

Alliance for Energy Innovation, LLC,
manager and operator of the
National Laboratory of the Rockies

Strategic Partnership Projects
Funds-In Agreement—Nonfederal Sponsor

General Terms and Conditions

(together with the face page and appendices, hereinafter referred to as “Agreement”)

Article I. Parties to the Agreement.

The U.S. Department of Energy facility contractor, Alliance for Energy Innovation, LLC, manager of the National Laboratory of the Rockies under Contract No. DE-AC36-08GO28308 (“Prime Contract”) and hereinafter referred to as the “Recipient” or “NLR,” has been requested by the “Sponsor,” as identified in Block 1 on page 1 of this Agreement, to use best efforts to perform the work set forth in the Statement of Work, attached hereto as Appendix A. The Recipient and Sponsor are hereinafter collectively referred to as the “Parties” or individually as a “Party.” It is understood by the Parties that the Recipient is obligated to comply with the terms and conditions of its facility Prime Contract with the United States Government (hereinafter called the “Government”) represented by the United States Department of Energy (hereinafter called the “Department” or “DOE”) when providing goods, services, products, materials, or information to the nonfederal Sponsor under this Agreement.

Article II. Term of the Agreement.

The Recipient’s estimated period of performance for completion of the Statement of Work is included in Block 2 on page 1 of this Agreement. The term of this Agreement shall not be effective until it is signed by the last of the Parties and it is approved by the California Department of General Services, if required. However, Alliance shall not be subject to any obligations hereunder unless and until funds are received and allocated to this Agreement.

Article III. Costs.

1. The Recipient estimated cost for the work to be performed under this Agreement is stated in Block 3 on page 1 of this Agreement.
2. The Recipient has no obligation to continue or complete performance of the work at a cost in excess of the original estimated cost or any subsequent amendment.
3. The Recipient agrees to provide at least thirty (30) days’ notice to the Sponsor if the actual cost to complete performance will exceed its estimated cost.

Article IV. Funding and Payment.

The Sponsor shall provide sufficient funds in advance to reimburse the Recipient for costs to be incurred in performance of the work described in this Agreement, and the Recipient shall have no obligation to perform in the absence of adequate advance funds. Sponsor’s payment to Recipient shall be made in accordance with the remittance instructions included on Recipient’s Invoice. If the estimated period of performance exceeds 90 days and the estimated cost exceeds \$25,000, the Sponsor may, with the Recipient’s approval, advance funds incrementally. In such a case, the Sponsor shall provide to the Recipient, prior to any work being performed, an advance payment sufficient to cover anticipated work that will be performed for the first billing cycle. In addition, the Sponsor shall provide additional advance funding to ensure that funds remain available for work during subsequent billing cycles (collectively the advance payment amount of **\$[amount]** as set forth in Block 3 on page 1 of this Agreement). Following Sponsor’s remittance of the advance payment, the Recipient will invoice the Sponsor each billing cycle (or as necessary) to maintain a balance of funding sufficient to cover

anticipated work. Sponsor's payment shall be due no later than thirty (30) days after receipt of Recipient's invoice. Payment shall be made directly to the Recipient who will then notify the DOE as appropriate. Upon termination or completion, any excess funds shall be refunded by the Recipient to the Sponsor.

Article V. Source of Funds.

The Sponsor hereby represents that, if the funding it brings to this Agreement has been secured through other agreements, such other agreements do not have any terms and conditions (including intellectual property terms and conditions) that conflict with the terms and conditions of this Agreement.

Article VI. Tangible Personal Property.

Upon termination of this Agreement, tangible personal property or equipment produced or acquired in conducting work under this Agreement shall be owned by the Sponsor. Tangible personal property or equipment produced or acquired as part of this Agreement will be accounted for and maintained during the term of the Agreement in the same manner as DOE property or equipment. Costs incurred for disposition of property shall be the responsibility of the Sponsor and included in costs allocated in Article III or paid separately by the Sponsor.

Article VII. Publication Matters.

The publishing Party shall provide the other Party a 60-day period in which to review and comment on proposed publications that disclose any of the following: technical developments and/or research findings generated in the course of the Agreement or identify Proprietary Information (as defined in Appendix C). The publishing Party shall not publish or otherwise disclose Proprietary Information identified by the other Party, except as mandated by law.

The Sponsor will not use the name of Recipient, the Government, or their employees in any promotional activity, such as advertisements, with reference to any product or service resulting from this Agreement, without prior written approval of the Government and Recipient.

Article VIII. Legal Notice.

The Parties agree that the following legal notice shall be affixed to each report furnished to the Sponsor under this Agreement and to any report resulting from this Agreement which may be distributed by the Sponsor:

DISCLAIMER

This report may contain research results which are experimental in nature. Neither the United States Government, nor any agency thereof, nor Alliance for Energy Innovation, LLC, nor any of their employees, makes any warranty, express or implied, or assumes any legal responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference to any specific commercial product, process, or service by its trade name, trademark, manufacturer, or otherwise, does not constitute or imply an endorsement or recommendation by the United States Government or any agency thereof, or by the Alliance for Energy Innovation, LLC. The United States Government reserves for itself a royalty-free, worldwide, irrevocable, non-exclusive license for Governmental purposes to publish, disclose, distribute, translate, duplicate, exhibit, prepare derivative works, and perform any such data included herein. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof, or by the Alliance for Energy Innovation, LLC and shall not be used for advertising or product endorsement purposes.

Article IX. Disclaimer.

THE GOVERNMENT AND THE RECIPIENT MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT; THAT THE GOODS, SERVICES, MATERIALS, PRODUCTS, PROCESSES, INFORMATION, OR DATA TO BE FURNISHED HEREUNDER WILL ACCOMPLISH INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE INCLUDING THE INTENDED PURPOSE; OR THAT ANY OF THE ABOVE WILL NOT INTERFERE WITH PRIVATELY OWNED RIGHTS OF OTHERS. NEITHER THE GOVERNMENT NOR THE RECIPIENT SHALL BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO SUCH RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS AGREEMENT.

Article X. General Indemnity.

Reserved.

Article XI. Product Liability Indemnity.

The Sponsor agrees on behalf of itself that all technology and information generated under this Agreement will be placed in the public domain (with the appropriate disclaimer) or the results will be a product, process, or service that will not be commercialized by the Sponsor for profit. The Sponsor further agrees not to license to any other California state entities any technology or information generated under this Agreement. Therefore, a standard Product Liability provision where the Sponsor would indemnify the Recipient and the Government is not included in this Agreement. However, notwithstanding any other provision of this Agreement, for licenses granted or assignments made by Sponsor to any third party in technology derived from the work performed under this Agreement that has not been placed in the public domain by the owner, such licenses shall include the following clause, appropriately modified to identify the parties, unless the third party licensee is prohibited by law from indemnifying:

PRODUCT LIABILITY INDEMNITY

Notwithstanding any other provision of this agreement, licensee/assignee agrees that all technology and information licensed/assigned under this agreement will not be commercialized by licensee/assignee for profit. However, if licensee/assignee does commercialize the technology licensed/assigned hereunder, licensee/assignee agrees that the following applies:

A. Except for any loss, liability, or claim resulting from any willful misconduct or negligent acts or omissions of the Government, Alliance for Energy Innovation, LLC, or persons acting on their behalf ("Indemnified Parties"), the licensee/assignee agrees to hold harmless and indemnify the Indemnified Parties against any losses, liabilities, and claims, including all damages, costs, and expenses, including attorney's fees, arising from personal injury or property damage occurring as a result of the making, using, or selling of a product, process, or service by or on behalf of licensee/assignee, its assignees, or licensees, which was derived from the technology licensed under this agreement.

B. For the purposes of this Article, neither the Government nor Alliance for Energy Innovation, LLC shall be considered assignees or licensees of licensee/assignee, as a result of reserved Government and Alliance for Energy Innovation, LLC rights. This Article shall apply only if licensee/assignee was:

1. informed as soon and as completely as practical by the appropriate Indemnified Party of the allegation or claim;
2. afforded, to the maximum extent by applicable laws, rules, or regulations, an opportunity to

- participate in and control its defense; and
3. given all reasonably available information and reasonable assistance requested by licensee/assignee.

C. No settlement for which licensee/assignee would be responsible shall be made without the consent of licensee/assignee, unless required by final decree of a court of competent jurisdiction.

D. Solely for the purposes of this clause, the Indemnified Parties are a third party beneficiary of this agreement and are entitled to all the rights and benefits conferred by this clause. The Indemnified Parties shall have the full right to sue upon and enforce this clause in accordance with its terms as if the Indemnified Parties were a signatory hereto.

E. This clause shall self-delete and be of no force or effect upon all of the technology licensed under this agreement being placed in the public domain by the owner of such technology.

F. Licensee/assignee shall include the substance of this clause, appropriately modified but including this section, in any license granted or assignment made by licensee/assignee to any third party in any technology or information provided, licensed, or assigned under this agreement.

Article XII. Intellectual Property Indemnity—Limited.

Reserved.

Article XIII. Notice and Assistance Regarding Patent and Copyright Infringement.

Each Party shall report to the other Party, promptly and in reasonable written detail, each claim or allegation of infringement of any patent, copyright, trade secret or other intellectual property right based on the performance of this Agreement of which a Party has knowledge. In the event of any claim or suit against a Party based on such alleged infringement, the other Party shall furnish to the Party, when requested by the Party, all evidence and information in the possession of the other Party pertaining to such suit or claim.

Article XIV. Patent Rights.

Terms and conditions regarding patent rights are set forth in Appendix B and Appendix E, both attached hereto and incorporated herein.

Article XV. Rights in Technical Data.

Terms and conditions regarding rights in technical data are set forth in Appendix C and Appendix E, both attached hereto and incorporated herein.

Article XVI. Background Intellectual Property.

Background Intellectual Property means pre-existing and independently funded intellectual property, as those terms are defined in Appendix E. Each Party may use the other Party's Background Intellectual Property identified in an appendix of this Agreement solely in performance of the Statement of Work. Except as expressly set forth in Appendix E, this Agreement does not grant to either Party any option, grant, or license to commercialize, or otherwise use the other Party's Background Intellectual Property. Licensing of Background Intellectual Property beyond that expressly set forth in Appendix E, if agreed to by the Parties, shall be the subject of separate licensing agreements between the Parties.

Each Party shall use reasonable efforts to list all relevant Background Intellectual Property in the appendix titled "Background Intellectual Property;" however, neither Party shall be liable to the other

Party because of failure to list its Background Intellectual Property.

Article XVII. Assignment and Notification.

Neither this Agreement nor any interest therein or claim thereunder shall be assigned or transferred by either Party, except as authorized in writing by the other Party to this Agreement, provided, however, the Recipient may transfer it to the Department, or its designee, with notice of such transfer to the Sponsor, and the Recipient shall have no further responsibilities except for the confidentiality, use, and/or non-disclosure obligations of this Agreement. The obligations of the Recipient set forth in this Agreement shall apply to any successor in interest continuing the operation of the National Laboratory of the Rockies.

If the Sponsor intends to assign or transfer any interest in this Agreement to a third party or the Sponsor is merging or being acquired by a third party, the Sponsor shall notify the Recipient with details of the pending action for a determination. The Recipient shall reply in writing whether such transfer is acceptable or invoke the termination clause.

Article XVIII. Similar or Identical Services.

The Government and/or Recipient shall have the right to perform similar or identical services in the Statement of Work for other sponsors as long as the Sponsor's Proprietary Information is not utilized.

Article XIX. Export Control.

Each Party is responsible for its own compliance with laws and regulations governing export control.

Article XX. Disputes.

The Parties shall attempt to jointly resolve all disputes arising from this Agreement. In the event a dispute arises under this Agreement, the Sponsor is encouraged to contact Recipient's Technology Partnerships Ombudsman in order to resolve such dispute before pursuing third-party mediation or other remedies. If the Parties are unable to jointly resolve a dispute within 60 days, the Parties agree to submit the dispute to a non-binding third-party mediation process that is mutually agreed upon by the Parties.

Article XXI. Entire Agreement and Modifications.

1. This Agreement with its appendices contains the entire agreement between the Parties with respect to the subject matter hereof, and all prior representations or agreements relating hereto have been merged into this document and are thus superseded in totality by this Agreement.
2. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the Parties and approved as required—including by the DOE. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the Parties.

Article XXII. Termination.

This Agreement may be terminated by either Party, following thirty (30) days written notice to the other Party. If Article IV provides for advance funding, this Agreement may also be terminated by the Recipient in the event of failure by the Sponsor to provide the necessary advance funding. In the event of termination, either by the Sponsor or the Recipient (e.g. for lack of advance funding), the Sponsor shall be responsible for the Recipient's costs (including closeout costs), but in no event shall the Sponsor's cost responsibility exceed the total cost to the Sponsor as described in Article III, above.

It is agreed that any obligations of the Parties regarding Proprietary Information or other intellectual property will remain in effect, despite early termination of the Agreement.

Funds-In Agreement

Appendix A, Exhibit D—Confidential Deliverables and Pre-existing Intellectual Property Lists

PART I: CONFIDENTIAL DELIVERABLES

Pursuant to 20 California Code of Regulations section 2505(c)(2)(B), the Energy Commission designates the following as confidential.

No Confidential Deliverables,

OR

Confidential Deliverables:

Description of Information to be Kept Confidential: <ul style="list-style-type: none"> • Title of document/name of deliverable • Task Number • Portion of document to be kept confidential • General description of the technology to be kept confidential. 	Legal Basis for Confidential Designation: <ul style="list-style-type: none"> • Trade Secret <ul style="list-style-type: none"> --Technical --Business --Marketing --Economic/Financial • Patent application number 	Term of Confidentiality

PART II: PRE-EXISTING OR INDEPENDENTLY FUNDED INTELLECTUAL PROPERTY

Recipient has identified the following intellectual property as pre-existing intellectual property or independently funded intellectual property, as those terms are defined in Appendix E of this Agreement.

No Pre-existing or Independently funded Intellectual Property

OR

Pre-existing or Independently funded Intellectual Property (Please insert "none" in the types that do not apply):

Patents Issued

Title	Patent Number	Inventors/ Assignee (Owner)	File Date	Issue/ Grant Date	Country	Description

Patent Applications

Title	File Date	Public Description (2-3 sentences)

Trade Secrets

Title	Public Description (2-3 sentences)

Copyrights

Title	Copyright Number	Owner	File Date	Issue/ Grant Date	Country	Description

Trademarks

Title	Trademark Number	Owner	File Date	Issue/ Grant Date	Country	Description

Disclosure Memos

Title	Disclosure Date	Memo Number, if applicable	Public Description (2-3 sentences)

Invention Berkeley (DOE National Labs Only)

Title	Number	Date

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Appendix B – Patent Rights

(Alternative I - class waiver declined or denied)

1. The following definitions shall be used.

"Subject Invention" means any invention or discovery of the Recipient, or, to the extent the Sponsor, a Subrecipient of the Recipient, or Match Fund Contributor is performing any work under this Agreement, of the Sponsor, Subrecipient of the Recipient, or Match Fund Contributor respectively, conceived in the course of, or under this Agreement or, in the case of an invention previously conceived by the Sponsor, Subrecipient of the Recipient, or Match Fund Contributor, first actually reduced to practice in the course of or under this Agreement. "Subject Invention" includes any art, method, process, machine, manufacture, design or composition of matter, or any new and useful improvement thereof, or any variety of plant, whether patented under the Patent Laws of the United States of America or any foreign country, or unpatented.

2. Any Subject Invention made by the Recipient under this Agreement will be governed by the provisions of the M&O Contract with the DOE. For any Subject Invention to which the Recipient, a Subrecipient of the Recipient, a Match Fund Contributor, or the Government retains title, the provisions provided in Appendix E shall apply.
3. The Sponsor, Subrecipient(s) of the Recipient, and Match Fund Contributor(s) as applicable, may retain title to their own Subject Inventions, subject to the Government retaining a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced by or on behalf of the United States the Subject Inventions throughout the world, a requirement to report their Subject Inventions to DOE within 6 months after conception or first actual reduction to practice, whichever occurs first, in the course of or under this Agreement, U.S. Preference (35 U.S.C. § 204), and such other conditions consistent with DOE patent waiver policy.

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Appendix C – Rights in Technical Data

(Alternative I - unlimited rights/nonproprietary - software)

1. The following definitions shall be used.
 - A. "Generated Information" means information produced in the performance of this Agreement or any of Recipient's subcontracts under this Agreement.
 - B. "Proprietary Information" means information, which is developed at private expense, is marked as Proprietary Information, and embodies (1) trade secrets or (2) commercial or financial information which is privileged or confidential under the Freedom of information Act (5 USC § 552 (b)(4)).
 - C. "Unlimited Rights" means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.
 - D. "Computer Software" means (i) computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and (ii) recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.
2. For work performed at the DOE facility, the Sponsor agrees to furnish to the Recipient or leave at the facility that information, if any, which is (1) essential to the performance of work by the Recipient personnel or (2) necessary for the health and safety of such personnel in the performance of the work. Any information furnished to the Recipient shall be deemed to have been delivered with Unlimited Rights unless marked as Proprietary Information. The Sponsor agrees that it has the sole responsibility for appropriately identifying and marking all documents provided containing Proprietary Information
3. The Sponsor, California Public Utilities Commission, Recipient, and the Government shall have Unlimited Rights in all Generated Information, except for information which is disclosed in a Subject Invention disclosure being considered for patent protection.
4. The Government and Recipient agree not to disclose properly marked Proprietary Information without written approval of the Sponsor, except to Government employees who are subject to the statutory provisions against disclosure of confidential information set forth in the Trade Secrets Act (18 USC § 1905).
5. The Sponsor is solely responsible for the removal of all of its Proprietary Information from the DOE facility by or before termination of this Agreement. The Sponsor may request the Recipient to return or destroy all of the Sponsor's Proprietary Information subject to paragraph (2) above. The Government and Recipient shall have Unlimited Rights in any information which is not removed from

the DOE facility by termination of this Agreement. The Government and Recipient shall have Unlimited Rights in any Proprietary Information which is incorporated into the facility or equipment under this Agreement to such extent that the facility or equipment is not restored to the condition existing prior to such incorporation.

6. The Sponsor agrees that the Recipient will provide to the Department of Energy a nonproprietary description of the work performed under this Agreement.
7. COPYRIGHT: The Parties, Subrecipient(s) of the Recipient, or Match Fund Contributor(s), as applicable, may assert Copyright in any of their Generated Information. For Generated Information in which the Recipient, Subrecipient(s) of the Recipient, or Match Fund Contributor(s), as applicable, asserts copyright, the provisions provided in Appendix E shall apply. Subject to the other provisions of this clause including Computer Software generated by the Recipient below, and to the extent copyright is asserted, the Government reserves for itself and others acting in its behalf, a paid-up, world-wide, irrevocable, non-exclusive license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, prepare derivative works, and perform any such copyrighted works.

When the Recipient, Subrecipient(s) of the Recipient, or Match Fund Contributor(s), as applicable, asserts copyright in its Computer Software developed under this Agreement or any of Recipient's subcontracts under this Agreement, the Government has for itself and others acting on its behalf, a royalty-free, nontransferable, nonexclusive, irrevocable worldwide copyright license to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government (narrow-license). After the such party abandons or no longer commercializes the Copyrighted Computer Software, the Government has for itself and others acting on its behalf, a royalty-free, nontransferable, nonexclusive, irrevocable worldwide copyright license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government (broad-license).

Except as provided in Appendix E, a separate copyright license may be necessary in Computer Software developed outside of this Agreement and used to perform the work in this Agreement, such as creating derivative works.

General Terms and Conditions (GTC 04/2017 edited)

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services (DGS), if required. Recipient may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: If this Agreement is assigned by the Recipient, either in whole or in part, to a successor manager and operator of the National Laboratory of the Rockies or to the US Department of Energy (DOE) as directed by the DOE, the parties agree to memorialize the assignment by executing a formal written amendment.
4. AUDIT: Recipient agrees that the awarding department, the Bureau of State Audits, or their designated representative shall have the right at the State of California's (State's) expense, to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Recipient agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Recipient agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records, provided that such interviews and the time of such employees are at the State's expense. Further, Recipient agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. DISPUTES: Recipient shall continue with the responsibilities under this Agreement during any dispute.
6. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any further payments should the Recipient fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State.

7. INDEPENDENT CONTRACTOR: Recipient, and the agents and employees of Recipient, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

8. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Recipient and its Subrecipients shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Recipient shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Recipient and Subrecipients shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Recipient shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Recipient and its Subrecipients shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

9. TIMELINESS: Time is of the essence in this Agreement.

10. COMPENSATION: The consideration to be paid Recipient, as provided herein, shall be in compensation for all of Recipient's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

11. GOVERNING LAW: This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California. However, in the event that State law is preempted by Federal law applicable to this Agreement, Federal law shall take precedence.

12. ANTITRUST CLAIMS: The Recipient by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Recipient shall comply with the requirements of the Government Codes

Sections set out below.

- a. The Government Code Chapter on Antitrust claims contains the following definitions:
 - 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
 - 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
 - b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
 - c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
 - d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.
13. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

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**Appendix E—California Energy Commission
Definitions and Additional Agreement Terms**

Clause 1. Purpose and Precedence.

- A. The Parties agree that this Appendix E is intended as an addendum to the Funds-In Agreement, to fulfill the legal and regulatory obligations and commitments that the CEC (herein, California Energy Commission) has to the State of California.
- B. In the event of any conflict between the terms and conditions of the Funds-In Agreement and this Appendix E, the Funds-In Agreement terms and conditions shall take precedence.
- C. Further, in the event of any conflict between Federal law applicable to this Funds-In Agreement and State law, Federal law shall take precedence.

Clause 2. Definitions.

- A. **Agreement Budget** refers to California Energy Commission reimbursable resources for that portion of the Project covered by the Agreement.
- B. **Agreement Period** is the length of the Agreement between the California Energy Commission and the Recipient. The Agreement Period coincides with that portion of the Project covered by the Agreement Budget.
- C. **Date** means calendar date.
 - 1) **Agreement Start Date** is the date California Energy Commission reimbursable expenses can begin after the Agreement document is signed by the Department of General Services.
 - 2) **Termination Date** is the expiration date of the Agreement and is the last date California Energy Commission reimbursable expenses can be incurred.
- D. **Equipment** means any products, objects, machinery, apparatus, implements or tools, in excess of \$5,000.00, purchased or constructed under this Agreement, including those products, objects, machinery, apparatus, implements or tools, in excess of \$15,000.00, from which over thirty percent (30%) of the equipment is composed of materials purchased for the project.
For the purposes of determining residual value, the California Energy Commission will use straight line depreciation over the equipment's useful life as determined by the California Energy Commission's standard accounting practices. The residual value will be calculated as of the date of the completion or termination of this Agreement.
- E. **Materials** means the substances used in constructing a finished object, commodity, device, article or product.
- F. **Participant's value contribution** means the assessed value of Federal Administrative Charges not charged to this project and assessed value of synergistic projects. The assessed value of such synergistic projects does not constitute a funding contribution or obligation (either cash or in-kind) on the part of the Recipient.
- G. **Project** refers to the entire effort undertaken and planned by the Recipient under Appendix A, Statement of Work and includes the work funded by the California Energy Commission. The Recipient's Project coincides with that portion of the Project covered by the Agreement Budget and the Agreement Period.
- H. **Sale** is sale, license, lease, gift or other transfer of a project-related product or right.

- I. **Vendor** means a person or entity that sells goods or services to the Recipient, Subrecipient, or any lower-tiered level of Sub-Subrecipient, in exchange for some of the grant funds, and does not make decisions about how to perform the grant's activities. The Vendor's role is ministerial and does not involve discretion over this Agreement's activities.
- J. **Match Funds** means cash or in-kind (i.e., non-cash) contributions provided by the Recipient, Subrecipient, any lower-tiered level of Sub-Subrecipient, or Vendor, or a third party (each, when contributing Match Funds, a "Match Fund Contributor") for a project funded by the CEC.
- K. **Subrecipient (formerly Subcontractor)** means a person or entity that receives grant funds directly from the Recipient and is entrusted by the Recipient to make decisions about how to conduct some of this Agreement's activities. A Subrecipient's role involves discretion over grant activities and is not merely just selling goods or services.
- L. **Sub-Subrecipient** has the same meaning as a Subrecipient except that it receives grant funds from a Subrecipient or any lower tier level of a Sub-Subrecipient.

Clause 3. Standard of Performance.

- A. Recipient, its Subrecipients and their employees in the performance of work under this Agreement shall be responsible for using their best efforts to exercise the degree of skill and care required by customarily accepted good professional practices and procedures used in scientific and engineering research fields.
- B. In the event that the California Energy Commission believes the Recipient or any Subrecipient has failed or is failing to perform in accordance with the standard of performance in paragraph 3A, the California Energy Commission and the Recipient shall negotiate in good faith an equitable resolution satisfactory to both parties. If such resolution cannot be reached, the California Energy Commission's sole remedy in the event of the Recipient's failure to perform in accordance with the standard of performance in paragraph 3A is termination of the Agreement.
- C. Nothing contained in this Clause 3 is intended to limit any of the rights or remedies that the Parties may have under law, or to limit exercise of any other provision of this agreement.

Clause 4. Subrecipients and Subrecipient Agreements.

- A. Agreements with Subrecipients. In the case of utilization of Subrecipients, the Recipient shall be responsible for establishing and maintaining contractual agreements with and reimbursement of each of the Subrecipients for work performed in accordance with the terms of this Agreement. Recipient shall provide the California Energy Commission with copies of all subcontract agreements resulting from this Agreement promptly upon final execution thereof.
- B. Replacement of key Subrecipients. Any key Subrecipients listed in Appendix A, Statement of Work cannot be replaced or substituted without prior written concurrence of the California Energy Commission Agreement Manager. Such concurrence shall be timely and not unreasonably withheld.
- C. Replacement or substitution of all other Subrecipients. The Recipient shall notify the California Energy Commission in writing of any replacement or substitution of Subrecipients not listed as key Subrecipients in Appendix A Statement of Work.
- D. Termination of subcontracts. Upon the termination of any subcontract, the California Energy Commission's Commission Agreement Manager shall be immediately notified.
- E. Procurement processes. The Recipient shall use DOE-approved and regulated procurement policies, processes, and procedures to achieve the subcontract obligations under this Agreement. Federally-approved policies, processes, and procedures regarding competitive selection, sole-source justification, intellectual property rights, assignment, and flow-down shall be maintained for all subcontracts under this Agreement.

Clause 5. Public Hearings.

If public hearings on the subject matter dealt with in this Agreement are held during the period of the Agreement, Recipient will make available to testify the personnel assigned to this Agreement if requested by the California Energy Commission. The California Energy Commission will reimburse, by

advance payment, the labor and travel costs of testifying personnel assigned to this Agreement at the Recipient's rates for such work.

Clause 6. Site Access for Project Review.

The Parties acknowledge that the United States Department of Energy enforces strict requirements regarding security, safety, and access to the DOE National Laboratories' sites and facilities. **To the extent permitted by DOE and Recipient security, safety, and access requirements**, the California Energy Commission staff or its representatives shall have reasonable access to the construction site or R&D laboratory and all project records related to performance under this Agreement.

Clause 7. Notice to Parties.

Notice to the Parties may be given by certified mail properly addressed, postage fully prepaid, to the address listed in Block 8 (California Energy Commission), and Block 10 (Recipient) in the Standard Agreement for each respective party. Notice may be given to such other address as either Party shall provide to the other in accordance with this section. Such notice shall be effective when received, as indicated by post office records, or if deemed undeliverable by post office, such notice shall be effective nevertheless fifteen (15) days after mailing.

Alternatively, notice may be given by personal delivery to the at the address designated in the Standard Agreement or to such other address as either Party shall notify the other in accordance with this section. Such notice shall be deemed effective when delivered unless a legal holiday for State or Federal offices commences during the 24-hour period, in which case the effective time of the notice shall be postponed 24 hours for each such intervening day.

Clause 8. Business Activity Reporting.

- A. Recipient shall not change or reorganize the type of business entity under which it does business except upon prior written notification to the California Energy Commission.
- B. Recipient shall promptly notify California Energy Commission of the occurrence of each of the following:
 - 1) The existence of any litigation or other legal proceeding affecting the Project;
 - 2) The occurrence of any casualty or other loss to project personnel, equipment, in excess of \$5,000.00, or third parties of a type commonly covered by insurance; and
 - 3) Recipient's receipt of notice of any claim or potential claim against Recipient for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the California Energy Commission's rights.

Clause 9. Travel and Per Diem.

- A. Travel identified in Appendix A. Statement of Work does not require prior authorization.
- B. Travel that is not included in Recipient's Statement of Work shall require prior written authorization from the California Energy Commission Agreement Manager.
- C. Origination and destination points for calculating travel expenses shall be the Recipient's office location where the employees performing on the Agreement are permanently assigned. The Recipient shall be reimbursed for travel and per diem on the same basis as the Recipient's DOE-approved rates in effect during this Agreement.
- D. The Recipient will document travel expenses as follows:
 - expenses must be detailed using the Recipient's DOE-approved rates.
 - expenses must be documented by trip including dates and times of departure and return. Employee's travel expense report may be used instead.
 - The Recipient will retain travel expense documentation and receipts for audit and verification to the extent audits are permitted by DOE policy.

Clause 10. Accounting.

The Recipient's costs shall be determined on the basis of the Recipient's accounting system procedures and practices employed as of the effective date of this Agreement, and as may be revised from time to time, provided that generally accepted accounting principles and cost reimbursement practices are used. The Recipient's cost accounting practices used in accumulating and reporting costs during the performance of this Agreement shall 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 provided, further, that such costs may be accumulated and reported in greater detail during performance of this Agreement. The Recipient's accounting system shall distinguish between direct costs 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.

Clause 11. Survival.

It is understood and agreed that certain Agreements provisions shall survive the completion or termination date of this Agreement for any reason. The Agreements provisions include, but are not limited to:

- "Funding and Payment" Terms and Conditions, Article IV
- "Tangible Personal Property" Terms and Conditions, Article VI
- "Product Liability Indemnity" Terms and Conditions, Article XI
- "Disputes" Terms and Conditions, Article XX
- "Termination" Terms and Conditions, Article XXII
- "Patent Rights" Appendix B
- "Rights in Technical Data" Appendix C
- "Site Access for Project Review" Appendix E, Clause 6
- "Business Activity Reporting" Appendix E, Clause 8
- "Accounting" Appendix E, Clause 10
- "Pre-existing and Independently Funded IP" Appendix E, Clause 17
- "Subject Intellectual Property" Appendix E, Clause 18
- "Royalty Payments to the Commission" Appendix E, Clause 19
- "CA Taxpayer Access to Publicly Funded Research" Appendix E, Clause 20
- Public Works Appendix E, Clause 24

Clause 12. Stop Work.

California Energy Commission Agreement Officer may, at any time, by five-days written notice to the Recipient, require the Recipient to stop all or any part of the Agreement's work tasks.

- A. Compliance. Upon receipt of such stop work order, the Recipient will immediately take all necessary steps to comply and to minimize the incurrence of costs allocable to work stopped.
- B. Equitable Adjustment. An equitable adjustment shall be made by the California Energy Commission based upon a written request for an equitable adjustment by the Recipient. Such adjustment request must be made within thirty (30) days from the date of receipt of the stop work notice.
- C. Revoking a Stop Work Order. The Recipient will resume the stopped work only upon receipt of written instructions from the California Energy Commission's Commission Agreement Officer canceling the stop work order.

Clause 13. Insurance.

The Recipient will obtain and maintain for the life of this Agreement general liability insurance on an occurrence form with limits not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined with a \$2,000,000 annual policy aggregate. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Recipient's limit of liability. The policy must include California Energy Commission, State of California, its officers, agents, and employees as additional insured, but only with respect to work performed under this

Agreement. Recipient must furnish to the California Energy Commission a certificate of insurance to remain in effect at all times during the term of this Agreement.

The Recipient's cost associated with obtaining and maintaining such liability insurance policy shall be an expense that is considered by the Parties to be allocable to this Agreement. Should the Recipient be unwilling or unable to obtain such general liability insurance, the CEC may obtain such coverage. In the case of utilization of Subrecipients to complete the contracted scope of work, Recipient shall include all Subrecipients as insured under Recipient's insurance or supply evidence of insurance to the California Energy Commission equivalent to the coverage required of Recipient.

Clause 14. Budget Contingency Clause.

Notwithstanding Article V of the FIA General Terms and Conditions, it is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. CEC shall provide Recipient with notice of such a lack of appropriated funds as soon as practicable but, in any event, prior to the time at which funds in Recipient's possession may no longer be spent. In this event, thereafter, the State of California (State) shall have no liability to pay any additional funds whatsoever to Recipient or to furnish any other considerations under this Agreement and Recipient shall no longer be obligated to perform any provisions of this Agreement. If funding for any fiscal year is reduced or deleted by the Budget Act 54 for purposes of this program, the State shall have the option to either terminate this Agreement with no liability occurring to the State therefrom, or offer an agreement amendment to Recipient to reflect the reduced amount.

Clause 15. 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 California state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Recipient is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide Recipient advance written notice of such termination, allowing Recipient at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.

Clause 16. Documents Incorporated by Reference.

The documents below are incorporated by reference into this Agreement. The terms and conditions of this Agreement will govern in the event of a conflict with the solicitation documents below. The Solicitation will govern in the event of a conflict between the solicitation and the Recipient's proposal.

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

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

General Laws

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

Clause 17. Pre-existing and Independently funded Intellectual Property.

A. Ownership

The CEC makes no ownership, license, or royalty claims to pre-existing intellectual property, independently funded intellectual property, or project-relevant pre-existing or independently funded intellectual property. "Ownership", for the purposes of Clause 17 and Clause 18 herein, means exclusive possession and control of all rights to intellectual property, including the right to use and

transfer intellectual property. Intellectual property licenses and royalties are discussed in Clauses 18 and 19.

- 1) "Pre-existing intellectual property" means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that the Recipient, Subrecipients, or any lower-tiered level of Sub-Subrecipients, Vendors, or a third party owned or possessed prior to the effective date of this Agreement and that have not been developed, altered, or, in the case of inventions, first actually reduced to practice with CEC or Match Funds; and (b) associated proprietary rights to these items that are obtained without CEC or Match Funds, such as patent and copyright.
- 2) "Independently funded intellectual property" means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, or developed, or altered by the Recipient, Subrecipients, or any lower-tiered level of Sub-Subrecipients, Vendors, or a third party during or after the Agreement term without CEC or Match Funds and, in the case of inventions, not first actually reduced to practice with CEC or Match Funds; and (b) associated proprietary rights to these items that are obtained without CEC or Match Funds, such as patent and copyright.

"Works of authorship", for the purposes of Clause 17 and Clause 18 herein, does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices. The CEC owns such products regardless of their funding source.

- 3) "Project-relevant pre-existing intellectual property" and "project-relevant independently funded intellectual property" mean pre-existing and independently funded intellectual property, respectively, of Recipient, Subrecipients, and any lower-tiered level of Sub-Subrecipients that is used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement.

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

1) Identification of Property

- a) The Recipient will use reasonable efforts to identify all project-relevant pre-existing intellectual property in Appendix A, Exhibit D prior to the effective date of the Agreement, or within sixty (60) days of becoming aware that the property has been or will be used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement. Appendix A, Exhibit D may be amended (see the "Amendments" section).
- b) The Recipient will use reasonable efforts to identify all project-relevant independently funded intellectual property in Appendix A, Exhibit D within sixty (60) days of becoming aware that the property has been or will be used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement.
- c) Notwithstanding the above, failure to identify project-relevant pre-existing or independently funded intellectual property in Appendix A, Exhibit D will not result in the property's designation as "subject intellectual property" that is subject to licenses and royalties, as described in Clauses 18 and 19.

2) Access to Property

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

Upon the Commission Agreement Manager's ("CAM's") request, the Recipient will provide the CAM and any reviewers designated by the CEC or the California Public Utilities Commission with access to review the Recipient's project-relevant pre-existing and independently funded intellectual property. If the property has been designated as

confidential as specified in Appendix A, Exhibit D, the CEC will only disclose it under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508.

3) Preservation of Property
[RESERVED]

Clause 18. Subject Intellectual Property.

A. Ownership

- 1) The Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors respectively own all of their own subject intellectual property, subject to the licenses described in subsection b.

“Subject Intellectual property” means: (a) inventions (including subject inventions as defined in Appendix B), 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, in the case of inventions, first actually reduced to practice with Agreement or Match Funds during or after the Agreement term; and (b) any associated proprietary rights to these items, such as patent and copyright.

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

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

B. Subject Intellectual Property Licenses

- 1) Recipient agrees to grant, agrees to require Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors to grant, and does hereby grant, to both the CEC and the California Public Utilities Commission, a no-cost, non-exclusive, nontransferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce subject intellectual property for California state governmental purposes.
- 2) Under limited circumstances as described in this subclause 2, both the CEC and the California Public Utilities Commission may direct Recipient, Subrecipients of the Recipient, any lower-tiered level of Sub-Subrecipients, and Vendors to grant, in accordance with the Prime Contract and subaward agreements, as applicable, and in accordance with such entities’ normal licensing practices, to load-serving entities and/or contract service providers a no-cost, non-exclusive, nontransferable, irrevocable, royalty-free, worldwide, perpetual, limited to California license for non-commercial purposes, to use, publish, translate, modify, and reproduce subject intellectual property to enhance the entities’ service to EPIC ratepayers in California, solely for use by the load-serving entity at the load-serving entity’s facilities in California, including load-serving entity transmission and distribution systems. The subject intellectual property that the Recipient, Subrecipients of the Recipient, any lower-tiered level of Sub-Subrecipients, and Vendors may be directed to license to load-serving entities is limited to analytical tools and models that can be used to inform distribution planning and decision-making that benefits electric ratepayers.

“Load-serving entity” means a company or other organization that provides electricity to EPIC ratepayers in California.

“Contract Service Provider” means a service provider that is performing services for a load-serving entity in support of the load-serving entity’s provision of service to EPIC ratepayers, under a written contract with the load-serving entity.

- 3) The Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors have 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. Furthermore, the U.S. Government shall also have such license, to be used by or on behalf of the U.S. Government.

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

C. Energy Commission's Rights to Subject Inventions

1) RESERVED

2) Notice of Patent

If any patent is issued for a subject invention, the Recipient, Subrecipient, lower-tiered level of Sub-Subrecipient, or Vendor will send the CAM written notice of the issuance within three (3) months of the issuance date. The notice must include the patent title, issuance number, and a general description of the invention.

3) Legal Notice

The Recipient and all persons and/or entities obtaining an ownership interest in patentable subject intellectual property must include the following statement within the specification of any United States patent application, and any subsequently issued patent for the subject invention: "This invention was made with State of California support under California Energy Commission grant number EPC-23-001. The Energy Commission has certain rights to this invention."

D. Access to Subject Intellectual Property

1) Access to Subject Intellectual Property

Upon the CAM's request, the Recipient, Subrecipient, any lower-tiered level of Sub-Subrecipient, or Vendor will provide the CAM and any individuals designated by the CEC or the California Public Utilities Commission with access to the entity's subject intellectual property in order to exercise the license described above, and to determine any royalty payments due under the agreement.

2) RESERVED

E. Intellectual Property of Others

The Recipient may not, in supplying work under this Agreement, knowingly infringe or misappropriate any intellectual property right of a third party.

Clause 19. Royalty Payments to the Commission.

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

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

intellectual property development activities that were funded with Match Funds that the entity itself provided. For example, if 10% of the development activities were funded by the Recipient with Match Funds during the Agreement and the Recipient's payments for sales totaled \$100,000 in one year, the Recipient would owe the Energy Commission \$1,350 for the year (1.5% of \$100,000 = \$1,500; 10% of \$1,500 = \$150; \$1,500 - \$150 = \$1,350).

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

- E. The Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors may make an early buyout payment to the Energy Commission without a pre-payment penalty, as an alternative to making annual royalty payments for ten (10) years following the Agreement's end date. The payment must be in a lump sum amount equal to one and a half (1.5) times the amount of total funds paid by the CEC under the entire Agreement and made within five (5) years of the Agreement's end date. The payment amount due under the early buyout option will not be reduced by the percentage of Match Funds as described above. The payment will also not be reduced because a Subrecipient, any lower-tiered level of Sub-Subrecipient, or Vendor that owes royalties received less than the total CEC funds paid out under the agreement. For example, if a Subrecipient only received 25% of the total CEC funds paid out (because the rest went to the Recipient or other Subrecipients, this early buyout option of 1.5 times funds paid is based on the total CEC funds paid under the Agreement and not the lower, 25% received by the Subrecipient.
- F. The Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors may not make any sale, transfer, license, or any other conveyance or even allowed use, of subject intellectual property for less than fair market value. Such activity constitutes breach of this Agreement, and will obligate the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors to repay within sixty (60) days the early buyout amount due. In the event of breach, the CEC may exercise all rights and remedies available to it under law and at equity.
- G. Royalty payments not made within fifteen (15) days of the due date will constitute breach of this Agreement. The payments will become debt obligations of the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors to the CEC, due upon demand and bearing interest at the maximum interest rate allowed by law.
- H. The Recipient will maintain separate accounts within its financial and other records for the purpose of tracking components of sales and royalties due to the CEC under this Agreement.
- I. Payments to the CEC are subject to audit as provided for under the Recordkeeping, Cost Accounting, and Auditing section.
- J. The Recipient shall include these royalty provisions in its agreements with all Subrecipients and Vendors and ensure they in turn include them in their agreements with all lower-tiered level of Sub-Subrecipients and Vendors, who develop or assist with the development of subject intellectual property.

Clause 20. California Taxpayer Access to Publicly Funded Research.

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

- 1) "Peer-Reviewed Manuscript" means a manuscript after it has been peer reviewed and in the form in which it has been accepted for publication in a scientific journal.
 - 2) "Research Grant" in the Act and "this Agreement" in this section mean this Agreement.
 - 3) "State Agency" in the Act means the Energy Commission.
- c. The Recipient shall provide for free public access to any Peer-Reviewed Manuscript developed within the scope of this Agreement.
 - d. The Recipient shall ensure that any publishing or copyright agreements concerning Peer-Reviewed Manuscripts:
 - 1) Fully comply with California Government Code section 13989.6;
 - 2) Do not conflict with the Energy Commission's rights under this Agreement;
 - 3) Secure for the Energy Commission the rights provided under this Agreement, including the rights to Intellectual Property described in Clause 18; and
 - 4) Recognize the free public access to the Peer-Reviewed Manuscript.
 - e. The Recipient shall report to the CEC the final disposition of any Peer-Reviewed Manuscript, including but not limited to if it was published; when it was published; where it was published; and, when the 12-month time period expires, where the Peer-Reviewed Manuscript will be available for open access.
 - f. Not later than 12 months after the official date of publication, the Recipient shall make available to the CEC an electronic version of any Peer-Reviewed Manuscript that is developed within the scope of this Agreement.
 - g. The Recipient shall make publicly accessible an electronic version of any Peer-Reviewed Manuscript that is developed within the scope of this Agreement, not later than 12 months after the official date of publication, on a repository approved in writing by the CEC, including but not limited to the University of California's eScholarship Repository at the California Digital Library; the California State University's ScholarWorks at the Systemwide Digital Library; or PubMed Central. The Recipient shall notify the CEC when the Peer-Reviewed Manuscript is available on an CEC-approved repository.
 - h. If the Recipient is unable to ensure that its Peer-Reviewed Manuscript is accessible on an CEC-approved, publicly accessible repository, the Recipient may comply by providing the manuscript to the CEC not later than 12 months after the official date of publication.
 - i. For any publications other than a Peer-Reviewed Manuscript, (herein referred to as "Other Publications") including scientific meeting abstracts, developed within the scope of this Agreement, the Recipient shall:
 - 1) Provide an electronic version of the Other Publications to the CEC not later than 12 months after the official date of publication.
 - 2) Ensure that any publishing or copyright agreements concerning Other Publications:
 - a. Do not conflict with the CEC's rights under this Agreement.
 - b. Secure for the CEC the rights provided under this Agreement, including the rights to subject Intellectual Property described in Clause 18.
 - j. The Act states that "Grantees are authorized to use grant money for publication costs, including fees charged by a publisher for color and page charges, or fees for digital distribution." Recipient agrees that for purposes of this Agreement, the Recipient is only authorized to use funds under this Agreement, including Match Funds, for these purposes if the expenses are included in the Agreement's Budget and meet the other Agreement requirements for payment, including that the CEC will only reimburse the Recipient for expenditures incurred during the Agreement term. If these expenses are not included in the Budget, both parties must agree and amend the Budget to include such expenditures before Recipient is authorized to use Agreement funds, either reimbursable expenses or Match Funds, for these purposes.
 - k. Should a conflict exist between the terms in this Clause 20 and other terms of this Agreement, the terms in this section prevail.

Clause 21. Report on Funds Spent in California and Funds to California Based Entities.

A. Recipient shall submit as part of its 90-day reconciliation reports from Exhibit B, Appendix A, Quarterly Reconciliation documentation of (1) the Total Energy Commission Reimbursable Funds Spent in California and (2) if the funding source is PIER Natural Gas, the Total Energy Commission Reimbursable Funds to California Based Entities. These reports can be (a) listed on the 90-day reconciliation report, (b) appended to it as an attachment, or (c) documented using the Total Energy Commission Reimbursable Funds Spent in California and Total Energy Commission Reimbursable Funds to CBEs form at <http://www.energy.ca.gov/research/contractors.html> or the form using the template shown in Attachment J-1.

B. Definitions

NOTE: If the Solicitation contains any of these definitions, then, notwithstanding Clause 16, the definitions in the Solicitation take precedence over the definitions below, which otherwise apply:

a. "Funds Spent in California" means that: (1) funds under the "Direct Labor" category and all categories calculated based on direct labor (Recipient and Subrecipient Labor Rates) are paid to individuals who pay California state income taxes on wages received for work performed under the agreement; and (2) business transactions (e.g., material and equipment purchases, leases, rentals, and contractual work) are entered into with a business located in California.

Airline ticket purchases for out of state travel and payments made to out-of-state workers are not considered funds "spent in California." However, funds spent by out-of-state workers in California (e.g., hotel and food) and airline travel originating and ending in California are considered funds "spent in California."

b. "California Based Entity" means either of the following:

- 1) A corporation or other business form organized for the transaction of business that has its headquarters in California and manufactures in California the product that qualifies for the incentive or award; or
- 2) A corporation or other business form organized for the transaction of business that has an office for the transaction of business in California and substantially manufactures in California the product that qualifies for the incentive or award, or substantially develops within California the research that qualifies for the incentive or award, as determined by the agency issuing the incentive or award.

During this Agreement, Recipient shall meet its promised expenditure of Funds Spent in California and funds spent on California Based Entities. The promised amount of each is determined in this Agreement (usually in the Agreement Budget) or Recipient's proposal, with the amount in the Agreement taking precedence in case of a conflict.

Clause 22. Drug-Free Workplace Certification.

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

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

- Will agree to abide by the terms of the company's statement as a condition of employment on the project.

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 Recipient may be ineligible for any future state awards if the CEC determines that any of the following has occurred: (1) the Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

Clause 23. Americans with Disabilities Act.

By signing this Agreement, the Recipient assures the CEC 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.

Clause 24. Public Works.

The Recipient is responsible for complying with all applicable laws, which can include public works requirements under the Labor Code. Recipient acknowledges acceptance of Agreement funds may trigger public works laws (Labor Code Section 1720 et seq.), a requirement of which is to pay prevailing wages, applying to its entire project. If the project is public works then it is subject to compliance monitoring and enforcement by the Department of Industrial Relations. By signing this Agreement, Recipient certifies that it shall comply with all applicable Public Works laws and requirements.