

EXHIBIT C

CEC STANDARD GRANT TERMS AND CONDITIONS FOR THE COMMUNITY ENERGY RELIABILITY AND RESILIENCE PROGRAM

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1. **AGREEMENT**

This project is being funded with a grant from the Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law (BIL), which provides funds through the federal Community Energy Reliability and Resilience Investment Program (CERRI) to demonstrate measurable improvements in energy resilience in the United States and mitigate climate related risk; invest in modernized grid infrastructure that can enable consumer access to lower-cost energy and accommodate increased electrification, increased penetrations of variable renewable electricity and distributed energy resources, and other evolving system needs over the coming decades; and invest in clean energy and decarbonization solutions to achieve a carbon-free power sector by 2035 and net-zero greenhouse gas emissions economy-wide by 2050. Public Law. No. 117-58, 136 Stat. 429 (2021); Infrastructure Investment in Jobs Act (IIJA) section 40401(d).

The California Energy Commission (Energy Commission, Commission, Recipient, or CEC), as the recipient of a portion of IIJA funds through the CERRI Program (CERRI funds) has entered into an agreement with the United States Department of Energy (DOE) to administer distribution of these funds, including entering into grant agreements with subrecipients, such as this Agreement, to improve electric grid infrastructure and resiliency consistent with IIJA section 40401(d) requirements.

This grant agreement (Agreement) between the California Energy Commission and the grant Subrecipient 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, which take precedence in the event of a conflict with the standard terms and conditions (**Exhibit D**); (6) a contacts list (**Exhibit E**); (7) all attachments; and (8) all documents incorporated by reference.

All reimbursable work and expenditure of funds (CEC-reimbursed and/or match share) must occur within the Agreement term specified on the CEC-146 form. The CEC cannot authorize any payments until all parties sign this Agreement.

The Subrecipient's authorized representative shall sign all copies of this Agreement and return all signed packages to the Energy Commission's Grants and Loans Office within 30 days. Failure to meet this requirement may result in the forfeiture of this award. When all required signatures are obtained, an executed copy will be returned to the Subrecipient.

The term of this Agreement or the Agreement Period is the length of this Agreement between the Energy Commission and the Subrecipient. Project means Subrecipient's specific project that is funded in whole or in part by this Agreement. The Subrecipient's project may coincide with or extend outside the Agreement Period.

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 under which this Agreement was awarded.
- b. The Subrecipient's proposal submitted in response to the solicitation as accepted by CEC

Nondiscrimination

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

General Laws

- d. Any other 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 Subrecipient and its lower tier subrecipients, contractors, 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 Subrecipient 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 Subrecipient 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 rights and 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 rights and 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 Subrecipient 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 Subrecipient, the Subrecipient owns all intellectual property developed under this Agreement (please see the “Intellectual Property” section).

d. Failure to Submit Products

A Subrecipient’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 rights and 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 Subrecipient may only submit a request for the final payment (including any retention) after the final report is completed, submitted to the CAM, and CEC 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 and the U.S. Department of Energy. It does not necessarily represent the views of the Energy Commission, the U.S. Department of Energy, their employees, or the State of California or United States. Neither the Commission, the State of California, U.S. Department of Energy, United States, nor the Energy Commission’s or U.S. Department of Energy’s employees, contractors, or subcontractors make 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 Energy Commission or U.S. Department of Energy, nor has the Energy Commission or U.S. Department of Energy passed upon the accuracy of the information in this document.

- 2) The Subrecipient 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].

6. AMENDMENTS

a. Procedure for Requesting Changes

The Subrecipient 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 and Section 25 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 the Subrecipient's request, the CAM or Commission Agreement Officer will provide the Subrecipient 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

To the extent permitted by 2 CFR 200.308, except when replacing "key personnel," the Subrecipient, and any lower tier subrecipients, contractors, 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.

Subrecipients 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, Subrecipients are strongly encouraged to obtain advance written approval for "key personnel", or risk not being reimbursed for their work.

Subrecipient 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 Subrecipient, a Subcontractor, any lower-tiered level of Sub- Subtractor, 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 Subrecipient 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

See Exhibit Z, Federal Award Terms and Conditions, Subpart A, Section 27, Revision of Budget and Program Plans.

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 Subrecipient or any lower tier subrecipient, contractor, or vendor plans to purchase and be reimbursed under this Agreement that is not already listed in Exhibit B, Budget. To accomplish this, the Subrecipient 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 Subrecipient 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 Subrecipient, or any lower tier subrecipient or contractor can assign new personnel to a new or existing job classification without CEC approval. However, the Subrecipient 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 Subrecipient, or any lower tier subrecipient or contractor can promote existing personnel to a new or existing job classification without CEC approval. However, the Subrecipient 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 Subcontractors or Vendors

Under these Terms, all changes of lower tier subcontractors 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.”

Subrecipients 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, Subrecipients 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 Subcontractor WILL NOT BE REIMBURSED for any work completed prior to advance written approval. If a Subcontractor 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 (as that term is defined in Section 28 below) or Subcontracts entered into between the Subrecipient and subrecipients, contractors, and vendors for the performance of this Agreement.

a. Subrecipient's Obligations

- 1) The Subrecipient is responsible for handling all contractual and administrative issues arising out of or related to any Subawards or Subcontracts 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 lower tier subrecipient, contractor, or vendor, and no Subaward or Subcontract may relieve the Subrecipient of its responsibilities under this Agreement. The Subrecipient agrees to be as fully responsible to the CEC for the acts and omissions of its lower tier subrecipients, contractors, 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 Subrecipient.

The Subrecipient's obligation to pay its subrecipients, contractors and vendors is an independent obligation from the CEC's

obligation to make payments to the Subrecipient. As a result, the CEC has no obligation to pay or enforce the payment of any funds to any of Subrecipient's lower tier subrecipient, contractor or vendor.

- 3) The Subrecipient is responsible for establishing and maintaining Subawards/Subcontracts with and reimbursing each lower tier subrecipient, contractor and vendor for work performed in accordance with the terms of this Agreement.
- 4) A lower tier subrecipient means a person or entity that receives grant funds directly from the Subrecipient and is entrusted by the Subrecipient to make decisions about how to conduct some of the Agreement's activities. A lower tier 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 lower tier 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 Subrecipient or Subcontractor; or,
 - Provides match share funding contributions to this Agreement.
- 5) A contractor or vendor means a person or entity that sells goods or services to the Subrecipient or any lower tier subrecipient, in exchange for some of the grant funds, and does not make decisions about how to perform the Agreement's activities. A contractor or vendor's role is ministerial and does not involve discretion over Agreement activities. A contractor or 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 Subrecipient, and a contractor or vendor are when the contractor or 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. Flow-Down Terms

Lower tier subrecipients funded in whole or in part by this Agreement must include language conforming to the terms below, unless, to the extent permitted by state and federal laws and regulations, 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).

Subrecipients do not have to flow down the terms on this list that in their respective sections only state “[RESERVED].”

- Standard of Performance (Section 3)
- Legal Statements on Products (included in Section 5, “Products”). This term does not have to be included if the lower tier 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 lower tier 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 lower tier subrecipient will not be reimbursed for equipment with CEC funds.
- Termination, Executive Order N-6-22 – Russia Sanctions (Section 16.d)
- Indemnification (Section 17)
- Confidential Subrecipient Information (Section 18). This term does not have to be included if the lower tier subrecipient will not have access to or generate confidential information
- Intellectual Property (Section 20)
- 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)
- Intellectual Property (Section 20)
- 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 Subrecipient, including termination procedures and the basis for settlement.
- A statement that further assignments will not be made to any lower tier subrecipient or contractor without additional advance written consent of the CEC.

c. Vendor Flow-Down Terms

The flow-down requirements either come from the CEC, the terms and conditions of the Federal CERRI award to CEC, or the law. Subrecipient does not have to include any of the CEC-created Subrecipient flow-down terms in its Subawards or Subcontracts with Vendors unless it is necessary for the Subrecipient to meet its obligations to the CEC under this Agreement or required by Exhibit Z Federal Award Terms and Conditions.

But the Subrecipient is still required to make sure Vendors comply with all applicable laws. For example, the Subrecipient 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 Subrecipient does not have to include in its Subawards or Subcontracts with Vendors, CEC-created terms, such as Equipment, Travel and Per Diem, Retention of Records, and Audits, if the

Subrecipient does not need them to fulfill its obligations to the CEC. An example of when the Subrecipient might need to include a CEC-created term in a Vendor Subaward or Subcontract is if intellectual property and royalty payments are involved. The Subrecipient 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 Subrecipient provides to the CEC as part of this Agreement, the Subrecipient shall ensure its Vendor Subaward or Subcontract 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 Subrecipient 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 or Subcontracts 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 Subrecipient's final invoice under this Agreement.

e. Copies of Subawards or Subcontracts

The Subrecipient must provide a copy of its Subawards or Subcontracts upon request by the CEC.

f. Conflicting Subaward or Subcontract Terms

Prior to the execution of this Agreement, the Subrecipient will notify the CAM of any known or reasonably foreseeable conflicts between this Agreement and any of its Subawards or Subcontracts (e.g., conflicting intellectual property or payment terms). If the Subrecipient 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 rights and remedies, terminate this Agreement if any conflict impairs or diminishes its value.

g. Profit

1) Subrecipient shall ensure that only lower tier subrecipients, contractors, or 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 Subrecipient. This includes, but is not limited to, owning 5% or more of Subrecipient's stock.
- b) Is directly or indirectly, partially or fully owned or controlled by Subrecipient. This includes, but is not limited to, having 5% or more of stock owned by Subrecipient.
- c) Has one or more common employees, including, but not limited to, owners, officers, directors, or managers, with Subrecipient.
- d) Shares a Parent Company with Subrecipient. For purposes of this Agreement, Parent Company is defined as an entity that directly or indirectly, partially or fully owns or controls both the Subrecipient and the Subcontractor or Sub-Subcontractor or shares the same employees with them. This includes, but is not limited to, owning 5% or more of stock in both the Subrecipient and Subcontractor or Sub-Subcontractor.
- e) Does not, for any other reason, have an arm's-length relationship (e.g., a relationship involving independent, competing interests) with the Subrecipient. 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) Subrecipient shall further ensure the profit to each Unrelated Company that is a Subcontractor, or a Sub-Subcontractor 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 Subrecipient and its Subcontractor 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-CERRI Funds in any Form. Only CEC funds, or federal CERRI funds flowed to a Subcontractor pursuant to this Agreement, will receive can count towards profit. For example, assume Subrecipient's Subcontractor 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-Subcontractors 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, Subrecipient 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 Subrecipient includes SubX's invoice as part of its invoice to the CEC. The Subrecipient 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 Subcontractor's direct labor, a category counting towards the profit calculation, to a Sub-Subcontractor, 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 rights and 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 Subrecipient prior to the Subrecipient Incurring or Paying the expense.
- "Incurred Cost" means an expense for which the Subrecipient has become liable (legally obligated) to pay. Here are examples of incurred costs:
 - The Subrecipient's staff has completed work during the month but has not been paid by the Subrecipient. These labor and associated costs (e.g., fringe benefits) are considered Incurred Costs.
 - The Subrecipient has purchased a piece of equipment **and** received an invoice, bill, or receipt. The Subrecipient 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 Subrecipient has already made payment.

b. Advance Payments

Recipients can receive Advance Payments only for subawards or contracts 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 Subrecipient, 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 Subrecipient 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 Subrecipient, and any lower tier subrecipient or contractor 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.

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 Subrecipient, and any lower-tiered level of subrecipient or contractor to receive reimbursement for actual Indirect Costs.

Option 1: De Minimis

The Subrecipient and any lower tier subrecipient or contractor can elect to invoice and receive a de minimis amount at the set rate of 15% 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.

Entities choosing this de minimis option for Indirect Costs will not have to provide backup documentation for the de minimis amount.

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

Subrecipient, and any lower tier subrecipient or contractor 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.

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

The Subrecipient, and any lower tier subrecipient or contractor shall pay ALL Incurred Costs within 14 calendar days of receiving payment under this Agreement for the Incurred Costs. For example, if the Subrecipient invoices and then receives payment from the CEC on September 15 for an Incurred Cost of \$10,000, the Subrecipient 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 Subrecipient shall only invoice the CEC, Subcontractors shall only invoice the Subrecipient (and so on for any lower tier subrecipient or contractor), for Incurred Costs it will pay within 14 calendar days of receiving payment of CEC funds. For example, assume the Subrecipient 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 Subrecipient shall only invoice the Commission for \$100,000 each month. The Subrecipient shall not invoice for the entire \$300,000 and retain the balance over the three months.

For any Incurred Costs for which the Subrecipient, and any lower tier subrecipient or contractor 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 Subrecipient shall specify "Repayment of Unspent Funds under Agreement [Insert this Agreement #]." Subrecipient shall remit the repayment to:

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

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

e. Payment Requests

The Subrecipient 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.

Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient for undisputed invoices. An undisputed invoice is an invoice submitted by the Subrecipient 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 Subrecipient will be notified in writing.

g. Subrecipient's headquarters:

For purposes of payment, the Subrecipient's headquarters is the location of the Subrecipient'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 Subrecipient, and any lower tier subrecipient or contractor 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 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 Subrecipient 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 Subrecipient; and (3) the Subrecipient will have no obligation to perform any work under this Agreement.

j. Allowability of Costs

1) Allowable Costs

The costs for which the Subrecipient 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; and (iii) the terms and conditions and any other requirements of this Agreement.

2) Unallowable Costs

Subrecipient shall not invoice or obtain from the CEC any profit for itself under this Agreement. This Agreement is a grant for the Subrecipient's project. This is not a services contract to the state. The Subrecipient is already receiving the benefit of the grant funds. The CEC shall not pay profit to the Subrecipient on top of the benefit it is receiving from the grant funds in this Agreement. Some subrecipients and contractors 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) Subrecipient will use the federal cost principles and/or acquisition regulations when determining allowable and unallowable costs.

k. Payment Request Format

The Subrecipient, and any lower tier subrecipient or contractor 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>.

Subrecipient shall provide documentation showing the Subrecipient'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 Subrecipient, and any lower tier subrecipient or contractor 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 Subrecipient 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 Subrecipient

can choose to flow down the retention requirement to its lower tier subrecipients subject to the following restrictions and any other requirements in this Agreement:

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

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

9. TRAVEL AND PER DIEM

- a. Any travel taken that is not listed in Exhibit B, the Budget is at the financial risk of the Subrecipient, Subrecipient, and any lower tier subrecipient or contractor taking the trip. Please note that the Subrecipient, and any lower tier subrecipient or contractor cannot invoice and be paid for more than the total amount in the Travel Budget Category without an amendment, except as otherwise permitted under this Agreement.
- b. No reimbursement for food or beverages will be made other than for allowable per diem charges.
- c. The Subrecipient 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, Subrecipient, and any lower tier subrecipient or contractor 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 Subrecipient 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 Subrecipient, and any lower tier subrecipient or contractor can invoice at standard room rates. The CEC will not reimburse for luxury accommodations.

e. Airfare

The Subrecipient, and any lower tier subrecipient or contractor can invoice at coach rates on commercial flights. The CEC will not pay for upgrades on flights.

f. Rental Car

The Subrecipient, and any lower tier subrecipient or contractor can invoice for vehicles appropriate for the purpose of the travel. The CEC will not reimburse expenses for luxury vehicles.

g. Bus/Train

The Subrecipient, and any lower tier subrecipient or contractor 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/rideshare

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 Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient will ensure that its Subcontractors, and any lower tier subrecipient, contractor, and vendors also comply with the public works/prevailing wage requirements above. As applicable, the

Subrecipient will ensure that all agreements with its subrecipients, contractors, 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, contractors, and vendors also contain these terms. The Subrecipient is responsible for any failure of any lower- tiered level of subrecipients, contractors, or vendors to comply with California prevailing wage and public works laws.

d. Indemnification and Breach

Any failure of the Subrecipient or its lower tier subrecipients, contractors, or vendor 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 Subrecipient's sole risk. In such a case, the CEC will refuse payment to the Subrecipient 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 Subrecipient will indemnify the CEC and hold it harmless for any and all financial consequences arising out of or resulting from the failure of the Subrecipient and/or any of its subcontractors to pay prevailing wages or to otherwise comply with the requirements of prevailing wage law.

e. Budget

The Subrecipient'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 Subrecipient may wish to contact DIR or a qualified labor attorney for guidance.

f. Covered Trades

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

g. Questions

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

h. Certification

The Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient will submit to the CEC the above-described certificate signed by the Subrecipient and all Subcontractors, and any lower-tier subrecipient, contractor, and vendors performing public works activities on the project. Absent this certificate, the Subrecipient 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 Subrecipient 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 Subrecipient's books of accounts at all reasonable times, to the extent necessary to verify the accuracy of the Subrecipient's reports.

b. Accounting Procedures

The Subrecipient'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 Subrecipient uses generally accepted accounting principles and cost reimbursement practices. The Subrecipient'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 Subrecipient'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 Subrecipient 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. In addition to the rights of the federal government, the CEC, another state agency, and/or a public accounting firm designated by the

CEC may audit the Subrecipient's accounting records at all reasonable times, with prior notice by the CEC.

The Subrecipient 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 Subrecipient 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 Subrecipient will repay the amounts to the CEC within thirty (30) days of request or as otherwise agreed by the CEC and the Subrecipient. If the CEC does not receive such repayments, it will be entitled to take actions such as withholding further payments to the Subrecipient and seeking repayment from the Subrecipient.

e. Audit Cost

The Subrecipient 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 the amount audited. The Subrecipient 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 Subrecipient'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 Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient and CEC, title to equipment acquired by the Subrecipient with grant funds will vest in the Subrecipient. The Subrecipient 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 Subrecipient 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 Subrecipient shall refer to the applicable federal regulations in this Agreement for guidance regarding additional equipment requirements.

15. STOP WORK

CEC staff may, at any time by written notice to the Subrecipient, require the Subrecipient 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 Subrecipient 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 Subrecipient may resume the work only upon receipt of written instructions from CEC staff.

16. TERMINATION

a. Purpose

CEC may terminate the Agreement as set forth herein and proceed with the work required under the Agreement in any manner it deems proper. The Subrecipient 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 Subrecipient 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 Subrecipient. In this event, the Subrecipient will use all reasonable efforts to mitigate its expenses and obligations. The Subrecipient will relinquish possession of equipment purchased for this Agreement with CEC funds to the CEC, or the Subrecipient 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:

- Subrecipient fails to perform the requirements of this Agreement in the time and manner provided herein.
- Partial or complete loss of match funds;
- Reorganization to a business entity unsatisfactory to the Energy Commission;
- Retention or hiring of subrecipients, contractors or vendors, or replacement or addition of personnel, that fail to perform to the standards and requirements of this Agreement;
- The Subrecipient's inability to pay its debts as they become due and/or the Subrecipient's default of an obligation that impacts its ability to perform under this Agreement; or
- Significant change in federal, state, 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 Subrecipient. In this event, the Subrecipient 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 Subrecipient 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 Subrecipient advance written notice of such termination, allowing Subrecipient 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 Subrecipient 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 SUBRECIPIENT INFORMATION

a. Identification of Confidential Subrecipient Information

- 1) For the purposes of this Section, “Confidential Subrecipient Information” refers to information belonging to the Subrecipient that the Subrecipient has satisfactorily identified as confidential, and the Energy Commission has agreed to designate as confidential under Title 20 California Code of Regulations Section 2505.
- 2) Prior to the effective date of this Agreement, the Subrecipient will identify all products (or information contained within products) it considers Confidential Subrecipient 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 Subrecipient obtains or develops additional products (or information contained within products) not originally identified as Confidential Subrecipient Information in Attachment 1 to this Exhibit, the Subrecipient 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 Subrecipient Information, the Subrecipient will mark each page of any document containing Confidential Subrecipient Information as “confidential” and present it in a sealed package to the Contracts, Grants, and Loans Office.

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

b. Disclosure of Confidential Subrecipient Information

The CEC will only disclose Confidential Subrecipient Information under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508. All Confidential Subrecipient Information that is legally disclosed by the Subrecipient 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, 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 Subrecipient Information, even if the CEC has been advised of the possibility of such damages.

Damages that the CEC, 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 Subrecipient, Subcontractors, any lower tier subrecipient, contractor, or vendor 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 Subrecipient and the Subrecipient believes the statement is incorrect, the Subrecipient may state publicly what it believes is correct.

19. PRE-EXISTING AND INDEPENDENTLY FUNDED INTELLECTUAL PROPERTY

[RESERVED]

20. INTELLECTUAL PROPERTY

Subject to Exhibit Z, Federal Award Terms and Conditions, Subpart A, Section 16, Intellectual Property:

- a. The Subrecipient owns all intellectual property, subject to the licenses described below.
- b. CEC owns all tangible products specified for delivery in the Scope of Work, with the exception of any intellectual property.
- c. Nothing in this Agreement gives the Subrecipient any rights to “Confidential Information” and “Personal Information” as defined in Section 26, other than using Confidential Information and Personal Information for the limited purpose of performing Subrecipient’s work under this Agreement in accordance with Section 26.
- d. CEC has a non-exclusive, non-transferable, irrevocable, worldwide, perpetual license to use, publish, translate, modify, and reproduce intellectual property created under this Agreement for governmental purposes. 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.
- e. Subrecipient 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.
- f. Access to and Preservation of Intellectual Property
 - 1) Access to Intellectual Property

Upon the CAM’s request, the Subrecipient will provide the CAM and any individuals designated by the CEC, with access to the Subrecipient’s intellectual property in order to exercise the license rights described above.
 - 2) Preservation of Intellectual Property

The Subrecipient will preserve intellectual property at its own expense for at least three (3) years after payment by the CEC of the Subrecipient’s final invoice.
- g. Intellectual Property Indemnity

The Subrecipient 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 Subrecipient will defend and indemnify the CEC 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 Subrecipient or its employees, subcontractors, or agents in connection with or related to the products or the Subrecipient's performance under this Agreement.

21. ROYALTY PAYMENTS TO THE COMMISSION

[Reserved]

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 Subrecipient and its agents, , any lower-tier subrecipients, contractors, 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 Subrecipient 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 rights and remedies in this Agreement will be taken and construed as cumulative, meaning in addition to every other right or remedy provided in the Agreement or by law.

g. Assurances

The CEC reserves the right to seek further written assurances from the Subrecipient 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 Subrecipient 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 Subrecipient, any lower tier subrecipients, contractors, and vendors for patent, copyright, trademark, service mark, and/or trade secret infringement that could affect the CEC's rights.
- 2) The Subrecipient 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 Subrecipient), it may terminate this Agreement as provided in the "Termination" section.

i. Access to Sites and Records

CEC 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 take place in Sacramento County.

m. CEC as Third-Party Beneficiary

The Subrecipient shall ensure that in all of its agreements with all lower tier 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 Subrecipient 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 Subrecipient, Subcontractors, any lower tier subrecipients, contractors, 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 Subrecipient and any lower tier subrecipients, contractors, and vendors will ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

The Subrecipient and any lower tier subrecipients, contractors, 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 Subrecipient and any lower tier subrecipients, contractors, 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 Subrecipient 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 Subrecipient 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.).

In addition to any other rights and remedies available to the CEC, failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and the Subrecipient may be ineligible for any future state awards if the CEC determines that any of the following has occurred: (1) the Subrecipient has made false certification, or (2) violates the certification by failing to carry out the requirements of the Act.

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

The Subrecipient, 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 Subrecipient within the immediately preceding two-year period because of the Subrecipient's failure to comply with an order of a federal court that orders the Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient shall provide for free public access to any Peer-Reviewed Manuscript developed within the scope of this Agreement.
- d. The Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient shall notify the CEC when the Peer-Reviewed Manuscript is available on an CEC- approved repository.

- h. If the Subrecipient is unable to ensure that its Peer-Reviewed Manuscript is accessible on an CEC-approved, publicly accessible repository, the Subrecipient 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 Subrecipient 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.” Subrecipient agrees that for purposes of this Agreement, the Subrecipient 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 Subrecipient 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 Subrecipient 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 SUBRECIPIENT’S NON-COMPLIANCE

Without limiting any of its other rights and remedies, the CEC may, for Subrecipient’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 rights and remedies, is entitled to repayment of all funds paid to Subrecipient if the Subrecipient does not timely complete all tasks in the Scope of Work.

If over the course of performing under this Agreement, the CEC and the

Subrecipient 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 Subrecipient will receive confidential information or personal information from the CEC or a third-party for the performance of this Agreement, the Subrecipient 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, subrecipients, 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 Subrecipient must flow-down the CEC’s special terms for confidential information into each subcontract, 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. Subrecipient must also require all individuals and entities to flow-down this Section to any lower tier subcontractors, sub-subcontractors, 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 Subrecipient 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, Subrecipient 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 Subrecipient.
- **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 Subrecipient has become liable (legally obligated) to pay.
- ***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 Subrecipient, Subcontractors, any lower-tiered level of Sub-Subcontractors, 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 Subrecipient has already made payment.
- ***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 Subrecipient and consisting of the work funded by the CEC. The project may coincide with or extend beyond the Agreement term.

- **Subrecipient** means the entity that executed this Agreement with the CEC and subrecipient of CERRI funds.
- **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 Subrecipient means all agreements it has with lower tier subrecipients.
- **Subcontractor** means a person or entity that receives grant funds directly from the Subrecipient and is entrusted by the Subrecipient 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-Subcontractor** has the same meaning as a Subcontractor except that it receives grant funds from a Subcontractor or any lower tier level of a Sub-Subcontractor.
- **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 Subrecipient, a Subcontractor, or any lower-tiered level of Sub-Subcontractor, 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.