:

1. In violation, as determined by a court of competent jurisdiction, 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 issued by a court of competent jurisdiction 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 by a court of competent jurisdiction to be in violation of provisions of federal law relating to air or water pollution.
4. 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.

1. ***Reserved***
2. ***Commission Remedies for Recipient’s Non-Compliance***

Without limiting any of its other remedies, the Commission 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.

1. ***Definitions***

* ***Agreement Term*** means the length of this Agreement, as specified on the Agreement signature page (form CEC-146).
* ***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.
* ***Data Sharing Agreement*** means an Agreement executed between the Recipient, CEC and the Governor’s Office of Planning and Research that, at minimum, describes:
  + - confidential information that may be included in Scope of Work deliverables;
    - the law(s) that allow the information to be kept confidential;
    - the allowable uses of the confidential information.
* ***Effective Date*** means the date on which this Agreement is signed by the last party required to sign, provided that signature occurs after the Agreement has been approved by the Energy Commission at a business meeting or by the Executive Director or his/her designee.
* ***Equipment*** means products, objects, machinery, apparatus, implements, or tools that are purchased or constructed with Energy Commission funds for the project, and that have a useful life of at least one year and an acquisition unit cost of at least $5,000. “Equipment” includes products, objects, machinery, apparatus, implements, or tools that are composed by over thirty percent (30%) of materials purchased for the project. For purposes of determining depreciated value of equipment used in the Agreement, the project will terminate at the end of the normal useful life of the equipment purchased and/or developed with Energy Commission funds. The Energy Commission may determine the normal useful life of the equipment.
* ***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 or a third party for a project funded by the Energy Commission. If this Agreement resulted from a solicitation, refer to the solicitation’s discussion of match funding for guidelines specific to the project.
* ***Materials*** means the substances used to construct, or as part of, a finished object, commodity, device, article, or product and that does not meet the definition of Equipment.
* ***Ownership*** means exclusive possession of all rights to property, including the right to use and transfer property.
* ***Product*** means any tangible item specified for delivery to the Energy Commission in the Scope of Work.
* ***Project*** means the entire effort undertaken and planned by the Recipient and consisting of the work funded by the Energy Commission. The project may coincide with or extend beyond the Agreement term.
* ***State*** means the state of California and all California state agencies within it, including but not limited to commissions, boards, offices, and departments.

1. ***No Waiver of Sovereign Immunity***

A waiver of sovereign immunity is not required under this Agreement.