

EXHIBIT A

SONOMA CLEAN POWER AUTHORITY - STANDARD AGREEMENT

ADVANCED ENERGY CENTER VENDOR AGREEMENT

This Advanced Energy Center Vendor Agreement (“Agreement”), dated as of _____ (“Effective Date”) is made by and between the Sonoma Clean Power Authority (“SCPA”), a California joint powers authority, and _____, a [corporate form] (“Vendor”). SCPA and Vendor may be individually referred to as a “Party” or collectively as “Parties.”

1. Scope of Products and Services: Vendor agrees to provide any and all of the energy efficiency/fuel switching products (collectively, the “Products”) and services as described in Exhibit A.
2. Warranty; Performance Standard:
 - a. In addition to any and all warranties provided or implied by law or public policy, or any other warranties provided by Vendor, Vendor warrants that its Products are free from defects in design and workmanship; comply with applicable federal, state and local laws and regulations; are new, of good quality and workmanship; and free from defects; are suitably safe and sufficient for the purpose for which they are normally used; and are not subject to any liens or encumbrances. Vendors agree to supply Products in accordance with all applicable engineering, construction and other codes and standards, in accordance with industry standards and in accordance with the terms of this Agreement all with the degree of high quality and workmanship expected from purveyors engaged in the practice of providing Products of a similar nature. For Products purchased through the Advanced Energy Center, Vendors agree to provide a warranty that provides customers with equal or greater protection as is set forth in this section.
 - b. Vendor warrants that it possesses the necessary training, experience and skill to competently and professionally provide the services described in Exhibit A.
 - c. If SCPA determines that any of Vendor’s Products or services are not in accordance with the level of competency and standard of care normally observed by a person in Vendor’s profession, SCPA, in its sole discretion, shall have the right to do any or all of the following:
 - i. Require Vendor to meet with SCPA to review the quality of Vendor’s Products and/or work and resolve matters of concern;

- ii. Require Vendor to repeat the work at no additional charge until the work meets the level of competency and standard of care normally observed by a person in Vendor's profession;
 - iii. Terminate this Agreement pursuant to Section 6; or
 - iv. Pursue any and all other remedies at law or in equity.
3. Payment: Vendor shall submit one invoice for each calendar month in which Vendor seeks payment or reimbursement from SCPA related to Products. Invoices shall be signed by key staff, and include such other information as may be reasonably requested by SCPA, such as information necessary for SCPA to demonstrate compliance with the California Energy Commission ("CEC") grant. Upon receipt of properly prepared invoicing and satisfactory documentation indicating that the Products have been installed, SCPA agrees pay Vendor agreed upon incentives or reimbursement as set forth in Exhibit A.
4. NOT TO EXCEED AMOUNT. IN NO EVENT SHALL THE AMOUNT PAYABLE TO VENDOR DURING THE TERM OF THIS AGREEMENT EXCEED _____ dollars (\$_____). This dollar amount is not a guarantee that SCPA will pay that full amount to Vendor, but is merely a limit of potential SCPA expenditures under the Agreement.
5. Term of the Agreement: The initial term of this Agreement shall be from the Effective Date to _____, unless terminated pursuant to Section 6 or amended by a written, executed amendment to the Agreement. Vendor understands and agrees that funding for costs under this Agreement after July 1, 2017 is subject to approval by SCPA's Board of Directors of a budget including such funding, and that SCPA may terminate this Agreement pursuant to Section 6 below if such funding is not approved.
6. Termination:
 - a. Notwithstanding any other provision of this Agreement, at any time and without cause, the CEO of SCPA shall have the unequivocal right to terminate this Agreement by giving thirty (30) calendar days written notice to the other Party.
 - b. Notwithstanding any other provision of this Agreement, should Vendor fail to perform any of its obligations or violate any of the terms of this Agreement (Termination for Cause), the CEO of SCPA may, upon providing Vendor written notice stating the reason for termination, immediately terminate this Agreement. In the event of termination, Vendor, within fourteen (14) calendar days following the date of termination, shall deliver to SCPA all materials and work product subject to Section 16 and shall submit to SCPA a final invoice for all outstanding payments.

7. Indemnification: Vendor agrees to accept all responsibility for loss or damage to any person or entity, including the SCPA, and to indemnify, hold harmless, and release the SCPA, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Vendor, that arise out of, pertain to, or relate to Vendor's performance of or obligations or omissions under this Agreement. Vendor agrees to provide a complete defense for any claim or action brought against the SCPA based upon a claim relating to Vendor's performance or obligations or omissions under this Agreement. Vendor's obligations under this Section apply whether or not there is concurrent negligence on the SCPA's part, but to the extent required by law, excluding liability due to the SCPA's conduct, specifically SCPA's sole negligence, active negligence or willful misconduct. The SCPA shall have the right to select its legal counsel at Vendor's expense, subject to Vendor's approval, which shall not be unreasonably withheld.
8. Insurance: Vendor shall maintain and shall require all of its subcontractors, Vendors, and other agents to maintain insurance as described below unless such insurance has been expressly waived in writing by SCPA.
- a. Workers' Compensation. If Vendor has employees at any time during the term of this Agreement, Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California, and Employers Liability with minimum limits of \$1,000,000 per accident; \$1,000,000 disease per employee; \$1,000,000 disease per policy.
 - b. Commercial General Liability. Commercial General Liability Insurance with Minimum Limits: \$1,000,000 per occurrence; \$2,000,000 general aggregate; \$2,000,000 products/completed operations aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance. If Vendor maintains higher limits than the specified minimum limits, SCPA requires and shall be entitled to coverage for the higher limits maintained by Vendor.
 - i. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. Deductibles or self-insured retention that exceeds \$25,000 must be approved in advance by SCPA. Vendor is responsible for any deductible or self-insured retention and shall fund it upon SCPA's written request, regardless of whether Vendor has a claim against the insurance or is named as a party in any action involving SCPA.
 - ii. SCPA shall be an additional insured for liability arising out of operations by, or on behalf of, the Vendor in the performance of this Agreement.

- iii. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- iv. The policy shall cover inter-insured suits between the additional insureds and Vendor and include a "separation of insureds" or "severability" clause which treats each insured separately.
- c. Automobile Liability. Automobile Liability Insurance with Minimum Limit of \$1,000,000 combined single limit per accident. Automobile Insurance shall apply to all owned autos. If Vendor currently owns no autos, Vendor agrees to obtain such insurance should any autos be acquired during the term of this Agreement. Automobile Insurance shall apply to hired and non-owned autos.
- d. Professional Liability. Professional Liability/Errors and Omissions Insurance with Minimum Limit of \$1,000,000 per claim or per occurrence. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by SCPA. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
- e. All Policies Requirements.
 - v. Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A: VII.
 - vi. The Certificate of Insurance must include the following reference: Sonoma Clean Power Authority.
 - vii. All required Evidence of Insurance shall be submitted to SCPA within 3 business days of the Effective Date. Vendor agrees to maintain current Evidence of Insurance on file with SCPA for the entire term of this Agreement.
 - viii. The name and address for Additional Insured endorsements and Certificates of Insurance is: Sonoma Clean Power Authority, Attn: Contract Administration, 50 Santa Rosa Avenue, Fifth Floor, Santa Rosa, CA, 95404.
 - ix. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10)

business days before expiration or other termination of the existing policy.

- x. Vendor shall provide SCPA immediate written notice if: (A) any of the required insurance policies are terminated; (B) the limits of any of the required policies are reduced; and/or (C) the deductible or self-insured retention is increased.
 - xi. Upon written request, certified copies of required insurance policies must be provided within thirty (30) calendar days.
 - xii. Vendor's indemnity and other obligations shall not be limited by these insurance requirements.
9. Status of Vendor: Vendor, in providing Products and performing the services under this Agreement, shall act as an independent contractor and shall control the work and the manner in which it is performed. At no time shall Vendor work as an agent or employee of SCPA and at no time shall Vendor be entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits SCPA provides its employees. In the event SCPA exercises its right to terminate this Agreement pursuant to Section 6, Vendor expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.
10. No Suspension or Debarment: Vendor warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any state or federal department or agency. Vendor also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration.
11. Taxes: Vendor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement. Vendor shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Vendor agrees to indemnify and hold SCPA harmless from any liability which it may incur to the United States or to any US State as a consequence of Vendor's failure to pay, when due, all such taxes and obligations. In the event SCPA is audited for compliance regarding any withholding or other applicable taxes, Vendor agrees to, in a timely fashion, furnish SCPA with proof of payment of taxes on these earnings.
12. Records Maintenance: Vendor shall keep and maintain full and complete documentation and accounting records concerning all Products provided and services performed that are compensable under this Agreement and shall make such documents and records available to SCPA for inspection at any reasonable time. Vendor shall maintain such records for a period of five (5) years following the expiration or termination of this Agreement.

13. Conflict of Interest: Vendor warrants that it presently has no interest, and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with Vendor's performance under this Agreement. Vendor further warrants that in the performance of this Agreement no person having any such interests shall be assigned by Vendor to perform work under this agreement nor be given access to the information described in Section 16. Vendor shall comply with any and all applicable California Fair Political Practices Act requirements.
14. Statutory Compliance: Vendor shall comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the Products and Services provided under this Agreement.
15. Nondiscrimination: Without limiting any other provision of this Agreement, Vendor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by reference.
16. Confidentiality, Ownership and Disclosure of Work Product: All information obtained by Vendor under this Agreement shall be deemed confidential ("Confidential Information"). Unless SCPA provides written permission, Vendor is compelled by a court of law or regulatory agency, or Vendor obtained Confidential Information from a source or sources other than SCPA, Vendor shall not share Confidential Information with any other person or entity outside of SCPA staff and SCPA authorized representatives. Vendor further agrees to execute non-disclosure agreements related to protecting Confidential Information as requested by SCPA. Provisions related to Confidential Information shall survive expiration or termination of the Agreement for a period of five (5) years. All reports, original drawings, graphics, plans, studies, and other data or documents ("Documents"), in whatever form or format, produced by Vendor or Vendor's subcontractors, consultants, and other agents within the term and scope of this Agreement shall be the property of SCPA. SCPA shall be entitled to immediate possession of such Documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Vendor shall promptly deliver to SCPA all such Documents, which have not already been provided to SCPA in such form or format, as SCPA deems appropriate. Such Documents shall be and will remain the property of SCPA without restriction or limitation.
17. Assignment and Delegation: Parties shall not assign, delegate, sublet, or transfer any interest in, or duty under, this Agreement without the prior written consent of the other.
18. Written Communications: All written communications, including notices, bills and payments, may be made via electronic mail or to the following addresses:

TO SCPA:

Sonoma Clean Power Authority
Attn: Contract Administration
50 Santa Rosa Avenue, 5th Floor
Santa Rosa, CA 95404
leadlocally@sonomacleanpower.org

With Copies to:

Sonoma Clean Power Authority
ATTN: General Counsel
50 Santa Rosa Avenue, 5th Floor
Santa Rosa, CA 95404
jmullan@sonomacleanpower.org

TO VENDOR:

[TO BE PROVIDED BY VENDOR]

19. No Waiver of Breach: The waiver by SCPA of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.
20. Construction: To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The Parties agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated. The Parties acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one Party in favor of the other. Parties acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
21. Consent: Wherever in this Agreement the consent or approval of one Party is required to an act of the other Party, such consent or approval shall not be unreasonably withheld or delayed.
22. No Third-Party Beneficiaries: Nothing contained in this Agreement shall be construed to create, and the Parties do not intend to create, any rights in third parties.
23. Choice of Law and Forum: This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement, or for the breach of this Agreement, shall be brought and tried in Santa Rosa, California, or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

24. Exhibits; Order of Precedence:
- a. Exhibits. This Agreement includes the following Exhibits:
 - i. Exhibit A – Scope of Products and Services
 - ii. Exhibit B – Special Provisions
 - iii. Optional Exhibits. Vendor agrees to be bound by the terms and conditions set forth in any of the exhibits selected below as if the terms and conditions were fully set forth in this Agreement. Exhibits not selected below do not apply to this Agreement.
 - Exhibit C - Non-Disclosure Agreement
 - Exhibit D – Prevailing Wage Requirements
 - Exhibit E – CEC Grant Terms & Conditions
Electric Program Investment Charge (EPIC) Standard Grant Terms and Conditions, including Exhibit C-1 (Confidential Products and Project-Relevant Pre-Existing and Independently Funded Intellectual Property)
 - b. Order of Precedence. In the event of a conflict between the body of this Agreement and any Exhibits or attachments, the language in the body of this Agreement shall prevail. In the event of a conflict between the Exhibits, the order of precedence set forth in this section 24(a) applies. Notwithstanding the foregoing, in the event of any conflict between this Agreement and the California Energy Commission (CEC) requirements set forth in Exhibit E, or Exhibit E imposes requirements beyond those set forth in this Agreement, Exhibit E shall control.
25. Captions: The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
26. Merger: This writing is intended both as the final expression of the Agreement between the Parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to California Code of Civil Procedure Section 1856.
27. Amendment: No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both Parties.
28. Survival of Terms: All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

29. Time of Essence: Time is and shall be of the essence of this Agreement and every provision within this Agreement.
30. Joint Powers Authority. Vendor hereby acknowledges that SCPA is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Cal. Govt. Code section 6500 *et seq.*, as the same may be amended from time to time) pursuant to a Third Amended and Restated Joint Powers Agreement dated October 13, 2016 (the "Joint Powers Agreement"), that SCPA is a public entity separate from its members, and that under the Joint Powers Agreement the members have no liability for any obligations or liabilities of SCPA. Vendor agrees that SCPA shall solely be responsible for all debts, obligations and liabilities accruing and arising out of the Agreement and Vendor agrees that it shall have no rights against, and shall not make any claim, take any actions or assert any remedies against, any of SCPA's members, any cities or counties participating in SCPA's community choice aggregation program, or any of SCPA's retail customers in connection with this Agreement.
31. California Energy Commission (CEC) Requirements. Vendor understands and agrees that compensation paid to Vendor under this Agreement comes from a grant to SCP from the California Energy Commission. Vendor shall review the grant terms and conditions included in (EXHIBIT E, ELECTRIC PROGRAM INVESTMENT CHARGE (EPIC) STANDARD GRANT TERMS AND CONDITIONS) and in the performance of services under this Agreement shall comply with all requirements applicable to Vendor under the terms and conditions.

[SIGNATURES TO APPEAR ON FOLLOWING PAGE]

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By signing below, the signatories warrant that each has authority to execute this Agreement on behalf of their respective Parties, and that this Agreement is effective as of the Effective Date.

SONOMA CLEAN POWER AUTHORITY

VENDOR

BY: _____
Geof Syphers
Chief Executive Officer

BY: _____
TITLE
: _____

DATE: _____

DATE: _____

APPROVED AS TO FORM

BY: _____
General Counsel

DATE: _____

SAMPLE

Exhibit A
Scope of Products and Services

To be completed/modified for each Vendor

LIST OF PRODUCTS AND APPLICABLE VENDOR DISCOUNTS/INCENTIVES

Manufacturer				
Model				
MSRP				
Vendor Discounts				
Applicable SCPA CARE/FERA Bonus Incentive				

SCPA INCENTIVES AND RELATED PROVIDER REQUIREMENTS

Vendors are eligible for SCPA incentives where SCPA customers use the contractor matching tool to be located at the Advanced Energy Center.

Provider Requirements & Responsibilities:

TO BE COMPLETED FOR EACH VENDOR

SCPA Requirements & Responsibilities:

TO BE COMPLETED FOR EACH VENDOR

In addition to the requirements set forth above, Vendors must provide SCPA with additional documentation satisfactory to SCPA to demonstrate eligibility for SCPA incentives and compliance with CEC grant terms.

VENDOR TRAINING SERVICES & MARKETING SUPPORT

Training-Related Services:

TO BE COMPLETED FOR EACH VENDOR

Marketing Support:

1. Attend up to 8 SCPA sponsored outreach events (no more than 4 hours each) as requested;
2. Participate in media events and interviews as requested;
3. Adhere to Brand Guidelines provided by SCPA for the Program;

4. Obtain prior SCPA approval for all advertising and collateral materials that reference the Program;
5. If requested by SCPA, or its agents, assist with development of collateral materials and/or presentations;
6. Coordinate all marketing activities for the Program with SCPA.
7. Vendor may promote the Program on Vendor's website with a hyperlink to the SCP webpage, with approval from SCPA; and
8. Vendor may promote the program on Vendor's social media channels, with content approved by SCPA.

APPROVED VENDOR DISPLAY

Narrative description and diagrams as appropriate provided by each Vendor.

Exhibit B
Special Conditions

The following are representative requirements. Specific policies and procedures to be developed for each vendor and product.

1. Vendor represents and warrants that it is an entity duly licensed and authorized to do business in the State of California.
2. Vendors shall have local distribution within the State of California.
3. Notification Requirements: Vendor agrees to notify SCPA Program Manager in writing of any of the following within (1) day of their occurrence: Any known SCPA customer complaints, any issue with hardware and/or software that could affect customer experience and/or achieved energy savings, any change to product hardware/software or product pricing, changes in company status.
4. Vendor Product Training Requirements:
 - a. Vendor agrees to provide training(s) at Advanced Energy Center location, and to provide support to local contractors as necessary for successful deployment of product as defined in Exhibit A. Vendor agrees that such a training program will include educational trainings and resources and a plan for contractor evaluation.
 - b. Identify a minimum of 3 licensed, qualified contractors that are able to install any product that requires contractor installation.
5. Vendor Discount Requirements:
 - a. Through June 2022 (the "Program Period"), Vendor shall make available to all SCPA customers the technologies listed on Exhibit A at the discount(s) as set forth on Exhibit A.
 - b. Vendor shall not sell technologies listed on Exhibit A at a price greater than the manufacturer's suggested retail price for technology less the amount of the discount listed on Exhibit A.
 - c. Vendor may grant additional discounts to customers if negotiated by the customer and Vendor.
6. Reporting Requirements:
 - a. To verify compliance with the requirement in Section 12, for each transaction during the Program Period involving the sale of a technology listed on Exhibit A, Vendor shall provide SCPA with a copy of the documentation listed in Exhibit A to verify that the incentives described above were provided to the customer.
 - b. Report to SCP on a minimum of a monthly basis, with a preference for weekly reporting or real-time data through OpenADR reports or equivalent. Vendors must agree to include the following in their reports: total units sold, property location of units sold, energy use of product (including 15-minute interval level data), and other product-specific

- metrics or other information reasonably requested by SCP or otherwise required by the CEC Grant.
- c. Vendor shall participate in an exit interview with SCP and provide feedback on the Lead Locally Program as requested
7. Advanced Energy Center Participation: The inclusion of any product in the Program or Advanced Energy Center is within the sole discretion of SCPA, and any given Product may be removed from the Program or Advanced Energy Center at any time for any reason at the sole discretion of SCPA.
 8. Order Fulfillment and Payment Collection:
 - a. Vendor, or its designated agent, will be solely responsible for, and bear all liability for, the fulfillment and installation of their Product, including without limitation, packaging and shipping Products and customer service. Vendor, or its designated agent, shall be responsible for any costs or charges related to shipping-related or installation-related problems, including without limitation, damaged or lost Products, late shipments or mis-delivery. Vendor shall be responsible for all returns and/or refunds related to Products.
 - b. Vendor must ship Vendor's energy efficient/fuel switching products or engage with local distribution channels within 3-5 business days from the order date.
 - c. Vendor must provide SCP customers with a warranty period of no less than 1 years from purchase, with a preference for longer warranty periods.
 9. Vendor Display Requirements:
 - a. Vendor is assigned the space in the Advanced Energy Center showroom floor identified in Exhibit A. Vendor Displays must be installed in accordance with the requirements set forth in Exhibit A.
 - b. All Vendor Displays must be installed, maintained and removed wholly at Vendor's cost. Vendor must remove its Vendor Display within thirty (30) days of expiration or termination of this Agreement. In the event that Vendor fails to remove its Vendor Display within such timeframe, SCPA reserves the right to remove the Vendor Display, and retain or dispose of any remaining equipment, and charge Vendor for the costs of such removal.
 - c. All Vendor Displays, and any modifications thereto, must be approved in advance by SCPA and SCPA reserves the right to reject any installation proposal or alteration in its sole discretion.
 - d. Vendor has access to a standard 120V electrical quad service. Wall and overhead lighting will be provided by SCPA.
 - e. Any lighting integral to Vendor display shall be provided by Vendor. All vendor displays and any changes to vendor displays must be approved by SCPA and must be maintained in good repair. Vendor is responsible for assembly and disassembly of display as required by Program.

10. Damage, Loss, Theft. SCPA is not responsible for damage, theft or other losses associated with Vendor Products in the Advanced Energy Center.
11. Inspections: SCPA or its designated agent reserves the right to inspect any installation completed as a part of the Program.
12. Program Marketing: Vendor agrees to coordinate Program marketing activities with SCPA as specified in Exhibit C and adhere to brand guidelines provided by SCPA. Vendor agrees to obtain prior SCPA approval for all advertising and collateral materials that reference the Program.

Violation of Special Conditions may result in suspension or termination of Vendor participation in SCP programs, removal from the Advanced Energy Center and termination of this Agreement.

SAMPLE

Exhibit C
Non-Disclosure Agreement

- Included
- Not Included

SAMPLE

Exhibit D
Prevailing Wage Requirements

- Included
- Not Included

SAMPLE

Exhibit E
CEC Grant Terms & Conditions

*Electric Program Investment Charge (EPIC) Standard Grant Terms and Conditions,
including Exhibit C-1 (Confidential Products and Project-Relevant Pre-Existing and
Independently Funded Intellectual Property*

- Included
- Not Included

SAMPLE

**SONOMA CLEAN POWER AUTHORITY
MUTUAL CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT**

THIS MUTUAL CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT (this “**Agreement**”) is entered into as of _____ (the “**Effective Date**”) by and between Sonoma Clean Power Authority, a California joint powers authority, with a principal place of business at 50 Santa Rosa Avenue, 5th Floor, Santa Rosa, CA 95404 (“**SCPA**”) and _____ (“**Consultant**”).

The parties to this Agreement intend to enter into discussions regarding, and may at the end of those discussions enter into, a agreement between SCPA and Consultant under which Consultant would [*generally describe scope of services to be provided*] (the “**Services**”). In connection with the Services, the parties may receive certain Confidential Information (as defined below) from each other, the confidentiality of which the parties desire to protect. For purposes of this Agreement, the party making the disclosure of Confidential Information is referred to as “**Disclosing Party**” and the party receiving such Confidential Information is referred to as “**Receiving Party**.” For purposes of this Agreement, “**Affiliate**” means, as to either party, any person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with that party. For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. **Confidential Information.**

(a) **Defined.** “**Confidential Information**” means all secret, proprietary, confidential or otherwise nonpublic information of or relating to a party or its Affiliates, in any form whether written, electronic, visual or oral, and all notes, analyses, compilations, studies, reports, interpretations, or other material prepared by Receiving Party or its employees or agents which contain or reflect or are based upon, in whole or in part, the foregoing, including the names, addresses, and other information relating to SCPA customers.

(b) **Exclusions.** Confidential Information does not include information (i) that is or becomes generally known to the public other than as a result of disclosure by Receiving Party or any of its Representatives (as defined below) in violation of the terms of this Agreement; (ii) that is in the possession of Receiving Party at the time of disclosure by Disclosing Party, as reasonably evidenced by a prior or contemporaneous writing and other than as a result of Receiving Party’s breach of any legal obligation; (iii) that becomes known to Receiving Party through disclosure by sources other than Disclosing Party which, to the knowledge of Receiving Party, are not subject to any obligation of confidentiality or other duty not to disclose such information; or (iv) that is independently developed by Receiving Party without reference to the Confidential Information and through persons who have not had, either directly or indirectly, access to or knowledge of such Confidential Information, as reasonably evidenced in writing by Receiving Party.

2. **Obligation of Confidentiality.**

Receiving Party will not use or disclose any Confidential Information of Disclosing Party except for purposes of carrying out Receiving Party’s duties and obligations with respect to, and otherwise as reasonably necessary to implement, the Services, except that Receiving Party may disclose such Confidential Information where it is under a legal or regulatory obligation to do so. Subject to the foregoing, without the prior written consent of Disclosing Party, Receiving Party will not disclose any portion of the Confidential Information to any person, other than to employees, consultants, Affiliates, advisors, attorneys, auditors, lenders or agents of Receiving Party who have a need to know in connection with the Services or otherwise (collectively, to the extent Receiving Party discloses, or provides access to, Confidential Information to any of

the foregoing, its “**Representatives**”), provided such Representatives are informed of this Agreement and agree to be bound by the terms hereof or are otherwise bound by obligations of confidentiality with regard to the Confidential Information which are at least as protective as the confidentiality obligations set forth herein.

3. **Compliance with the Law.** If Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule, or a request to SCPA under the California Public Records Act (California Government Code Section 6250 et seq.)) to disclose any Confidential Information of Disclosing Party, Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy.

4. **Return of Materials.** Upon termination of the Agreement or upon the earlier written request of Disclosing Party, Receiving Party shall, and shall cause its Representatives to, promptly upon the written request of Disclosing Party, deliver to Disclosing Party all documents, files or other materials furnished by or on behalf of Disclosing Party to Receiving Party constituting Confidential Information, without retaining any copies of them. Receiving Party shall then and shall cause its relevant Representatives to destroy all other documents, files or materials constituting Confidential Information of Disclosing Party (including all electronic records containing or describing any Confidential Information), and shall confirm in writing to Disclosing Party that all Confidential Information and records have been returned or destroyed. The obligations of Receiving Party contained in this Agreement will survive any return or destruction of documents, files or other materials containing Confidential Information; provided, however, an archival copy of the Confidential Information and copies, notes, summaries, or extracts may be retained (and subsequently destroyed) in the files of Receiving Party in accordance with its record retention policies, so long as such policy does not conflict with the terms of protection of Receiving Party for the periods described in this Agreement.

5. **Governing Law and Jurisdiction.** This Agreement will be governed by and interpreted in accordance with the internal laws of the State of California, without regard to conflicts of laws. The parties hereby consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in San Francisco County for the purposes of adjudicating any matter arising from or in connection with this Agreement. Each party expressly waives any right to a trial by a jury in any proceeding arising directly or indirectly out of this Agreement.

6. **No Representation, Warranty or Obligation.** Disclosing Party makes no representation or warranty, express or implied, as to the Confidential Information, including without limitation to any warranty against infringement, accuracy or completeness, and Disclosing Party shall have no liability based upon the Confidential Information; provided, that Disclosing Party represents it has the right to disclose the Confidential Information to Receiving Party hereunder. Nothing in this Agreement obligates Disclosing Party to make any particular disclosure of Confidential Information or to complete, revise or update any Confidential Information. Nothing herein obligates either party to enter into or continue discussions or transactions related to the Services, or prevents Disclosing Party from disclosing its Confidential Information to any other person or entity.

7. **Term.** This Agreement will continue in full force and effect for a term of three years from the Effective Date. This Agreement shall survive any change or termination of the parties’ business relationship.

8. **Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly

acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

9. **Miscellaneous.** The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement. This Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter hereof. This Agreement supersedes all prior written and oral agreements and all other communications between the parties. Amendments and modifications to this Agreement will be effective only if written and signed by both parties. This Agreement will be binding upon and inure to the benefit of each party's successors or permitted assigns. Except as expressly stated herein, each party intends that this Agreement will not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the parties hereto, SCPA's Affiliates, and their successors and permitted assigns. If any provision in this Agreement is invalid or unenforceable in any circumstances, its application in any other circumstances and the remaining provisions of this Agreement will not be affected thereby. All notices, requests, consents and other communications required or permitted to be delivered hereunder must be made in writing and delivered by hand, via overnight delivery service or by registered or certified mail, postage prepaid. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Each party represents and warrants that the individual signing below has the necessary authority to bind the party set forth below.

IN WITNESS WHEREOF, the parties hereto have executed this Mutual Confidentiality Agreement as of the Effective Date.

SONOMA CLEAN POWER AUTHORITY

By: _____
Name:
Title:

By: _____
Name:
Title:

[If any Customer AMI (smart meter) data is to be provided, please see the General Counsel for advice as to whether additional provisions should be added relating to that data.]

EXHIBIT D

PREVAILING WAGE REQUIREMENTS

- 1 General. Pursuant to California Labor Code § 1720 et seq., this Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes.
- 2 Rates. These prevailing rates are on file with SCPA and are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to work on the Project. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half.
- 3 Compliance. The Agreement will be subject to compliance monitoring and enforcement by the DIR, under Labor Code § 1771.4.
- 4 Discrimination Prohibited. Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Consultant and its Subconsultants are required to comply with all applicable Laws prohibiting discrimination, including the California Fair Employment and Housing Act (Govt. Code § 12900 et seq.), Government Code § 11135, and Labor Code §§ 1735, 1777.5, 1777.6, and 3077.5. This requirement is in addition to those set forth in Section 15 of the Agreement.
- 5 Labor Code Requirements.
 - 5.1 Eight Hour Day. Pursuant to Labor Code § 1810, eight hours of labor constitute a legal day's work under this Agreement.
 - 5.2 Pursuant to Labor Code § 1813, Consultant will forfeit to SCPA as a penalty, the sum of \$25.00 for each day during which a worker employed by Consultant or any Subconsultant is required or permitted to work more than eight hours in any one calendar day or more than 40 hours per calendar week, except if such workers are paid overtime under Labor Code § 1815.
 - 5.3 Apprentices. Consultant is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code § 1777.5, which is fully incorporated by reference.
 - 5.4 Notices. Pursuant to Labor Code § 1771.4, Consultant is required to post all job site notices prescribed by Laws.
 - 5.5 Prevailing Wages. Each worker performing Work under this Agreement that is covered under Labor Code §§ 1720 or 1720.9, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in §§ 1771 and 1774 of the Labor Code. The prevailing wage rates are on file with SCPA and available online at <http://www.dir.ca.gov/dlsr>. Consultant must post a copy of the applicable prevailing rates at the Project site.

- 5.6 Penalties. Pursuant to Labor Code § 1775, Consultant and any Subconsultant will forfeit to SCPA as a penalty up to \$200.00 for each calendar day, or portion a day, for each worker paid less than the applicable prevailing wage rate. Consultant must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
- 5.7 Federal Requirements. If this Project is subject to federal prevailing wage requirements in addition to California prevailing wage requirements, Consultant and its Subconsultants are required to pay the higher of the currently applicable state or federal prevailing wage rates.
- 5.8 Payroll Records. Consultant must comply with the provisions of Labor Code §§ 1776 and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for electronic submission of payroll records to the DIR.
- 5.9 Consultant and Subconsultant Obligations. Consultant and each Subconsultant must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Services. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - 5.9.1 The information contained in the payroll record is true and correct; and
 - 5.9.2 Consultant or the Subconsultant has complied with the requirements of Labor Code §§ 1771, 1811, and 1815 for any Services performed by its employees on the Project.
- 5.10 Certified Record. A certified copy of an employee's payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to SCPA, to the Division of Labor Standards Enforcement, to the Division of Apprenticeship Standards of the DIR, and as further required by the Labor Code.

Enforcement. Upon notice of noncompliance with Labor Code § 1776, Consultant or Subconsultant has ten (10) days in which to comply with the requirements of this section. If Consultant or Subconsultant fails to do so within the ten (10) day period, Consultant or Subconsultant will forfeit a penalty of \$100.00 per day, or portion a day, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from payments then due to Consultant.

END OF EXHIBIT D

EXHIBIT E

CEC grant terms and conditions (CEC’s Electric Program Investment Charge (EPIC) Standard Grant Terms and Conditions.)

**EXHIBIT C (from the CEC Grant Contract)
ELECTRIC PROGRAM INVESTMENT CHARGE (EPIC) STANDARD
GRANT TERMS AND CONDITIONS**

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

TERMS AND CONDITIONS

1. **Introduction**

This grant agreement (Agreement) between the California Energy Commission (Energy Commission, or Commission) and the Recipient is funded by the Electric Program Investment Charge (EPIC), an electricity ratepayer surcharge authorized by the California Public Utilities Commission (CPUC).

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

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

2. **Documents Incorporated by Reference**

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

Solicitation Documents (if applicable)

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

CPUC Decision

- c. **Decision 13-11-025 (Decision Addressing Applications of the California Energy Commission, Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company for Approval of their Triennial Investment Plans for the Electric Program Investment Charge Program for the Years 2012 through 2014)**
[http://docs.cpuc.ca.gov/PublishedDocs/
Published/G000/M081/K773/81773445.PDF](http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M081/K773/81773445.PDF)

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

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

Federal Acquisition Regulations (applicable to commercial organizations)

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

Nondiscrimination

- f. 2 California Code of Regulations, Section 8101 et seq.: Contractor Nondiscrimination and Compliance

General Laws

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

3. *Standard of Performance*

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

4. *Due Diligence*

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

5. *Products*

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

- The Recipient will submit all products identified in the Scope of Work to the Commission Agreement Manager, in the manner and form specified in the Scope of Work.
- The Recipient will also submit all products prepared during the invoicing period to the Accounting Office along with the invoice, as specified in subsection (c) of Section 8 (Payment of Funds).

If the Commission Agreement Manager determines that a product is substandard given its description and intended use as described in the Scope of Work, the Commission Agreement Manager may refuse to authorize payment for the product and any subsequent products that rely on or are based upon the product under this Agreement.

- b. **Confidential Products**

Please see Section 19 (Confidentiality) for instructions regarding confidential products.

- c. **Rights in Products**

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

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

d. Failure to Submit Products

Failure to submit a product required in the Scope of Work will be considered material noncompliance with the Agreement terms, unless the Commission Agreement Manager waives the failure in writing. Noncompliance may result in actions such as the withholding of future payments or awards, or the suspension or termination of the Agreement.

e. Final Report and Payment

The Recipient may only submit a request for the final payment (including any retention) after the final report is completed and the Commission Agreement Manager has verified satisfactory completion of work.

f. Legal Statements on Products

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

LEGAL NOTICE

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

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

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

6. Amendments

a. Procedure for Requesting Changes

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

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

b. Approval of Changes

Certain changes to the Agreement (e.g., changes that increase the Agreement amount or substitute one Recipient for another) must be approved at a Commission business meeting or by the Executive Director (or his/her designee). Generally, changes that are not significant to the Agreement may be documented in a Letter of Agreement signed by both parties (electronic signatures are acceptable).

The Commission Agreement Manager or Commission Agreement Officer will provide the Recipient with guidance regarding the level of Commission approval required for a proposed change.

c. Personnel or Subcontractor Changes

All changes below require advance written approval by the Commission Agreement Manager, in addition to the appropriate level of Commission approval as described in subsection (b).

1) Replacement of Key Personnel, Subcontractors, and Vendors

The Commission Agreement Manager must provide advance written approval of the replacement of personnel, subcontractors, and vendors who are identified in the Agreement and are critical to the outcome of the project, such as the Project Manager.

2) Assignment of New Personnel to an Existing Job Classification

If the Recipient or a subcontractor seeks to assign new personnel to a job classification identified in Exhibit B, the Recipient or subcontractor must submit the individual's resume and proposed job classification and rate to the Commission Agreement Manager for approval. The proposed rate may not exceed the maximum rate identified for the job classification. Neither the Recipient nor any subcontractor may use the job classifications or rates of their subcontractors for personnel.

If the individual performs any work prior to the effective date of the amendment documenting the change, the Recipient will bear the expense of the work.

3) Promotion of Existing Personnel to an Existing Job Classification

Recipient or subcontractor personnel that are identified in Exhibit B may be assigned to a higher-paying job classification identified in Exhibit B. If the Recipient performs any work under the new rate prior to the effective date of the amendment documenting the change, the Recipient will bear the expense of the difference between the new and old rates.

4) Addition of Subcontractors

In order to add subcontractors to Exhibit B, the Commission Agreement Manager must submit a "Subcontractor Addition" form to the Commission Agreement Officer. The form identifies the new subcontractor, bidding method used (competitive or non-competitive), and the tasks the new subcontractor will perform.

5) Addition of Job Classifications and Changes in Hours

- 6) Increased Direct Operating Expenses and Rates that Exceed the Expenses and Rates Identified in Exhibit B

7. Contracting and Procurement Procedures

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

a. Contractor's Obligations to Subcontractors

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

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

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

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

b. Flow-Down Provisions

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

- Standard of Performance (Section 3)
- Legal Statements on Products (included in Section 5, "Products")
- Travel and Per Diem (Section 9)
- Prevailing Wage (Section 10)
- Recordkeeping, Cost Accounting, and Auditing (Section 11)
- Equipment (Section 14)
- Disputes (Section 15)
- Indemnification (Section 18)
- Confidentiality (Section 19)
- Pre-Existing and Independently Funded Intellectual Property (Section 20)
- Intellectual Property (Section 21)
- Royalty Payments to the Commission (Section 22)

- Access to Sites and Records (included in Section 23, “General Provisions”)
- Nondiscrimination (included in Section 24, “Certifications and Compliance”)
- Survival of the following sections:
 - Equipment (Section 14)
 - Recordkeeping, Cost Accounting, and Auditing (Section 11)
 - Pre-Existing and Independently Funded Intellectual Property (Section 20)
 - Intellectual Property (Section 21)
 - Royalty Payments to the Commission (Section 22)
 - Access to Sites and Records (included in Section 23, “General Provisions”)

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

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

c. **Audits**

All subcontracts entered into for the performance of this Agreement are subject to examination and audit by the Energy Commission and/or Bureau of State Audits for a period of three (3) years after payment of the Recipient’s final invoice under this Agreement. The Energy Commission may audit subcontracts that are relevant to the Recipient’s royalty payment obligations (see Section 22) for a period of ten (10) years after the Agreement’s end date.

d. **Copies of Subcontracts**

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

e. **Conflicting Subcontract Terms**

Prior to the execution of this Agreement, the Recipient will notify the Commission Agreement Manager of any known or reasonably foreseeable conflicts between this Agreement and its agreements with any subcontractors (e.g., conflicting intellectual property or payment terms). If the Recipient discovers any such conflicts after the execution of this Agreement, it will notify the Commission Agreement Manager of the conflict within fifteen (15) days of discovery. The Energy Commission may terminate this Agreement if any conflict impairs or diminishes its value.

f. **Penalties for Noncompliance**

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

8. Payment of Funds

a. Definitions

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

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

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

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

b. Advance Payments

Recipients can receive Advance Payments only for subcontractors with the U.S. Department of Energy laboratories. Otherwise, Advance Payments are NOT allowed under this Agreement. The Energy Commission in its sole discretion, and not the Recipient, decides if the Commission will make an Advance Payment.

c. Reimbursable Cost Requirements

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

ALL of the items in the Budget, including without limitation labor rates, fringe and indirect and individually listed items are caps (i.e., maximums), and the Recipient can only bill its ACTUAL amount up to capped amounts listed in the Budget. For example, if the Budget includes an employee's hourly rate of \$50/hour but the employee is only paid \$40/hour, the Recipient can only bill for \$40/hour. Under the same example, if the employee earned \$70/hour but the Budget only lists \$50/hour, the Recipient can only bill for \$50. Another example is if the maximum fringe rate listed in the budget is 20% but the Recipient's actual fringe rate is only 15%, the Recipient can only bill at 15%.

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

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

The Recipient shall only invoice the Commission for Incurred Expenses the Recipient shall pay with 14 calendar days of receiving payment from the Commission. For example, assume the Recipient has an Incurred Cost for a piece of equipment that costs \$300,000 and will pay in three installments of \$100,000 each over three months. The Recipient shall only invoice the Commission for \$100,000 each month. The Recipient shall not invoice for the entire \$300,000 and retain the balance over the three months.

For any Incurred Costs for which the Recipient has received funds from the Energy Commission and does not pay within 14 calendar days, the Recipient shall on the very next business day after the 14 calendar days submit repayment of the unpaid amount back to the Energy Commission. Repaid funds will be placed back into the agreement and will be available to reimburse allowable costs in accordance with this agreement. When making a repayment under this provision, the Recipient shall specify "Repayment of Unspent Funds under Agreement [EPC-17-008]." Recipient shall remit the repayment to:

California Energy Commission
Accounting Office
1516 Ninth Street, MS-2
Sacramento, CA 95814

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

e. Payment Requests

The Recipient may request payment from the Energy Commission at any time during the term of this Agreement but no more frequently than monthly. It is preferred that payment requests be submitted with the progress reports. The final payment request, including retention, MUST be received by the Energy Commission no later than the agreement end date.

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

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

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

f. Invoice Approval and Disputes:

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

The invoice will be disputed if all products due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. If the invoice is disputed, the Recipient will be notified via a Dispute Notification Form within fifteen (15) working days of receipt of the Commission Agreement Manager's invoice.

g. Recipient's headquarters:

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

h. Multiple Non-Energy Commission Funding Sources:

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

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

i. Reduced funding:

If the Energy Commission does not receive sufficient funds under the Budget Act or from the investor-owned utility administrators of the EPIC program to fully fund the work identified in Exhibit A (Scope of Work), the following will occur:

- a) If the Energy Commission has received a reduced amount of funds for the work, it may: (1) offer an Agreement amendment to the Recipient to reflect the reduced amount; or (2) cancel this Agreement (with no liability occurring to the State).
 - b) If the Energy Commission has received no funds for the work identified in Exhibit A: (1) this Agreement will be of no force and effect; (2) the State will have no obligation to pay any funds to the Recipient; and (3) the Recipient will have no obligation to perform any work under this Agreement.
- j. Allowability of Costs
- a) Allowable Costs
The costs for which the Recipient will be reimbursed under this Agreement include all costs, direct and indirect, incurred in the performance of the work identified in the Scope of Work. Costs must be incurred within the Agreement term. Factors to be considered in determining whether an individual item of cost is allowable include: (i) reasonableness of the item, including necessity of the item for the work; (ii) applicable federal cost principles or acquisition regulations incorporated by reference in Section 2 of this Agreement; and (iii) the terms and conditions of this Agreement.
 - b) Unallowable Costs
Below are examples of unallowable costs. Details concerning the allowability of costs are available from the Energy Commission's Accounting Office.
 - a) Profit of the Recipient or fees (this restriction does not apply to subcontractors);
 - b) Contingency costs;
 - c) Imputed costs (e.g., cost of money);
 - d) Fines and penalties;
 - e) Losses;
 - f) Excess profit taxes; and
 - g) Unapproved, increased rates and fees for this Agreement
 - c) Except as provided for in this Agreement or applicable California law or regulations, the Recipient will use the federal cost principles and/or acquisition regulations incorporated by reference in Section 2 of this Agreement when determining allowable and unallowable costs. In the event of a conflict, this Agreement takes precedence over the federal cost principles and/or acquisition regulations.
- k. Payment Request Format
- Each request for payment will consist of, but not be limited to, the following:
- 1) An invoice that includes a list of Incurred and Paid Costs. Backup documentation is required at the time of invoice submittal, such as time cards, vendor invoices, and proof of payment (e.g., cancelled checks). Unless otherwise specified in Exhibit B or the invoice template, the invoice must include the following:
 - a) Agreement number;
 - b) Date prepared;
 - c) Recipient's Federal tax ID number;

- d) Billing period;
 - e) Recipient's actual labor expenditures, including hourly unloaded labor rates by individual name and classification, hours worked, and benefits (fully loaded rates may only be used if they are included in the grant budget);
 - f) Non-labor expenses, including fringe benefits, indirect overhead, and general/administrative expenses;
 - g) Operating expenses, including travel, equipment, materials, and other;
 - h) By budget line item (cost component) category, the budgeted amount, amount billed to date, currently billed amount, and balance of funds;
 - i) Match fund expenditures (if applicable);
 - j) Receipts for travel (including departure and return times), equipment, materials, and miscellaneous; and
 - k) Subcontractor invoices that include all items above, for correspondence with the budget (e.g., if the budget lists hourly labor rates, the subcontractor's invoice should include hourly labor rates).
- 2) A progress report that documents evidence of progress, as described in the Scope of Work.
 - 3) Products prepared by the Recipient during the invoicing period, as described in the Scope of Work.

The Commission will accept computer-generated or electronically transmitted invoices without backup documentation provided that the Recipient mails a hard copy the same day.

The Recipient must submit all invoices to the following address:

California Energy Commission
Accounting Office
1516 Ninth Street, MS-2
Sacramento, CA 95814

If the Recipient has not otherwise provided to the Commission documentation showing the Recipient's payment of Incurred Costs, the Recipient shall provide such documentation as soon as possible and not later than three working days from a request from Commission personnel.

I. Certification

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

The documents included in this request for payment are true and correct to the best of my knowledge and I, as an agent of [Company Name] have authority to submit this request. I certify that reimbursement for these costs has not and will not be received from any other sources, including but not limited to a government entity contract, subcontract, or other procurement method. For projects considered to be a public work, prevailing wages were paid to eligible workers who provided labor for the work covered by this invoice; the Recipient and all subcontractors have complied with prevailing wage

laws.

m. Fringe Benefit, Indirect Overhead, General and Administrative (G&A), and Facilities and Administration (F&A) Rates

Indirect cost rates must be developed in accordance with generally accepted accounting principles and the applicable federal cost principles or acquisition regulations (see the provisions incorporated by reference in Section 2). If the Recipient has an approved fringe benefits or indirect cost rate (indirect overhead, G&A, or F&A) from its cognizant federal agency, the Recipient may bill at the federal rate up to the budget rate caps if the following conditions are met:

- The Recipient may bill at the federal provisional rate but must adjust annually to reflect its actual final rates for the year in accordance with the Labor, Fringe, and Indirect Invoicing Instructions contained in the budget (Exhibit B).
- The cost pools used to develop the federal rates must be allocable to the Agreement, and the rates must be representative of the portion of costs benefiting the Agreement. For example, if the federal rate is for manufacturing overhead at the Recipient's manufacturing facility and the Agreement is for research and development at the Recipient's research facility, the federal indirect overhead rate would not be applicable to the Agreement.
- The federal rate must be adjusted to exclude any costs that are specifically prohibited in the Agreement.
- The Recipient may only bill up to the Agreement budget rate caps, unless and until an amendment to the budget is approved.

n. Retention

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

Retention may be released upon completion of tasks that are considered separate and distinct (i.e., the task is a stand-alone piece of work and could be completed without the other tasks). Tasks for administration or management of the Agreement and/or subcontractors are not considered separate and distinct tasks. The tasks for which retention may be released prior to the end of the Agreement must be identified in Exhibit B (budget).

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

- The Recipient shall not flow down retention requirements to U.S. Department of Energy national laboratory subcontractors.

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

These requirements apply to all levels of subcontractors (e.g., a subcontractor to a subcontractor).

9. Travel and Per Diem

- a. **Travel not listed in the budget requires prior written authorization from the Commission Agreement Manager.**
- b. **No reimbursement for food or beverages will be made other than for allowable per diem charges.**
- c. **The Recipient will be reimbursed for authorized travel and per diem up to, but not to exceed, the rates allowed nonrepresented state employees. Current allowable travel reimbursement rates can be obtained from the Commission's web site at http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF.**
- d. **Travel expense claims must detail expenses using the allowable rates, and the Recipient must sign and date each travel expense claim before submitting it to the Commission for payment. Expenses must be listed by trip, including dates and times of departure and return. Travel expense claims supporting receipts and expense documentation must be attached to the Recipient's Payment Request. A vehicle license number is required when claiming mileage, parking, or toll charges. Questions regarding allowable travel expenses or per diem should be addressed to the Commission Agreement Manager.**

10. Prevailing Wage

- a. Requirement

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

b. **Determination of Project’s Status**

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

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

- 1) Timely obtain a legally binding determination from DIR or a court of competent jurisdiction before work begins on the project that the proposed project is not a public work; or
- 2) Assume that the project is a public work and ensure that:
 - Prevailing wages are paid unless and until DIR or a court of competent jurisdiction determines that the project is not a public work;
 - The project budget for labor reflects these prevailing wage requirements; and
 - The project complies with all other requirements of prevailing wage law, including but not limited to keeping accurate payroll records and complying with all working hour requirements and apprenticeship obligations.

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

c. **Subcontractors and Flow-down Requirements**

The Recipient will ensure that its subcontractors also comply with the public works/prevailing wage requirements above. The Recipient will ensure that all agreements with its subcontractors to perform work related to this Project contain the above terms regarding payment of prevailing wages on public works projects. The Recipient is responsible for any failure of its subcontractors to comply with California prevailing wage and public works laws.

d. **Indemnification and Breach**

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

e. Budget

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

f. Covered Trades

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

g. Questions

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

h. Certification

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

Prior to the release of any retained funds under this Agreement, the Recipient will submit to the Energy Commission the above-described certificate signed by the Recipient and all contractors and subcontractors performing public works activities on the project. Absent this certificate, the Recipient will have no right to any funds under this Agreement, and Commission will be relieved of any obligation to pay any funds.

11. Recordkeeping, Cost Accounting, and Auditing

a. Cost Accounting

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

b. **Accounting Procedures**

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

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

c. **Audit Rights**

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

It is the intent of the parties that the audits will ordinarily be performed not more frequently than once every twelve (12) months during the performance of the work and once at any time within three (3) years after payment by the Energy Commission of the Recipient's final invoice. However, performance of any such interim audits by the Energy Commission does not preclude further audit. The Energy Commission may audit books, records, documents, and other evidence relevant to the Recipient's royalty payment obligations (see Section 22) for a period of ten (10) years after payment of the Recipient's final invoice.

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

d. **Refund to the Energy Commission**

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

e. Audit Cost

The Recipient will bear its cost of participating in any audit (e.g., mailing or travel expenses). The Energy Commission will bear the cost of conducting the audit unless the audit reveals an error detrimental to the Energy Commission that exceeds more than ten percent (10%) or \$5,000 (whichever is greater) of: (1) the amount audited; or (2) if a royalty audit, the total royalties due in the period audited. The Recipient will pay the refund as specified in subsection (d), and will reimburse the Energy Commission for reasonable costs and expenses incurred by the Commission in conducting the audit.

f. Match or Cost Share

If the budget includes a match share requirement, the Recipient's commitment of resources, as described in this Agreement, is a required expenditure for receipt of Energy Commission funds. The funds will be released only if the required match percentages are expended. The Recipient must maintain accounting records detailing the expenditure of the match (actual cash and in-kind, non-cash services), and report on match share expenditures on its request for payment.

12. Workers' Compensation Insurance

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

13. Permits and Clearances

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

14. Equipment

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

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

15. Disputes

In the event of an Agreement dispute or grievance between the Recipient and the Energy Commission, both parties may follow the procedure detailed below. The Recipient will continue with its responsibilities under this Agreement during any dispute.

- a. Commission Agreement Manager/Commission Agreement Officer
 - The Recipient must first discuss the problem informally with the Commission Agreement Manager.
 - If the problem cannot be resolved at this stage, the Recipient must submit a Contractor Dispute Statement, along with any evidence, to the Commission Agreement Officer. The statement must include: (1) a summary of the issues in dispute; (2) the legal authority or other basis for the Recipient's position; and (3) the remedy sought.
- b. Commission Agreement Officer/ Program Office Manager
 - The Commission Agreement Officer and the Program Office Manager must make a determination on the problem within ten (10) working days of receipt of the Recipient's Dispute Statement.
 - The Commission Agreement Officer will submit a Dispute Finding to the Recipient that includes: (1) a decision; and (2) an explanation of the decision.
 - The Recipient may appeal to the Commission's Executive Director if it disagrees with the Commission Agreement Officer's decision.
- c. Executive Director
 - The Recipient must submit an Appeal to the Commission's Executive Director within ten (10) working days of receipt of the Commission Agreement Officer's Dispute Finding. The Appeal must explain why the Commission Agreement Officer's decision is unacceptable. The Recipient must include the following as attachments to the Appeal: (1) the Recipient Dispute Statement; (2) any supporting documents; and (3) the Dispute Finding.
 - The Executive Director or his/her designee will meet with the Recipient to review the issues raised.
 - A written decision signed by the Executive Director or his/her designee will be sent to the Recipient within twenty (20) working days of receipt of the Appeal. The Executive Director may exercise the option of presenting the decision to the Commission at a business meeting.
 - If the Recipient disagrees with the Executive Director's decision, it may appeal to the Commission at a regularly scheduled business meeting. The Commission Agreement Officer will inform the Recipient of the procedure for placing the appeal on a Commission Business Meeting Agenda.

16. **Stop Work**

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

- a. **Compliance. Upon receipt of a stop work order, the Recipient must immediately take all necessary steps to comply with the order and to minimize the incurrence of costs allocable to the work stopped.**

- b. **Equitable Adjustment. The Energy Commission will make an equitable adjustment based upon a written request from the Recipient. The Recipient must make the adjustment request within thirty (30) days from the date of the stop work order.**
- c. **Canceling a Stop Work Order. The Recipient may resume the work only upon receipt of written instructions from the Commission Agreement Officer.**

17. **Termination**

a. **Purpose**

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

b. **Breach**

The Energy Commission will provide the Recipient written notice of intent to terminate due to the Recipient's breach. The Recipient will have fifteen (15) calendar days to fully perform or cure the breach. If the Recipient does not cure the breach within fifteen (15) days, the Energy Commission may, without prejudice to any of its other remedies, terminate this Agreement upon five (5) calendar days written notice to the Recipient. In this event, the Energy Commission will pay the Recipient only the reasonable value of the services performed satisfactorily by the Recipient before the notice of termination, as may be agreed upon by the parties or determined by a court of law, but not to exceed the maximum payable Agreement amount.

c. **For Cause**

The Energy Commission may, for cause, terminate this Agreement upon giving thirty (30) calendar days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations. The Energy Commission will pay the Recipient for any services rendered and expenses incurred within thirty (30) days after notice of termination that the Recipient could not have avoided by reasonable efforts, in an amount not to exceed the maximum payable Agreement amount. The Recipient will relinquish possession of equipment purchased for this Agreement with Energy Commission funds to the Commission, or the Recipient may purchase the equipment as provided by the terms of this Agreement, with approval of the Energy Commission.

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

- Partial or complete loss of match funds;
- Reorganization to a business entity unsatisfactory to the Energy Commission;
- Retention or hiring of subcontractors, or replacement or addition of personnel, that fail to perform to the standards and requirements of this Agreement;

- The Recipient's inability to pay its debts as they become due and/or the Recipient's default of an obligation that impacts its ability to perform under this Agreement; or
- Significant change in state or Energy Commission policy such that the work or product being funded would not be supported by the Commission.

d. **Without Cause**

The Energy Commission may terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations. Also, the Energy Commission will pay the Recipient for all satisfactory services rendered and expenses incurred within thirty (30) calendar days after notice of termination that the Recipient could not avoid by reasonable efforts, in an amount not to exceed the maximum payable under this Agreement.

18. Indemnification

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

19. Confidentiality

a. Identification of Confidential Information

- 1) Prior to the effective date of this Agreement, the Recipient will identify all products (or information contained within products) that it considers to be confidential, in addition to the legal basis for confidentiality, in Attachment 1 to this Exhibit. If the Energy Commission agrees that the information is confidential, it will not disclose it except as provided in subsection (b).
- 2) During the Agreement, if the Recipient develops additional products (or information contained within products) not originally anticipated as confidential, it will follow the procedures for a request for designation of confidential information specified in Title 20 California Code of Regulations (CCR) Section 2505.

The Energy Commission's Executive Director will make the confidentiality determination. Following this determination, the confidential information may be added to Attachment 1 through a Letter of Agreement (see the "Amendments" section). The Energy Commission will not disclose information subject to an application for confidential designation except as provided in subsection (b).

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

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

b. Disclosure of Confidential Information

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

c. Waiver of Consequential Damages

In no event will the Energy Commission, the California Public Utilities Commission, or the state of California be liable for any special, incidental, or consequential damages based on breach of warranty, breach of contract, negligence, strict tort, or any other legal theory for the disclosure of the Recipient's confidential information, even if the Commission has been advised of the possibility of such damages.

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

d. Limitations on the Recipient's Disclosure of Products

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

20. Pre-Existing and Independently Funded Intellectual Property

a. Ownership

The Energy Commission makes no ownership, license, or royalty claims to pre-existing intellectual property, independently funded intellectual property, or project-relevant pre-existing or independently funded intellectual property. **“Ownership”** means exclusive possession and control of all rights to property, including the right to use and transfer property. Intellectual property licenses and royalties are discussed in Sections 21 and 22.

- 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 or a third party owned or possessed prior to the effective date of this Agreement and that have not been developed, altered, or reduced to practice with Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.
- 2) **“Independently funded intellectual property”** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice by the Recipient or a third party during or after the Agreement term without Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.

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

- 3) **“Project-relevant pre-existing intellectual property”** and **“project-relevant independently funded intellectual property”** mean pre-existing and independently funded intellectual property used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement.

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

- 1) Identification of Property
 - a) The Recipient will identify all project-relevant pre-existing intellectual property in Attachment 1 to this Exhibit prior to the effective date of the Agreement, or within sixty (60) days of becoming aware that the property has been or will be used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement. Attachment 1 may be amended by a Letter of Agreement (see the “Amendments” section).
 - b) The Recipient will identify all project-relevant independently funded intellectual property and the source of funding for the property in Attachment 1 to this Exhibit within sixty (60) days of becoming aware that the property has been or will be used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement.

- c) Failure to identify project-relevant pre-existing or independently funded intellectual property in Attachment 1 to this Exhibit may result in the property's designation as "intellectual property" that is subject to licenses and royalties, as described in Sections 21 and 22.

2) Access to Property

The extent of Energy Commission 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 request, the Recipient will provide the Commission Agreement Manager and any reviewers designated by the Energy Commission or the California Public Utilities Commission with access to review the Recipient's project-relevant pre-existing and independently funded intellectual property. If the property has been designated as confidential as specified in Section 19, the Energy Commission will only disclose it under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508.

3) Preservation of Property

The Recipient will preserve any project-relevant pre-existing or independently funded intellectual property at its own expense for at least ten (10) years from the Agreement's end date, unless the Recipient agrees to a longer retention period.

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

21. Intellectual Property

a. Ownership

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

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

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

- 2) The Energy Commission owns all products identified in the Scope of Work, with the exception of products that fall within the definition of "intellectual property."

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

b. **Intellectual Property Licenses**

- 1) Both the Energy Commission and the California Public Utilities Commission have a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce intellectual property for governmental purposes. The licenses are transferable only to load-serving entities for the purpose described below.
- 2) Both the Energy Commission and the California Public Utilities Commission may grant load-serving entities a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce intellectual property to enhance the entities’ service to EPIC ratepayers. **“Load-serving entity”** means a company or other organization that provides electricity to EPIC ratepayers. The licenses are transferable to third parties only for the purpose of facilitating the load-serving entity’s enhancement of service to EPIC ratepayers. Load-serving entities must obtain prior written approval from the Energy Commission or California Public Utilities Commission (whichever agency granted the load-serving entity the license) in order to transfer the license to a third party.
- 3) The Recipient has a non-exclusive, non-transferable, irrevocable, worldwide, perpetual license to use, publish, translate, modify, and reproduce written products created for Agreement reporting and management purposes, such as reports and summaries.
- d) If any intellectual property that is subject to the licenses above has been designated as confidential as specified in Section 19, all license holders will only disclose the intellectual property under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508.

All license holders will ensure that their officers, employees, and subcontractors who have access to the intellectual property are informed of and abide by the disclosure limitations in Section 19.

c. **Energy Commission’s Rights to Inventions**

“Invention” means intellectual property that is patentable.

1) **March-In Rights**

At the Energy Commission’s request, the Recipient will forfeit and assign to the Energy Commission all rights to any invention (with the exception of U.S. Department of Energy reserved rights) if the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the invention. The Energy Commission will have the unfettered right to use and/or dispose of the rights in whatever manner it deems most suitable to help transfer the invention into the marketplace, including but not limited to seeking patent protection or licensing the invention.

2) **Notice of Patent**

If any patent is issued for an invention, the Recipient will send the Commission Agreement Manager written notice of the issuance within three (3) months of the issuance date. The notice must include the patent title, issuance number, and a general description of the invention.

3) Legal Notice

The Recipient and all persons and/or entities obtaining an ownership interest in patentable intellectual property must include the following statement within the specification of any United States patent application, and any subsequently issued patent for the invention:

“This invention was made with State of California support under California Energy Commission grant number EPC-17-020. The Energy Commission has certain rights to this invention.”

d. Access to and Preservation of Intellectual Property

1) Access to Intellectual Property

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

2) Preservation of Intellectual Property

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

e. Intellectual Property Indemnity

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

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

22. Royalty Payments to the Commission

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

- a. The Recipient 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 Recipient 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 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 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 amount of funds paid by the Energy Commission under the Agreement.
- d. If intellectual property was developed in part with match funds during the Agreement term, the royalty payment will be reduced in accordance with the percentage of intellectual property development activities that were funded with match funds. For example, if 10% of the development activities were funded with match funds during the Agreement and payments for sales totaled \$100,000 in one year, the Recipient would owe the Energy Commission \$1350 for the year (1.5% of \$100,000 = \$1500; 10% of \$1500 = \$150; \$1500 - \$150 = \$1350).

If the Energy Commission is providing funds to the Recipient under this Agreement as a project match partner and Energy Commission funds are used in part to develop intellectual property, the royalty payments will be reduced in accordance with the percentage of intellectual property development activities that were funded with non-Energy Commission 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 Energy Commission \$300 for the year (1.5% of \$100,000 = \$1500; 80% of \$1500 = \$1200; \$1500 - \$1200 = \$300).

- e. The Recipient 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.
- f. The Recipient may not make any sale of intellectual property for consideration other than fair market value. Such activity constitutes breach of this Agreement, and will obligate the Recipient to repay within sixty (60) days the early buyout amount due. In the event of breach, the Energy Commission 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 to the Energy Commission, 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 Energy Commission under this Agreement.

- i. Payments to the Energy Commission are subject to audit as provided for under the Recordkeeping, Cost Accounting, and Auditing section.
- j. The Recipient will include these royalty provisions in its agreements with all subcontractors who develop or assist with the development of intellectual property.

23. General Provisions

a. Governing Law

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

b. Independent Capacity

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

c. Assignment

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

d. Timeliness

Time is of the essence in this Agreement.

e. Severability

If any provision of this Agreement is unenforceable or held to be unenforceable, all other provisions of this Agreement will remain in full force and effect.

f. Waiver

No waiver of any breach of this Agreement constitutes waiver of any other breach. All remedies in this Agreement will be taken and construed as cumulative, meaning in addition to every other remedy provided in the Agreement or by law.

g. Assurances

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

h. Change in Business

- 1) The Recipient will promptly notify the Energy Commission of the occurrence of any of the following:
 - a) A change of address.
 - b) A change in business name or ownership.
 - c) The existence of any litigation or other legal proceeding affecting the project or Agreement.
 - d) The occurrence of any casualty or other loss to project personnel, equipment, or third parties.

- e) Receipt of notice of any claim or potential claim against the Recipient for patent, copyright, trademark, service mark, and/or trade secret infringement that could affect the Energy Commission's rights.
- 2) The Recipient must provide the Commission Agreement Manager with written notice of a planned change or reorganization of the type of business entity under which it does business. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. If the Energy Commission does not seek to amend this Agreement or enter into a new agreement with the changed or new entity for any reason (including that the Commission is not satisfied that the new entity can perform in the same manner as the Recipient), it may terminate this Agreement as provided in the "Termination" section.
- i. Access to Sites and Records
Energy Commission and California Public Utilities Commission staff and representatives will have reasonable access to all project sites and to all records related to this Agreement.
 - j. Prior Dealings, Custom, or Trade Usage
These terms and conditions may not be modified or supplemented by prior dealings, custom, or trade usage.
 - k. Survival of Terms
Certain provisions will survive the completion or termination date of this Agreement for any reason. The provisions include but are not limited to:
 - Legal Statements on Products (included in Section 5, "Products")
 - Payment of Funds (Section 8)
 - Recordkeeping, Cost Accounting, and Auditing (Section 11)
 - Equipment (Section 14)
 - Disputes (Section 15)
 - Termination (Section 17)
 - Indemnification (Section 18)
 - Pre-Existing and Independently Funded Intellectual Property (Section 20)
 - Intellectual Property (Section 21)
 - Royalty Payments to the Commission (Section 22)
 - Change in Business (see this section)
 - Access to Sites and Records (see this section)

24. *Certifications and Compliance*

- a. Federal, State, and Local Laws
The Recipient will comply with all applicable federal, state and local laws, rules and regulations.

b. Nondiscrimination Statement of Compliance

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

The Recipient and its subcontractors will comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full. The Recipient and its subcontractors will give written notice of their obligations under this section to labor organizations with which they have a collective bargaining or other Agreement.

The Recipient will include the nondiscrimination and compliance provisions of this section in all subcontracts to perform work under this Agreement.

c. Drug-Free Workplace Certification

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

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

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

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

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

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

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

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

f. Air or Water Pollution Violation

Under state laws, the Recipient will not be:

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

g. Americans With Disabilities Act

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

25. Definitions

- **Agreement Term** means the length of this Agreement, as specified on the Agreement signature page (form CEC-146).
- **Budget Reallocation** means the movement of funds between tasks identified in the budget (Exhibit B).

- **Confidential Information** means information that the Recipient has satisfactorily identified as confidential in Attachment 1 to this Exhibit and that the Energy Commission has agreed to designate as confidential under Title 20 California Code of Regulations Section 2505.
- **Data** means any recorded information that relates to the project funded by the Agreement, whether created or collected before or after the Agreement's effective date.
- **Effective Date** means the date on which this Agreement is signed by the last party required to sign, provided that signature occurs after the Agreement has been approved by the Energy Commission at a business meeting or by the Executive Director or his/her designee.
- **EPIC** means the Electric Program Investment Charge, an electricity ratepayer-funded surcharge authorized by the California Public Utilities Commission in December 2011.
- **Equipment** means products, objects, machinery, apparatus, implements, or tools that are purchased or constructed with Energy Commission funds for the project, and that have a useful life of at least one year and an acquisition unit cost of at least \$5,000. "Equipment" includes products, objects, machinery, apparatus, implements, or tools that are composed by over thirty percent (30%) of materials purchased for the project. For purposes of determining depreciated value of equipment used in the Agreement, the project will terminate at the end of the normal useful life of the equipment purchased and/or developed with Energy Commission funds. The Energy Commission may determine the normal useful life of the equipment.
- **Independently Funded Intellectual Property** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice by the Recipient or a third party during or after the Agreement term without Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.

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

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

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

- **Invention** means intellectual property that is patentable.
- **Load-serving entity** means a company or other organization that provides electricity to EPIC ratepayers.
- **Match Funds** means cash or in-kind (i.e., non-cash) contributions provided by the Recipient or a third party for a project funded by the Energy Commission. If this Agreement resulted from a solicitation, refer to the solicitation's discussion of match funding for guidelines specific to the project.
- **Materials** means the substances used to construct a finished object, commodity, device, article, or product, such as equipment.
- **Ownership** means exclusive possession of all rights to property, including the right to use and transfer property.
- **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 or a third party owned or possessed prior to the effective date of this Agreement and that have not been developed, altered, or reduced to practice with Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.
- **Product** means any tangible item specified for delivery to the Energy Commission in the Scope of Work.
- **Project** means the entire effort undertaken and planned by the Recipient and consisting of the work funded by the Energy Commission. The project may coincide with or extend beyond the Agreement term.
- **Project-relevant pre-existing intellectual property and project-relevant independently funded intellectual property** mean pre-existing and independently funded intellectual property used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement.
- **Sale, Sales, and Sold** mean the sale, license, lease, or other transfer of intellectual property.
- **Sales Price** means the price at which intellectual property is sold, excluding normal returns and allowances such as sales tax.
- **State** means the state of California and all California state agencies within it, including but not limited to commissions, boards, offices, and departments.

End of Exhibit E