

# University of California Model Agreement Template and Terms

Please visit the [University of California, Office of the President](https://www.ucop.edu/research-policy-analysis-coordination/research-sponsors-agreements/state-of-california/california-model-agreement.html) for the California Model Agreement Template and Terms at <https://www.ucop.edu/research-policy-analysis-coordination/research-sponsors-agreements/state-of-california/california-model-agreement.html>.

In addition to the California Model Agreement Template and Terms, the California Energy Commission also requires the use of the California Energy Commission budget forms and the California Energy Commission Negotiated Alternate UTC Terms.

# **Exhibit B**

## **Budget for Project Period**

Attach (or insert) California Energy Commission Budget form

## **Exhibit B2**

### **Budget(s) Pertaining to Subcontractor(s) (when applicable)**

Attach (or insert) California Energy Commission Budget form

## **Exhibit G – Negotiated Alternate Language to UTC**

(For use in all CEC Contracts and Grants with UC/CSU, including EPIC funding)

### **1. Precedence of this Exhibit G**

Exhibit C, section 29 ‘Order of Precedence’ is replaced in its entirety as follows:

- A. The Energy Commission and the University have mutually determined that certain specified Agreement provisions from Exhibit C are inappropriate or inadequate for this Agreement and therefore have agreed to the following alternate UTC Terms as provided for in this Exhibit G – Negotiated Alternate Language to UTC.
- B. Any inconsistency in the provisions under this Agreement shall be resolved by giving precedence in the following order:
  - 1) Exhibit D – Additional Requirements Associated with Funding Sources, when applicable
  - 2) Exhibit G– Negotiated Alternative Language to UTC
  - 3) Exhibit C – University Terms and Conditions
  - 4) All other Agreement exhibits and attachments
  - 5) University’s application to the CEC solicitation under which this Agreement is funded
  - 6) CEC solicitation

### **2. Patent Rights - University**

- A. Subject to the requirements of law, all rights to any patentable inventions or discoveries conceived and first actually reduced to practice in the performance of the Scope of Work, Exhibit A, conducted under this Agreement (“Patentable Inventions”) shall belong to the University. The State shall have a nonexclusive, sublicensable, irrevocable, paid-up license to practice or have practiced such Patentable Invention for government purposes.
- B. A State Confirmatory License (attached) will be executed by the University to provide said license to any such Patentable Invention, within ninety (90) days after filing of patent application.
- C. University shall file, prosecute and maintain a patent application claiming a Patentable Invention described in paragraph A above within two years of disclosure of a Patentable Invention to University by inventors and will diligently pursue broad application of such Patentable Invention. If State notifies University of a need that is not being met by University, University will take steps to meet such need or will offer sufficient field-of-use rights to State to address such unmet need.
- D. If University decides not to file a patent application within such two-year period or decides to abandon a patent or patent application claiming such Patentable Invention, and determines that it does not intend to pursue commercialization of such Patentable Invention, then University will notify the State in sufficient time to preserve patent rights, and upon State agency request, University agrees to assign title to State, subject to requirements of law, outstanding rights in third parties, and a reserved right to use the Patentable Invention for educational and research purposes and to allow other educational and nonprofit institutions to do so.
- E. Copyrightable works that may be patentable are also subject to the Patent Rights clause, which will take precedence in case of a conflict.

### 3. Travel

The following change to Exhibit C, section 13.C only adds the “Pre-Approved Travel” and “Prior Approval Required” labels and does not otherwise change the provisions. Exhibit C, section 13.C is replaced in its entirety as follows:

#### C. Travel Approval Requirements

- 1) Pre-Approved Travel: The Budget shall identify all travel and the costs of travel, including travel by subawardees, and shall itemize the rate, estimated cost and destination of the travel. The Budget Justification and/or Scope of Work shall identify the travelers and purpose of the travel. Travel identified in this manner is considered approved upon execution and approval of the Agreement.
- 2) Prior Approval Required: Travel that is: 1) identified as non-pre-approved travel; or 2) not identified in the Budget and/or Scope of Work shall require prior written (including fax or email) authorization from the CEC Contract Project Manager. The need for actual travel not identified in the proposed Budget and/or Scope of Work must be justified and all technological avenues of communication (e.g., teleconferencing, videoconferencing, or web conferencing) must be explored before travel will be approved.

### 4. Equipment

If this Agreement is awarded as a grant (instead of a contract), then Exhibit C, section 14.B.1) is replaced in its entirety as follows:

“Equipment” means any products, objects, machinery, apparatus, vehicles, implements or tools purchased, used or constructed within the Agreement, having a useful life of at least one year, an acquisition unit cost of at least \$5,000, and purchased in whole or part with Energy Commission funds.

During the Agreement term, the University shall use the Equipment for this Agreement.

The University shall be solely responsible for the possession, use, storage, and maintenance of the Equipment, for maintaining appropriate insurance on the Equipment sufficient to cover its replacement value in case of loss, and for complying with any and all laws, including environmental laws, applicable to the Equipment.

Equipment, which is purchased in whole or in part with Commission funds, may not be claimed as Match Funds. Likewise, Match Funds used for the purchase of equipment may not be claimed for reimbursement with Energy Commission funds.

As between the Energy Commission and the University, legal title to Equipment acquired by the University shall vest in the University. With the exception of pre-existing UCC-1 blanket liens during the Agreement term, the University shall not further encumber or sell the Equipment except for the sole purpose of using the proceeds of such sale or encumbrance for the direct benefit of this Agreement’s activities. In such circumstance, the University shall provide written notice to the CEC Contract Project Manager of such proposed sale or encumbrance at least 30 days in advance of any sale or encumbrance, stating the purpose of the sale or encumbrance, and specifying the amount, how the amount equates with the reasonable value of the Equipment, and how the proceeds of the sale or encumbrance will be used for this Agreement.

It is understood and agreed that this Section shall survive the completion or termination date of this Agreement for any reason.

**5. Direct Labor and Fringe Benefits not capped.**

The following language is added to Exhibit C, section 14 Payment and Invoicing, Part A. Reimbursement, subitem 3):

The rates in Exhibit B, Budget, for Direct Labor and Fringe Benefits are treated as estimates and not capped rates. The University can invoice at higher rates as long as it is only invoicing for actual expenditures it has made. However, the University cannot invoice and be paid for more than the total amount in each Budget Category without an amendment, or for more than the total Agreement amount.

For individual invoices seeking reimbursement for (i) material and supply costs in excess of \$5,000, or (ii) equipment costs in excess of \$100,000, the State may request and University will supply documentation to show that the rates charged for such materials/supplies and/or equipment reflect actual costs incurred.

**6. Indirect Costs.**

The following language is added to Exhibit C, section 14 Payment and Invoicing, Part A. Reimbursement, subitem 4):

For any of the University of California (UC) and California State University (CSU) campuses and their systemwide offices, UC Office of the President and the CSU Office of the Chancellor, whether funds are received through a prime award from the CEC or through a subaward from another UC or CSU location, the maximum indirect cost rate allowable under this Agreement is 25% of Modified Total Direct Cost (MTDC).

In the event that CEC is acting as a Pass-Through Entity of federal funds (as defined at 2 CFR §200.1), and University is considered a federal Subrecipient (in accordance with 2 CFR §200.331 and in CEC's sole determination), then University may recover its federally approved indirect cost rate. A copy of the Federal agency's rate agreement must be provided. 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 max 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 the project, or is otherwise not in its best interest, the CEC reserves 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 University or federal Subrecipient may choose to charge the increase as Match Funds.

**7. Rounding**

The following language is added to Exhibit C, section 14 Payment and Invoicing, Part A. Reimbursement:

- 6) Recipient, Subrecipients, and each lower-tiered level of Sub-Subrecipients shall round invoiced amounts to the nearest cent (\$0.01) using standard rounding, which is rounding down for \$0.000 through \$0.004, and rounding up for \$0.005 through \$0.009. Recipient

must receive CEC approval if rounding will result in exceeding the amount in a Budget Category. Rounding cannot be used to exceed the total Agreement amount.

## 8. Invoicing

Exhibit C, section 14 Payment and Invoicing, Part C. Invoicing, paragraphs 3) and 4) are replaced with the following:

- 3) University shall use the Invoice Template substantially similar to the template attached as Appendix 1 to this Exhibit G – or available at <https://www.energy.ca.gov/files/training-invoice-template>, <https://www.energy.ca.gov/files/standard-invoice-template>.
- 4) University is not required to submit products such as progress reports with invoices.

## 9. No Payment for Late Final Invoice

Exhibit C, section 14.C.5 is replaced in its entirety as follows:

The University shall submit the final invoice to the State, no later than ninety (90) calendar days after the Agreement completion date. However, in the event that University contacts the CEC in anticipation of a reasonable and foreseeable delay, the CEC and University may agree upon an extension period for submission of such final invoice, subject to legislative funding reversion dates. If the University does not submit the final invoice within the 90-day required time period (or a greater period of time as agreed to by the CEC in its sole and absolute discretion), in addition to any other rights and remedies available to the CEC, the University will not receive payment.

It is understood and agreed that this Section shall survive the completion or termination date of this Agreement for any reason.

## 10. Prior Approval Requirements

Exhibit C, section 15 (A) and (C) are replaced in their entirety as follows:

### A. Prior Approval Requirements

The following changes require prior approval of the CEC Contract Project Manager. Such approval can be requested and granted simply through an email communication or other form of written communication:

#### 1) Change in Key Personnel

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

Recipient must keep the CAM informed of personnel changes through monthly calls and quarterly progress reports.

The assignment of new personnel to an existing job classification does not require prior approval from the CEC.

The promotion of existing personnel to an existing job classification does not require prior approval from the CEC.

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 University or their Subrecipient's personnel, key or otherwise, are unable to fulfill their responsibilities under the Agreement.

2) Inclusion of restricted use data or copyrighted works in Deliverables

3) Travel not included in the approved Budget

Travel taken that is not listed in Exhibit B, the Budget, or not pre-approved by the CAM in writing, is at the University's own financial risk. The CAM might not approve the trip as part of invoice review. Please note that the University cannot invoice and be paid for more than the total amount in the Travel Budget Category without an amendment, or for more than the total Agreement amount.

4) New Items under Materials and Miscellaneous of \$5,000 or more, or new Equipment

The CAM must approve in writing of any new materials and miscellaneous expenses of \$5,000 or more or new equipment the Recipient plans to purchase and be reimbursed under this Agreement that is not already listed in Exhibit B, Budget. To accomplish this, the University 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 University follows the processes in Exhibit G section 12 "Budget Flexibility" directly below.

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 the CAM does not have to approve new materials and miscellaneous expenses under \$5,000.

5) Computer (or theft sensitive equipment) not included in the approved Budget

6) Substitution or addition of Subrecipients

7) Match Fund Timing. A CAM may authorize, in writing, University 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 these Terms allow additional flexibility, the University agrees to spend the agreed match funds as soon as practicable during the Agreement in order to resume proportionality between CEC funds and Match funds spent.

C. Revisions and/or changes pursuant to this Section 15 may require a formal amendment to this Agreement. Changes to the Scope of Work shall require a formal amendment.

## 11. Budget Flexibility

Exhibit C, section 15 (B) is replaced in its entirety as follows:

No CEC approval is needed for University, Subrecipient, or any lower-tiered level of Sub-Subrecipient to move funds within each of the following Budget Categories listed in the Exhibit B: Direct Labor, Fringe Benefits, Travel, Equipment, Materials and Miscellaneous, Subrecipients, and Indirect Costs. (However, any new M&M, Equipment, Subrecipient or Vendor not listed in the budget does need to be approved prior to reimbursement.)

If the University, Subrecipient, or any lower-tiered level of Sub-Subrecipient wants to move funds between Budget Categories or submits an invoice that if paid would exceed a Budget Category amount approved, they have at least the following choices:

- 1) Request an amendment from the CEC. The CEC will not pay the invoice if and until an amendment is approved, except possibly for the final invoice per Exhibit G, section 12.3 below. In its sole discretion, the CEC might pay the portion of the invoice that does not involve the amount that goes beyond the Budget Category.
- 2) Retract the invoice and resubmit a corrected one that keeps within Budget Categories. The University can treat the amount paid beyond the Budget Category as match funds if the expenditure meets all of the applicable Agreement requirements for match funds.
- 3) If there is a Budget Category overage on the final invoice, the University can discuss with the CAM if the invoice can be approved without needing the amendment in Exhibit G, section 12.1 above. The CAM will require a written justification for the budget category overage to determine if the invoice can be approved.

All Budget changes for grants are reviewed and approved according to “Changes to Grants - Level of Approval and Notification Chart” commonly referred to as the “Changes Chart” found here: <https://www.energy.ca.gov/media/4494>

This new flexibility does NOT mean the University can exceed the overall Agreement amount.

## 12. Default disclaimer on publications.

Exhibit C, section 17.C is replaced in its entirety by the following:

- C. At the CEC’s sole discretion, the CEC will require the University to use one or more of the following disclaimers in any publication, presentation or other public release:
- 1) “This project was funded by the California Energy Commission. The contents may not necessarily reflect the official views or policies of the State of California.”
  - 2) “**Legal Notice:** This document was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no 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 report has not been approved or disapproved by the Energy Commission nor has the Energy Commission passed upon the accuracy of the information in this report.”

Unless otherwise directed in writing by the CEC Contract Project Manager, the University shall use the disclaimer in Exhibit G, Section 13C.1 above.

It is understood and agreed that this Section shall survive the completion or termination date of this Agreement for any reason.

### **13. Match Funds**

If the Agreement budget includes a Match Funds requirement, University's commitment of resources, as described in this Agreement, is a required expenditure for receipt of CEC funds. Agreement funds will be released only if the Match Funds are expended according to the Exhibit B - Budget. University must maintain accounting records detailing the expenditure of the Match Funds (actual cash and in-kind services).

### **14. Additional Subaward Flow-Down Terms**

Exhibit C, section 11.A is replaced in its entirety as follows:

- A. The University will perform the work contemplated with resources available within its own organization and no portion of the work shall be subawarded except for Subawards expressly identified in the proposal, the Scope of Work or the Budget, or any amendments to the foregoing. The University will incorporate into any Subaward for work identified in this Agreement all provisions and Exhibits in this Agreement applicable to the particular Subawardee, including, but not limited to the following:
  - 1) Conflict of Interest
  - 2) Confidential Information
  - 3) Budget Contingency
  - 4) Patents (if applicable)
  - 5) Copyrights (if applicable)
  - 6) Data Rights (if applicable)
  - 7) Audits
  - 8) Invoicing and Payment
  - 9) Indemnification
  - 10) Exhibit G and any other Exhibits in this Agreement; and
  - 11) Any other provisions required by statute, regulation or source of funds applicable to this Agreement.

### **15. Notification of Important Occurrences**

The University shall promptly notify the CEC of the occurrence of any of the following connected with or affecting the project:

- A. A requested change of project location.
- B. The existence of any litigation or other legal proceeding affecting the project.
- C. The occurrence of any casualty or other loss to project personnel, Equipment or third parties.
- D. Receipt of notice of any claim or potential claim against University for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the Energy Commission's rights.

### **16. Incorporation of Application and Solicitation**

If this Agreement resulted from an Energy Commission competitive solicitation, University's submitted material in response to the solicitation (Application), and the solicitation itself are incorporated by reference into this Agreement. In the event of a conflict between the University's Application, the solicitation and this Agreement, all provisions in this Agreement, including this Exhibit G, shall take precedence.

## 17. California Taxpayer Access to Publicly Funded Research Act

The following is added to Exhibit C, section 17.D., Terms & Conditions Required for State-Funded Research Grants:

- 5) The University shall ensure that any publishing or copyright agreements concerning Peer-Reviewed Manuscripts:
  - a) Do not conflict with the Energy Commission’s rights under this Agreement; and
  - b) Shall not alter any Energy Commission rights provided under this Agreement.

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.” University agrees that for purposes of this Agreement, the University 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 Commission will only reimburse the University 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 University is authorized to use Agreement funds, either reimbursable expenses or match, for these purposes.**

## 18. Russia Sanctions

The following provision will modify Section 7 of Exhibit C, to be additional to the existing language in Section 7:

### **I. 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 Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.

## 19. Definitions – the following additional definitions are added to Section 1 of Exhibit C.

- A. **California Energy Commission, Energy Commission, Commission, or CEC** means the State Energy Resources Conservation and Development Commission.
- B. **Match Funds** means cash or in-kind (non-cash) contributions shown in the approved budget, Exhibit B, and provided by University, Subawardee, or other parties that will be used in performance of this Agreement.
- C. **Match Fund Partner** means an entity providing Match Funds that does not receive any Commission funds.
- D. **CAM** means Commission Agreement Manager. Also known as the Contract Project Manager.

## 20. Royalty Payments to the Energy Commission (Applicable Only to EPIC and Natural Gas Agreements)

- A. In consideration of the Commission providing funding to the University, University agrees to pay the Commission a portion of either Net Revenues or Net Royalties under the terms and conditions hereinafter set forth. If federal funds are used in the conception or reduction to practice of a Subject Invention, such Net Revenues or Net Royalties shall be used by the State in a manner consistent with Title 35 United States Code (USC), Section 202, subdivision (c)(7) to the extent this USC Section applies).
- 1) Net Royalties. The University's obligation to make payments to the Commission shall commence from the date that the Net Royalties calculation is positive and extend until ten (10) years from the Agreement's end date. Payments are payable in annual installments and are due the first day of March for Net Royalties calculation made for the University's prior fiscal year. University agrees to pay to Commission an amount equivalent to 10% of the total cumulative Net Royalties, less payments made by University to Commission in previous years when Net Royalties were positive. Payments shall be made by check and made payable to the California Energy Commission, and shall list the Agreement number on the check.
  - 2) Net Revenues. If the University is the Licensee, the University's obligation to make payments to the Commission shall commence upon the first Sale of the Licensed Product. Payments are payable in annual installments and are due the first day of March for the prior fiscal year of the University and extend until ten (10) years from the Agreement's end date. University agrees to pay an amount equivalent to 1.5% of the Net Revenues by check made payable to the California Energy Commission, and shall list the Agreement number on the check.
- B. If a Licensed Product was developed in part with Match Funds during the Agreement term, the Net Royalty payments will be reduced in accordance with the percentage of such development activities that were funded with Match Funds. For example, if 20% of the development activities were funded with Match Funds during the Agreement and total cumulative Net Royalties equaled \$100,000 in one year, the University would owe the Energy Commission \$8,000 for the year (10% of \$100,000 = \$10,000; 80% of \$10,000 = \$8,000 (the 80% coming from 100% - 20% in match funds)).
- If the Energy Commission is providing funds to the University under this Agreement as a project match partner and Energy Commission funds are used in part to develop a Licensed Product, the Net Royalty payments will be reduced in accordance with the percentage of such development activities that were funded with non-Energy Commission funds during the Agreement term. For example, if 80% of the development activities were funded with University and/or third party funds during the Agreement and Net Royalties totaled \$100,000 in one year, the University would owe the Energy Commission \$2,000 for the year (10% of \$100,000 = \$10,000; 20% of \$10,000 = \$2,000 (the 20% coming from 100% - 80% in match funds)).
- C. Unless the University makes an early buyout, total Net Royalty or Net Revenue payments will be limited to three (3) times the amount of funds paid by the Energy Commission under the Agreement. The University 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 funds paid by the Energy Commission under the 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.

- D. University agrees not to make any Sale, license, lease, gift or other transfer of any Project Data, Subject Invention, copyrightable work or Licensed Product with the intent of, or for the purpose of, depriving Commission of Net Royalties or Net Revenues hereunder. Generally, this means that the University will not make any Sale, license, lease or other transfer of Project Data, Subject Invention, Copyrightable Work or Licensed Product for consideration other than fair market value except for research, educational, or other mutually agreed to purposes intended to serve the public benefit.
- E. University shall maintain separate accounts within their financial and other records for purposes of tracking royalties and revenues due to the Commission under this Agreement.
- F. Audits on Payments to Commission. Payments to the Commission are subject to the audit clause, Exhibit C, section 16.
- G. Defaults. In the event of default hereunder, the Commission shall be free to exercise all rights and remedies available to it herein, and under law and at equity. University's failure to pay when due, absent any prior written authorization by the Commission to delay payment, any amount due and payable under the terms of this Agreement constitutes a default under this Agreement.

## **21. License to Load-Serving Entities (Applicable Only to EPIC Agreements)**

The Commission may direct University to issue a no-cost, non-exclusive, non-sublicensable, irrevocable, royalty-free, worldwide, perpetual license to Copyrightable Works and/or a no-cost, non-exclusive, non-sublicensable, irrevocable, royalty-free, worldwide, paid-up license to Subject Inventions to Load-serving entities and/or third parties working with a Load-serving entity, for the Load-serving entity's use in enhancing its service to EPIC ratepayers. This license is for non-commercial purposes, meaning that it does not allow Load-serving entities to sell, commercially offer or distribute Copyrightable Works or patentable works to others in the marketplace. For example, if the University creates copyrightable or patentable software, the Commission can give a Load-serving entity the right to use the software as part of its operations of providing service to EPIC ratepayers, but the Load-serving entity cannot sell or distribute the software.

## **22. Generative AI Disclosure Obligations (Applicable Only to Contracts)**

- A. The following terms are in addition to the defined terms and shall apply to the Agreement:
  - 1) "Generative AI (GenAI)" means an artificial intelligence system that can generate derived synthetic content, including text, images, video, and audio that emulates the structure and characteristics of the system's training data. (Gov. Code § 11549.64.)
- B. University shall immediately notify the CEC in writing if it: (1) intends to provide GenAI as a deliverable to the CEC; or (2), intends to utilize GenAI, including GenAI from third parties, to complete all or a portion of any deliverable that materially impacts: (i) functionality of a State system, (ii) risk to the State, or (iii) Agreement performance. For avoidance of doubt, the term "materially impacts" shall have the meaning set forth in State Administrative Manual (SAM) § 4986.2 Definitions for GenAI.
- C. Notification shall be provided to the CEC designee identified in this Agreement.
- D. At the direction of the CEC, University shall discontinue the provision to the CEC of any previously unreported GenAI that results in a material impact to the functionality of the System, risk to the State, or Agreement performance, as determined by the CEC.

- E. If the use of previously undisclosed GenAI is approved by the CEC, then University will update the Deliverable description, and the Parties will amend the Agreement accordingly, which may include incorporating the GenAI Special Provisions into the Agreement, at no additional cost to the CEC.
- F. The CEC, at its sole discretion, may consider University's failure to disclose or discontinue the provision or use of GenAI as described above, to constitute a material breach of Agreement when such failure results in a material impact to the functionality of the System, risk to the State, or Agreement performance. The CEC is entitled to seek any and all remedies available to it under law as a result of such breach, including but not limited to termination of the Agreement.

### **23. Insolvency, Bankruptcy or Receivership**

University shall immediately, but no later than five calendar days, notify the CEC if the University, the University's parent, a subrecipient, a vendor, or a site host is planning for any of the following events: (1) the entity's filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act or similar applicable law; (2) the entity's consent to the institution of an involuntary case under the Bankruptcy Act or similar applicable law; (3) the filing, or planning of filing, of any similar proceeding for or against the entity, or the entity's consent to the dissolution, winding-up or readjustment of its debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over the entity, under any other applicable law; or (4) the entity's insolvency due to its inability to pay debts generally as they become due.

Such notification shall be in writing and shall: (1) specifically set out the details of the occurrence of the event; (2) provide the facts surrounding that event; and (3) provide the impact such event will have on the project being funded by this Agreement.

Upon the occurrence of any of the four events described above, the CEC reserves the right to conduct a review of the Agreement to determine the University's compliance with the required elements of the Agreement (including such items as match share, progress towards project objectives, and submission of required products). If the CEC review determines that there are significant deficiencies or concerns with the University's continued performance under the Agreement, the CEC reserves the right to take any action available under this Agreement including, but not limited to, issuing a Stop Work Order or terminating the Agreement.

Failure of the University to comply with this term may be considered a material breach of this Agreement.

This term shall be flowed-down to all subawards and site host agreements.

### **24. Additional Definitions (Applicable Only to EPIC and Natural Gas Agreements)**

- A. **California Based Entity (CBE)** is a corporation or other business form organized for the transaction of business that either:
  - Has its headquarters in California AND manufactures in California the product that is the subject of the award; OR
  - Has an office for the transaction of business in California AND substantially manufactures the product or substantially performs the research within California that is the subject of the award.

- B. **Copyrightable Work** means any copyrighted work as defined under U.S. copyright law to which the Recipient, a Subcontractor, or a Match Fund Partner has acquired title that is first created in the performance of the Scope of Work under this Agreement and is not a scholarly work.
- C. **Funds Spent in California** means: (1) Funds under the “Direct Labor” category and all categories calculated based on direct labor (Prime and Subcontractor 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. For funds not considered "spent in California," please refer to the definition stated in the associated solicitation under which this agreement was awarded.
- D. **Licensed Product** means any product commercialized by a Licensee that embodies or utilizes Project Data, a Subject Invention, or copyrightable work.
- E. **Licensee** means the organization (or its affiliates, joint venture or sublicensee) that is granted commercial rights to Project Data, a Subject Invention or copyrightable work to develop any of these into a commercial product that is made available to the public in the marketplace or otherwise Sold.
- F. **Load-Serving Entity** means a company or other organization that provides electricity to EPIC ratepayers.
- G. **Net Revenues** means the total of the gross invoice prices of Licensed Product Sold, less the sum of the following actual and customary deductions where applicable: cash; quantity discounts; sales, use, tariff, import/export duties or other excise taxes imposed upon particular Sales; transportation charges; and allowance or credits to customers because of rejections or returns.
- H. **Net Royalties** means gross licensing income, including royalties and fees, received by University from a Licensee as consideration for commercially licensing any Subject Invention, copyrightable work, or Project Data, less the following:
- 1) Legal or other direct expenses (that are not otherwise reimbursed under an option or license agreement from a third party) of patenting, protecting and preserving patent, copyright and related property rights, maintaining patents and other such costs, taxes, or reimbursements as may be necessary or required by law, except patent infringement expenses;
  - 2) Inventor or author shares in accordance with University’s, patent or copyright policy; and
  - 3) Direct expenses include operating expenses of University which are customarily reimbursed by royalty payments.
- Net Royalties do not include any payments to joint holders nor research funding accepted by University or a Subcontractor in association with an option or licensing agreement. Net Royalties shall be aggregated cumulatively, over time for each disclosed Subject Invention, copyrightable work, or Project Data.
- I. **Ownership** means exclusive possession and control of all rights to property, including the right to use and transfer property.

- J. **Sale** means the act of selling, leasing or otherwise transferring, providing, or furnishing for use for any consideration.
- K. **Sell** means to make or cause to be made a Sale.
- L. **Sold** means to have made or caused to be made a Sale.
- M. **Sales Price** means the price at which Licensed Product is sold, excluding sales tax.
- N. **Subject Invention** means any patentable invention or discovery that is either:
- 1) Conceived and first actually reduced to practice (actually reduced to practice or constructively reduced to practice by the filing of a patent application) in the performance of the Scope of Work;
  - 2) Conceived in the performance of the Scope of Work and first reduced to practice in the performance of the Scope of Work conducted under this Agreement or within forty-two (42) months after the completion of the Scope of Work; or
  - 3) Conceived prior to the effective date of this Agreement or conceived without Energy Commission funds and reduced to practice in the performance of the Scope of Work, provided that such conception is not encumbered by any obligations owed to a third party other than the U.S. Government.

**License to the State of California Attachment**

**Invention Title:** \_\_\_\_\_

**Inventor(s):** \_\_\_\_\_

**Patent or Application Serial No.:** \_\_\_\_\_ **US Filing/Issue Date:** \_\_\_\_\_

**Grant/Contract Identification Number(s):** \_\_\_\_\_

**Foreign Application filed/intended in (countries):** \_\_\_\_\_

The invention identified above is a Subject Invention under the Patent Rights – University clause which is included among the terms of the above-identified grant/contract award from the State of California. Subject to the requirements of federal funds, if any, this document is confirmatory of:

1. The nonexclusive, sublicensable, irrevocable, paid-up license to practice or have practiced for government purposes the invention described in any patent application and in any and all divisions and continuations, and in any and all patents and re-issues granted thereon throughout the world; and
2. All other rights acquired by the State by reason of the above identified grant/contract award and the laws and regulations which are applicable to the award.

The State is hereby granted the power to inspect and make copies of the above-identified patent application.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

By \_\_\_\_\_

Name and Title \_\_\_\_\_

For \_\_\_\_\_  
(Organization)

At \_\_\_\_\_

\_\_\_\_\_  
(Business Address)