



## REQUEST FOR PROPOSALS

Sonoma Clean Power Authority (“SCP” or “Sonoma Clean Power”) issues this Request for Proposals (“RFP”) to seek proposals from qualified Proposers to provide residential energy services, including smart thermostat installations, HVAC tune-ups, and home energy assessments for up to 1,000 households in Sonoma and Mendocino Counties.

Businesses that are locally headquartered and/or owned by women, minorities, LGBT, and/or disabled veterans are encouraged to respond to this RFP. Please visit [www.thesupplierclearinghouse.com](http://www.thesupplierclearinghouse.com) to learn more about the Supplier Diversity Program of the California Public Utilities Commission (CPUC).

**Responses Due: April 14, 2025 by 5:00 PM PDT**

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### 1. RFP OVERVIEW

The Sonoma Clean Power Authority (“SCP” or “Sonoma Clean Power”) is seeking proposals from qualified Proposers (“Proposer”) to deliver residential energy services across Sonoma and Mendocino Counties. Services include up to 1,000 smart thermostat installations, heating, ventilation, and air conditioning (“HVAC”) tune-ups, and home energy assessments. The selected Proposer(s) will also provide program management and collaborate with SCP to deliver these services.

SCP will serve as program administrator and cover all costs, including equipment, labor, and administration, ensuring no out-of-pocket cost for residents. Proposers must comply with prevailing wage requirements.

This RFP provides:

- Background on SCP
- Detailed scope of services
- An opportunity for Proposers to present qualifications and relevant experience

## 1.1 Background

### About Sonoma Clean Power

SCP is a public, locally run “community choice aggregation” electricity provider serving 87% of residents and businesses in Sonoma and Mendocino Counties (excluding Healdsburg and Ukiah). SCP is proud to serve our communities by delivering on our mission of turning the tide on the climate crisis, through bold ideas and practical programs. For more information about SCP go to: [www.sonomacleanpower.org](http://www.sonomacleanpower.org).

Image 1: Map of SCP Service Area



## **CEC Grant and Virtual Power Plant Initiative**

SCP was awarded a \$4.9 million California Energy Commission (“CEC”) grant to demonstrate community-based virtual power plant approaches. The grant aims to increase access to automated smart devices for low-income customers, where participation in SCP’s GridSavvy Rewards program has been historically limited due to awareness, financial, and accessibility barriers.

### **Purpose of this RFP**

This Request for Proposals (“RFP”) addresses a key component of the grant: implementing smart thermostat installations. The program targets 1,000 eligible homes, prioritizing CARE/FERA<sup>1</sup> customers and residents in Empower communities<sup>2</sup>. By bundling smart thermostat installations with HVAC tune-ups and energy assessments, SCP seeks to reduce energy costs, improve indoor comfort, and increase GridSavvy Rewards participation in underserved communities. All services will be paid for by Sonoma Clean Power and provided at no cost to qualifying households.

SCP seeks to understand each Proposer’s capabilities related to the scope of services and associated pricing to make informed decisions and potentially enter into contract negotiations with one or more qualified Respondents to this RFP.

### **Proposer Responsibilities**

The selected Proposer(s) will manage installation logistics, customer education, and program documentation while adhering to prevailing wage standards.

## **1.2 Goals**

The objectives of the residential energy services include:

- Deploy up to 1,000 smart thermostats in low-income SCP customer homes
- Provide skilled labor for up to 1,000 HVAC system tune-ups to improve efficiency
- Conduct up to 1,000 energy assessments identifying opportunities and constraints for the recommended energy efficiency upgrades
- Expand enrollment in SCP’s GridSavvy Rewards demand response program to help reduce peak electricity demand
- Reduce summer energy consumption through improved HVAC efficiencies
- Build trust and engagement with customers enrolled in CARE/FERA and customers who live in Empower communities
- Identify additional energy upgrade opportunities based on whole-home assessments

Additional objectives are outlined in Attachment B: Scope of Services.

## **2. OVERVIEW OF DESIRED SERVICES**

The following provides an overview of the Scope of Services. Full details and requirements can be found in Attachment B: Scope of Services.

### **Smart Thermostat Program Implementation**

- Purchase and install up to 1,000 smart thermostats (SCP-approved models)

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<sup>1</sup> California Alternate Rates for Energy Program (CARE) and Family Electric Rate Assistance Program (FERA) are financial assistance programs helping households lower their monthly energy bills.

<sup>2</sup> Empower communities are census tracts within SCP service area that are most vulnerable to, and impacted by, pollution, socioeconomic challenges and affordability issues (see Attachment A for list of census tracts).

- Remove and properly dispose of old thermostats
- Verify HVAC system functionality
- Facilitate enrollment in SCP's GridSavvy Rewards program

**HVAC System Tune-Ups**

- Perform up to 1,000 comprehensive HVAC system tune-ups including:
  - Inspect and clean HVAC components
  - Replace filters and measure airflow
  - Balance damper adjustments
  - Test blower motor testing and inspect ductwork
  - Measure refrigerant and recharge as needed
  - Verify carbon monoxide and smoke detector operation

**Energy Assessments**

- Visually inspect household energy loads
- Provide detailed reports outlining the age and condition of major appliances, including refrigerators, water heaters, and heating systems
- Identify additional energy improvements based on a comprehensive home assessment including window types and insulation levels

**Program Management**

- Coordinate with SCP
- Manage customer scheduling and eligibility verification
- Handle equipment procurement
- Collect and submit required documentation
- Ensure compliance with prevailing wage reporting requirements
- Provide customer education for GridSavvy Rewards enrollment
- Process invoicing

**3. RFP SCHEDULE AND REQUIREMENTS**

**3.1 RFP Timeline**

<b>EVENT</b>	<b>DEADLINE</b>
RFP Published	March 3, 2025
Pre-proposal webinar (recommended but not required)	March 14, 2025 at 9:00 AM PDT
Deadline for written questions to be submitted	March 21, 2025 at 5:00 PM PDT
Responses to questions to be posted on SCP website	March 28, 2025
Proposal packages due	<b>April 14, 2025, by 5:00 PM PDT</b>
RFP Submission review complete	May 2, 2025
Potential Interviews	May 6 – 7, 2025
Contract Execution	July 7, 2025

**Webinar attendance:** Register [here](#). While attendance is optional, we encourage you to join. The webinar offers a chance to ask questions, with answers provided live when possible and included in the published Q&A. If there is any discrepancy between verbal answers and the written responses, the written responses will be considered final.

### 3.2 Qualifications and Requirements

A qualified Proposer, or their subconsultant, must meet the following minimum qualifications:

- Hold a valid C-20 license
- Have experience in high-quality installation of smart thermostats and HVAC tune-ups
- Be familiar with California building codes, energy efficiency standards, and requirements specific to SCP's service territory
- Provide services throughout Sonoma and/or Mendocino Counties
- Demonstrate a successful track record with smart thermostat installations, HVAC tune-ups and energy assessments, including up to three (3) references
- Comply with California prevailing wage laws

## 4. PROPOSAL SUBMISSION INFORMATION

### 4.1 Submittal Process

1. **Deadline.** The deadline for submitting a Proposal is 5:00 PM PDT on April 14, 2025. No proposals will be accepted after that time.
2. **Submission Format.** Email one copy of the Proposal to [programs@sonomacleanpower.org](mailto:programs@sonomacleanpower.org) with the subject line "*Smart Thermostat Installations, HVAC Tune-Ups, and Home Energy Assessments – RFP Submittal*". Upon submittal, you will receive a confirmation of receipt.
3. By submitting a Proposal, the Proposer confirms that:
  - a. They have carefully read and fully understand all information provided by SCP as part of this RFP, including all Attachments and Exhibits
  - b. All information submitted is true and correct
  - c. SCP has the right to verify or request additional information as needed
  - d. They have no objections to the terms of the Professional Services Agreement, unless specifically identified and detailed in the proposal
4. Proposers cannot request changes to their Proposal after submission, even if they claim to have been unaware of certain facts or conditions.
5. Applicants are encouraged to submit joint proposals with other firms or individuals, as needed. If a Proposal includes services from multiple companies, please identify the Proposal Lead and how they will manage any and all subconsultants, partners, and consultants.

### 4.2 Submittal Requirements

Submittals must include the following sections:

1. **Cover Letter (1 page maximum)**  
Include the following elements:

- Reference to this RFP
- Legal business name, address and contact details
- Signature of an authorized representative

## **2. Approach (4 page maximum)**

- Provide a detailed description of the approach for delivering the Scope of Services (Attachment B) and achieving objectives for low-income households and Empower communities including:
  - Specific processes for each service (smart thermostat installation, HVAC tune-ups, home energy assessments)
  - Steps involved in customer interaction, equipment installation, GridSavvy Rewards enrollment, and follow-up
  - Areas willing to serve in SCP's service area
- If applicable, recommend any improvements or modifications to the proposed strategy
- Explain why you are interested in this scope of services and collaborating with SCP
- Indicate whether workforce development will be a part of the approach and if so, describe how it will be integrated

## **3. Proposer's Qualifications (1 page maximum)**

- Demonstrate compliance with all legal requirements (licenses, certifications, etc.) to provide services described in Attachment B
- Show how qualifications are met as per RFP Section 3.2 Qualifications and Requirements

## **4. Relevant Experience (2 pages maximum)**

- Provide qualifications of the local persons performing the technical assistance
- List any relevant trainings or certifications that the Proposer has completed, if applicable
- Describe experience in completing projects similar to the scope of services and complying with CA prevailing wage requirements

## **5. Cost Proposal (2 pages maximum)**

- Break down costs for:
  - Labor (using prevailing wage)
  - Equipment and materials
  - Administrative/clerical
  - Overhead and other expenses
- Provide hourly rates for assigned personnel (prevailing wage)
- Explain cost estimation methods and any recommendations for early-stage estimating
- Include any discounts for multiple sites in close proximity and batch scheduling efficiencies

**Pricing format**

<b>Task / Expense</b>	<b>Pricing</b>
1: Project management	\$/month
2: Labor (prevailing wage) and equipment for smart thermostat installation (up to 1,000 sites)	\$/site
3: Equipment – smart thermostat (Google Nest Generation 3)	\$/unit
4: Labor (prevailing wage) and equipment for HVAC system tune-ups (up to 1,000 sites) including a detailed report	\$/assessment
5: Equipment for HVAC Tune-up - filters	\$/site
6: Refrigerant recharge per refrigerant type (R-22, R-134a, R-410A)	\$/lb. per type
7: Labor (prevailing wage) for energy assessments (up to 1,000 sites) including a detailed report	\$/assessment
8: Personnel hourly rates for tasks not identified in scope of services	\$/hour

*Note: All labor pricing must include travel and mileage costs.*

*Note: The Proposer may split up pricing by Sonoma County and Mendocino County if desired.*

**6. Resumes (no maximum)**

- Provide qualifications for all team members, including the primary contact and personnel assigned to the project, including subcontractors or partners

**7. References (1 page maximum)**

- Provide 3 references with contact information including name, company (if applicable), phone number, and email address
- Include a brief description of the project and services provided

**8. Organization capacity (1 page maximum)**

- Identify locations that would be responsible for project operations
- Size of the company and number of full-time employees
- Standard hours of operation and customer service
- Identify any litigation pending or threatened against your company
- Identify any instances in which your company was disbarred

**9. Primary point of contact (2 pages maximum)**

- List of key team members, including subcontractors, and roles and responsibilities as they relate to SCP’s scope of services

**10. Standard Agreement Exceptions**

- List any objections or otherwise sought changes by Proposer to SCP’s Standard Professional Services Agreement (Attachment C)
- Objections or changes to the Form of Agreement not set forth in the Proposal are deemed waived by the Proposer

## 5. DIVERSITY IN NON-POWER PROCUREMENT SOLICITATIONS

All qualified organizations are encouraged to respond, including minority-owned and women-owned business entities. While California law prevents public agencies like SCP from giving preference to an organization on the basis of the owner's race, sex, color, ethnicity, or national origin, SCP nevertheless encourages responses from organizations owned by women, minorities, disabled veterans, persons with disabilities and LGBT persons. SCP also encourages eligible organizations to register with the CPUC Supplier Diversity Program by visiting the [CPUC'S Supplier Clearinghouse](#). Alternatively, businesses can certify as a small business or a disabled veteran-owned business through the [Department of General Services Certification program](#), as appropriate. Certified vendors are listed in directories which make it easier for SCP and other organizations to communicate contracting opportunities.

## 6. QUESTIONS REGARDING THE RFP, COMMUNICATION AND ADDENDA

For questions regarding this RFP, please contact: [programs@sonomacleanpower.org](mailto:programs@sonomacleanpower.org) with the subject line clearly marked "*Smart Thermostat Installations, HVAC Tune-Ups, and Home Energy Assessments – RFP Questions.*" Questions must be received no later than the deadline set forth in section 3 of this RFP.

SCP will post and share responses to all questions submitted by the deadline established in this RFP publicly.

No other contact with SCP employees or its contractors related to this RFP shall be made throughout this entire process. Any unauthorized contact may result in immediate disqualification.

In the event it becomes necessary to revise any part of this RFP, SCP will issue written addenda. Any amendment to this RFP is only valid if it is in writing and issued by SCP.

No oral interpretations or answers will bind SCP. All addenda issued by SCP will become part of this RFP.

## 7. REVIEW AND SELECTION PROCESS

A. Proposals will be evaluated based on:

1. Thoroughness and quality of response
2. Qualifications and experience of the firm and staff
3. Demonstration of previous work experience aligned with this solicitation
4. Satisfaction of the Scope of Services, as described in this RFP
5. Additional objectives provided, as described in this RFP
6. Staffing plan
7. Pricing
8. Quality of references
9. Stated exceptions to SCP's contract template or insurance requirements
10. Any other factors SCP deems relevant

B. Depending on the responses to this RFP, SCP may decide to interview and/or contract with more than one organization or individual. SCP staff will evaluate the responses to this RFP, and may, in its discretion, interview selected firms and individuals that staff



determine are most qualified.

C. Issuance of this RFP is not a guarantee that SCP will enter into any contract with any respondent. SCP reserves the right, at its sole discretion, to waive irregularities in Proposals, Proposal requirements (including minimum/desired Proposer and Product requirements), to request modifications of any Proposal, to accept or reject any or all Proposal received, and to cancel all or part of this RFP at any time prior to awards.

D. Responses that do not satisfy RFP and Proposal Requirements cannot be adequately evaluated.

SCP reserves the right to contact a Proposer at any time for clarifications about any part of the Proposer's Proposal. Proposal review questions and communications will focus on clarifying the information set forth by the Proposer in the proposals and will not be an opportunity for the Proposer to revise terms.

## **8. NEGOTIATIONS AND FINALIZATIONS**

Once the Proposer(s) has been selected for the program, contract negotiations will be conducted. These negotiations will relate to the detailed scope of services, specific program delivery features, program budgets, schedules, and payment terms. The contractual terms will include the general terms and conditions provided in Attachment C. SCP reserves the right to simultaneously conduct negotiations with both the prospective vendor/Proposer and an alternate Proposer. SCP also reserves the right to terminate negotiations with any or all Proposer(s) in the event that SCP and the Proposer(s) are unable to agree on contract terms and conditions within a reasonable period of time to be determined in SCP's sole and absolute discretion.

## **9. CALIFORNIA ENERGY COMMISSION**

This Project is partially funded by a grant from the California Energy Commission ("CEC"). As such, it is required that the successful Proposer, if any, and its subcontractors must comply with all requirements set forth in the CEC's Electric Program Investment Charge ("EPIC") Standard Grant Terms and Conditions (the "CEC Terms"), including requirements such as prevailing wage. The CEC Terms are included in this RFP as Exhibit E to SCP's Professional Services Agreement (Attachment C) . Because SCP must comply with the CEC Terms as a condition of receipt of grant funding, SCP will not consider any exceptions to these terms.

## **10. GENERAL TERMS AND CONDITIONS**

A. **California Public Records Act.** All Proposals submitted in response to this request shall be subject to disclosure under the California Public Records Act. In the event that a Proposer desires to claim portions of its proposal exempt from disclosure, the Proposer must clearly identify those portions with the word "confidential" printed on the lower right-hand corner of the page. SCP will consider a Proposer's request for exemption from disclosure; however, SCP will make a decision based upon applicable laws. Assertions by a Proposer that the entire Proposal or large portions are exempt from disclosure will not be honored. All responses to this Request for Information shall become the property of SCP and will be retained or disposed of accordingly. In the event that a Proposer asserts that its Proposal or portion thereof is exempt from disclosure, Proposer shall at SCP's option indemnify, defend with counsel appointed by SCP, and hold harmless SCP and SCP's elected officials,

officers, employees, agents, and volunteers from any claim, cause of action, litigation, or other proceeding that arises out of, relates to, or is incident to any such person refusing to produce for disclosure such Proposal or portion thereof.

- B. All Proposals received by the specified deadline will be reviewed by SCP for content, including but not limited to, experience, and qualifications of the Proposers.
- C. During the evaluation process SCP may request from any Proposer additional information which SCP deems necessary.
- D. Proposers shall bear all costs associated with responding to this RFP, and SCP will provide no compensation for these costs.

## **11. RIGHTS OF SONOMA CLEAN POWER**

- A. This RFP does not commit SCP to enter into a contract, nor does it obligate SCP to pay for any costs incurred in the preparation and submission of a Proposal or in anticipation of a contract.
- B. SCP reserves the right to:
  - 1. Issue subsequent solicitations;
  - 2. Postpone any of the time periods set forth in this RFP, for its own convenience;
  - 3. Remedy technical errors in the RFP;
  - 4. Negotiate with any, all, multiple or none of the Proposers that respond;
  - 5. Waive informalities and irregularities in the RFP; and
  - 6. Take any other action not otherwise prohibited by law.
- C. SCP reserves the right not to contract with any Proposer. If SCP decides to contract, SCP will contract with the Proposers whose Proposal, at the discretion of SCP, best meets the needs of SCP.
- D. Evaluation of a Proposal does not constitute a commitment by SCP to acquire such services from any source. SCP is not obligated in any way to proceed with this RFP or consider or enter into any agreement or undertake any liability to any Proposer in connection with this RFP and any and all responses, whether qualified or not, may be rejected without any liability whatsoever to any firm on the part of SCP. SCP shall not be responsible for any costs incurred by a Proposer to prepare, submit, negotiate, contract, or otherwise participate in this RFP process.
- E. SCP intends to own and collect Low Carbon Fuel Standard credits earned through chargers installed under this project.

## **12. CONFLICTS OF INTEREST**

SCP is subject to the Political Reform Act (Government Code Section 87100, et seq), Government Code Section 1090, Government Code Section 84308, related regulations, and other requirements governing conflicts, campaign contributions, and gifts (“COI Laws”).

Proposers are required to review all applicable COI Laws and by submitting a Proposal in

response to this RFP, Proposer also acknowledges that it has reviewed all applicable COI Laws and applicable SCP policies, as they may be amended from time to time.

This RFP process will be conducted in compliance with all COI Laws. SCP employees are prohibited from participating in the selection process for this RFP if they have any financial or business relationship with Proposer.

Proposers must disclose to SCP of any actual, apparent, direct or indirect, or potential conflicts of interest that may exist with respect to Proposer, any employees of Proposer, or any other person relative to the services to be provided pursuant to this RFP. Failure to do so may result in disqualification and any remedies set forth in the COI Laws.

## **ATTACHMENT A: Empower Communities**

Empower Communities are census tracts within SCP service area that are most vulnerable to, and impacted by, pollution, socioeconomic challenges and affordability issues.

### **Mendocino County**

- Covelo/Round Valley
- Fort Bragg
- Willits
- Ukiah (unincorporated)
- Laytonville
- Calpella
- Potter Valley
- Boonville
- Cleone
- Redwood Valley
- Hopland
- Brooktrails

### **Sonoma County**

- Taylor Mountain (Santa Rosa)
- Roseland (Santa Rosa)
- Bellevue (Santa Rosa)
- Kawana Springs (Santa Rosa)
- Comstock (Santa Rosa)
- Bicentennial Park (Santa Rosa)
- Rohnert Park B/C/R Section
- West End (Santa Rosa)
- Railroad Square (Santa Rosa)
- Sheppard (Santa Rosa)
- Feters Springs/Agua Caliente West
- Dry Creek
- East Cloverdale
- Downtown Santa Rosa

## **ATTACHMENT B: Scope of Services**

### **Smart Thermostat Installation, HVAC Tune-Ups, and Home Energy Assessments**

The scope of services encompasses all tasks necessary to verify, schedule, and complete installations and assessments. The work is structured into the following key tasks:

#### **Task 1: Project Management and Administration**

##### **Customer Management and Program Administration**

- SCP will create customer inquiry forms, participation agreements, and terms & conditions
- SCP will host the customer inquiry forms and verify customer eligibility by confirming their SCP account status
- SCP will provide marketing support to promote participation, the Consultant may supplement marketing efforts with additional outreach activities
- Consultant will attend SCP-provided training on GridSavvy Rewards and customer service expectations
- SCP and Consultant will develop an HVAC Tune-up report and Home Energy Assessment template to be used
- SCP and Consultant will develop a Dispute Resolution Process

##### **Appointment Coordination and Reporting**

- Consultant shall schedule and manage appointments and site visits with participating customers
- Consultant shall maintain an appointment log and provide timely communication regarding scheduling changes or cancellations
- Consultant shall submit monthly reports and invoices to SCP's Project Manager, including an overview of completed installations, assessments reports, and program participation statistics
- Consultant shall schedule regular check-ins with SCP as needed to review project progress, resolve issues, and ensure program alignment

##### **Site Visit Coordination and Compliance**

- Consultant shall notify SCP of upcoming site visits and accommodate periodic SCP requests to observe work being performed
- Consultant shall adhere to prevailing wage laws and reporting requirements in compliance with the California Department of Industrial Relations

#### **Task 2: Smart Thermostat Installation**

##### **Google Nest Thermostat Procurement (Optional)**

- Consultant will procure up to 1,000 Google Nest thermostats, ensuring that:
  - All units are new, authentic Google Nest Learning Thermostats (3rd

- Generation)
- Units include standard manufacturer warranty and installation materials
- Bulk pricing and volume discounts are clearly documented

### **Site Eligibility Confirmation**

- Consultant will verify site eligibility after SCP has confirmed customer eligibility, ensuring that:
  - The site has a functional central air conditioning system
  - The site is safe for the Consultant to perform work

### **Installation and Configuration**

- Consultant will install and configure smart thermostats to ensure full integration with the existing HVAC system
- Enroll the smart thermostat in SCP's GridSavvy Rewards program
- Provide a homeowner tutorial on thermostat operation, programming, and energy-saving settings, including answering technical questions and assisting with enrollment of the smart thermostat into SCP's GridSavvy program for demand response participation

### **Post-Installation Summary and Reporting**

- After installation, the Consultant will prepare and submit a comprehensive report for each site to SCP. The report should include details of the thermostat installation
- Submit the drafts of each assessment to SCP for review and potential feedback

## **Task 3: Technical Assistance for HVAC System Tune-ups**

### **Comprehensive HVAC System Tune-Up**

- Consultant shall conduct a tune-up of the heating and cooling system to optimize performance, including
  - Inspect and clean HVAC components, inspect ductwork
  - Replace filters and measure airflow
  - Balance damper adjustments
  - Clean condenser and evaporator coils
  - Test blower motor and inspect ductwork, seal ductwork as needed
  - Measure refrigerant and recharge as needed
  - Test carbon monoxide and smoke detector operation
- In the event that a system is red tagged based on the assessment, consult with SCP within 1 business day

### **Documentation and Homeowner Support**

- Consultant shall create all necessary documentation to assist homeowners in understanding the improvements made
- Prepare and submit a comprehensive report for each site to SCP, the report should include a check list of HVAC tune-up items and any applicable notes
- The Consultant shall not be responsible for selecting or recommending Consultant for

any additional work identified

## **Task 4: Technical Assistance for Building Energy Assessment**

### **HVAC System Evaluation**

- Document the HVAC system including:
  - Type of system (e.g., gas furnace, heat pump, central AC, etc.)
  - Fuel source, heating and cooling capacity, and efficiency rating
  - Age, condition, and estimated remaining lifespan

### **Water Heater Assessment**

- Provide details on the water heating system, including:
  - Fuel source (gas, electric, solar, etc.)
  - Storage capacity or flow rate for tankless units
  - Age and condition

### **Electrical Panel Evaluation**

- Assess and document the home's electrical panel, including:
  - Total capacity (amperage)
  - Total number of circuits
  - Number and type of breakers
  - Available capacity for additional loads
  - Panel age and condition
  - Presence and details of any subpanels

### **Building Envelope Analysis**

- Document the type and amount of attic insulation
- Assess window types (single or double pane)

### **Appliance Analysis:**

- Document details of major appliances (refrigerators, stove/oven, dryers, etc.), including:
  - Fuel type (gas, electric, induction, etc.)
  - Age and condition

### **Additional Items:**

- Identify any other on-site high energy consuming equipment (hot tub, well, etc.)
- Evaluate the feasibility of a whole house fan

### **General Deliverables**

- Consultant shall provide detailed site visit reports, including:
  - HVAC tune-up report
  - Home energy assessment report, may include photos
  - A summary of work performed

- Customer feedback and any reported issues
- Reports shall be submitted to SCP for review and recordkeeping
- Consultant shall maintain open communication with SCP to ensure alignment with program goals and compliance with regulatory requirements



## ATTACHMENT C: AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement for Professional Services (“Agreement”), dated as of \_\_\_\_\_ (“Effective Date”) is made by and between the Sonoma Clean Power Authority (“SCP”), a California joint powers authority, and \_\_\_\_\_ (“Consultant”). SCP and Consultant may be individually referred to as a “Party” or collectively as “Parties.”

1. **Scope of Services:** Consultant agrees to provide to SCP the services described in Exhibit A (“Services”).
2. **Performance Standard:** Consultant warrants that it possesses the necessary training, experience, expertise, and skill to competently, expertly, and professionally provide the Services . If SCP determines that any of Consultant’s work performed as Services is not in accordance with the level of competency and standard of care normally observed by an expert practicing in Consultant’s profession, SCP, in its sole discretion, shall have the right to do any or all of the following:
  - a. require Consultant to meet with SCP to review the quality of Consultant’s work performed as Services and resolve matters of concern;
  - b. require Consultant to repeat the Services at no additional charge until the work meets the level of competency and standard of care normally observed by an expert in Consultant’s profession;
  - c. terminate this Agreement pursuant to Section 6; or
  - d. pursue any and all other remedies at law or in equity.
3. **Payment:** Consultant shall submit one monthly invoice each calendar month in which Services are performed. Invoices shall be signed by key staff, include copies of receipts for pre-approved reimbursable expenses, and contain the following detail for each billable entry:
  - a. Date;
  - b. Detailed description of work performed and person(s) involved;
  - c. Time spent in 1/2 hour increments; and
  - d. Running summary on each invoice including total contracted amount of the agreement, funds already paid to date, and remaining funds available.

i. Example:

Not to exceed	\$60,000
<u>Payments to date</u>	<u>\$35,000</u>
Remaining funds	\$25,000

When such an invoice is furnished in accordance with this Agreement, SCP shall pay all undisputed amounts owing for Services adequately rendered set forth in such invoice within thirty (30) calendar days of receipt such invoice, applying the following rates:

- i. Fees based on the fee schedule, as set forth in Exhibit B (“Fee Schedule”); and
- ii. Reimbursable expenses pre-approved by SCP.

Without limiting the foregoing, Consultant (1) acknowledges that its failure to submit an invoice within sixty (60) days of the occurrence of the event to which a charge contained therein relates is an express condition precedent to any right it may have to payment in connection therewith, and (2) hereby stipulates that Consultant’s failure to strictly comply

with such condition precedent is a waiver and release of any right Consultant might otherwise have to payment in connection therewith.

4. **NOT TO EXCEED AMOUNT.** IN NO EVENT SHALL THE TOTAL AMOUNT PAYABLE FOR SERVICES PERFORMED DURING THE TERM OF THIS AGREEMENT EXCEED [write out amount] dollars (\$\_\_\_). This dollar amount is not a guarantee that SCP will pay that full amount to Consultant but is merely a limit of potential SCP expenditures under the Agreement. In the event that this total payable amount is reached, Consultant shall continue to furnish and complete the Services at no additional charge.
5. **Term of the Agreement:** The 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. Consultant understands and agrees that funding for costs under this Agreement after June 30, 2026 is subject to approval by SCP's Board of Directors of a budget including such funding, and that SCP may terminate this Agreement pursuant to Section 6 below if such funding is not approved. Consultant, shall promptly deliver to SCP all materials and work product subject to Section 17 upon the conclusion of the term of this Agreement.
6. **Termination:**
  - a. Notwithstanding any other provision of this Agreement, at any time and without cause, SCP shall have the right to terminate this Agreement by giving thirty (30) calendar days written notice to Consultant.
  - b. Notwithstanding any other provision of this Agreement, should Consultant fail to satisfactorily perform any of its obligations under this Agreement or otherwise breach any of the terms of this Agreement, SCP may, upon providing Consultant written notice stating the reason for termination, immediately terminate this Agreement.
  - c. In the event of termination, Consultant shall promptly and in any event no later than within fourteen (14) calendar days following the date of termination, deliver to SCP all materials and work product subject to Section 17 and shall submit to SCP a final invoice for any outstanding payments.
7. **Indemnification:** To the furthest extent permitted by law, Consultant shall indemnify, defend (with counsel appointed by SCP to defend at Consultant's expense), and hold harmless SCP, SCP's officials, officers, employees, volunteers, and agents, and any public agency which is a party to the joint powers agreement pursuant to which SCP is organized under section 6500 et seq. of the Government Code and their officials, officers, employees, volunteers, and agents (collectively, the "Indemnified Parties") from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to (1) the negligence (active or passive, ordinary or gross), recklessness, willful misconduct, or other errors or omissions of Consultant or Consultant's officials, officers, employees, volunteers, and agents, or (2) Consultant's performance of or obligations or omissions under this Agreement. Consultant agrees to provide a complete defense for any such claim or action brought against the Indemnified Parties. Consultant's obligations

under this Section apply whether or not there is comparative negligence of the Indemnified Parties, except that that Consultant's obligations hereunder exclude SCP's sole negligence, active negligence or willful misconduct but only to the extent required by applicable law.

8. **Insurance:** Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived in writing by SCP.

a. Workers' Compensation. If Consultant 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.

Commercial General Liability. Commercial General Liability Insurance with Minimum Limits: \$5,000,000 per occurrence; \$5,000,000 general aggregate; \$5,000,000 products/completed operations aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial. Coverage shall be at least as broad as the latest version of the following: Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).

b. Automobile Liability. Automobile Liability Insurance with Minimum Limit of \$5,000,000 combined single limit per accident. Automobile Insurance shall apply to shall be written on an "any auto" form. If Consultant currently owns no autos, Consultant 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. Coverage shall be at least as broad as the latest version of the following: Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto).

c. 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 SCP. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

d. All Policies Requirements.

- i. Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A-: VII.
- ii. The Certificate of Insurance must include the following reference: Sonoma Clean Power Authority.

- iii. All required Evidence of Insurance shall be submitted to SCP within 3 business days of the Effective Date. Consultant agrees to maintain current Evidence of Insurance on file with SCP for the entire term of this Agreement.
- iv. The name and address for Additional Insured endorsements and Certificates of Insurance is: Sonoma Clean Power Authority, Attn: Contract Administration, 431 E Street, Santa Rosa, CA, 95404.
- v. 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.
- vi. Consultant shall provide SCP 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.
- vii. Upon written request, certified copies of required insurance policies must be provided within thirty (30) calendar days.
- viii. Consultant's indemnity and other obligations shall not be limited by these insurance requirements.
- ix. If Consultant maintains higher limits than the specified minimum limits, SCP requires and shall be entitled to, coverage for the higher limits maintained by Consultant.
- x. 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 SCP. Consultant is responsible for any deductible or self-insured retention and shall fund it upon SCP's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving SCP.
- xi. SCP, SCP's officials, officers, employees, volunteers, and agents, and any public agency which is a party to the joint powers agreement pursuant to which SCP is organized under section 6500 et seq. of the Government Code and its officials, officers, employees, volunteers, and agents, shall be an additional insured for liability arising out of operations by, or on behalf of, the Consultant in the performance of this Agreement.
- xii. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- xiii. The policy shall cover inter-insured suits between the additional insureds and Consultant and include a "separation of insureds" or "severability" clause which treats each insured separately.
- xiv. Policies shall not contain exclusions contrary to this Agreement.

9. **Status of Consultant:** Consultant, in 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 Consultant work as an agent or employee of SCP and at no time shall Consultant be entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits SCP provides its employees. In the event SCP exercises its right to terminate this Agreement pursuant to Section 6, Consultant 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:** Consultant 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. Consultant 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:** Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement. Consultant 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. Consultant agrees to indemnify and hold SCP harmless from any liability which it may incur to the United States or to any US State as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In the event SCP is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to, in a timely fashion, furnish SCP with proof of payment of taxes on these earnings.
12. **Records Maintenance:** Consultant shall keep and maintain full and complete documentation and accounting records concerning all Services performed that are compensable under this Agreement and shall make such documents and records available to SCP for inspection and copying at any reasonable time and at Consultant's sole expense. Consultant shall maintain such records for a period of five (5) years following the expiration or termination of this Agreement.
13. **Conflict of Interest:** Consultant 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 applicable law or that would otherwise conflict in any manner or degree with Consultant's performance under this Agreement. Consultant further warrants that in the performance of this Agreement no person having any such interests shall be assigned by Consultant to perform work under this agreement nor be given access to the information described in Section 17. Consultant shall comply with any and all applicable laws relating to conflicts of interest, including by way of illustration and not by limitation California Fair Political Practices Act requirements.
14. **Statutory Compliance:** Consultant shall comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the Services provided under this Agreement.
15. **Compliance with California Energy Commission Grant Agreement:** Consultant acknowledges that the services performed under this Agreement are funded, in whole or in part, by a grant from the California Energy Commission ("CEC") as set forth in the grant agreement attached hereto as **Exhibit "E"** ("CEC Grant Agreement"). Consultant shall comply with all applicable terms, conditions, and requirements of the CEC Grant Agreement, including but not limited to reporting obligations, record-keeping, audit rights, and any applicable state and federal laws and regulations. Consultant shall cooperate with SCP in ensuring compliance with the CEC Grant Agreement and shall provide any necessary documentation or information requested by SCP to demonstrate such

compliance. If any term of this Agreement conflicts with the terms of the CEC Grant Agreement, the terms of the CEC Grant Agreement shall control to the extent necessary to resolve the conflict. Failure to comply with the applicable provisions of the CEC Grant Agreement shall be considered a material breach of this Agreement and may result in termination pursuant to the termination provisions herein.

16. **Nondiscrimination:** Without limiting any other provision of this Agreement, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by reference.
17. **Confidentiality, Ownership and Disclosure of Work Product:** All information obtained by Consultant under this Agreement shall be deemed confidential (“Confidential Information”). Unless SCP provides written permission, Consultant is compelled by a court of law or regulatory agency, or Consultant obtained Confidential Information from a source or sources other than SCP, Consultant shall not share Confidential Information with any other person or entity outside of SCP staff and SCP authorized representatives, and upon receipt of a court order, subpoena, or other process compelling disclosure of Confidential Information Consultant shall immediately notify SCP so that SCP has an opportunity to obtain a protective order or other relief. Consultant further agrees to execute non-disclosure agreements related to protecting Confidential Information as requested by SCP. 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, in whatever form or format, produced by Consultant or Consultant’s subcontractors, consultants, and other agents within the term and scope of this Agreement (“Documents”) shall be the property of SCP, and to the extent Consultant possesses such Documents, Consultant shall hold such Documents in trust for SCP’s benefit. SCP 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, Consultant shall promptly deliver to SCP all such Documents, which have not already been provided to SCP in such form or format, as SCP deems appropriate, and shall not thereafter retain Documents. Such Documents shall be and will remain the property of SCP without restriction or limitation.
18. **Assignment and Delegation:** Consultant shall not assign, delegate, sublet, or transfer any interest in, or duty under, this Agreement without the prior written consent of the SCP.
19. **Written Communications:** All written communications, including notices, bills and payments, may be made via electronic mail or to the following addresses:

TO SCP: Sonoma Clean Power Authority  
Attn: Carolyn Glanton  
431 E Street  
Santa Rosa, CA 95404  
cglanton@sonomacleanpower.org

*With Copies to:* Sonoma Clean Power Authority  
ATTN: Contract Administration  
431 E Street  
Santa Rosa, CA 95404  
invoices@sonomacleanpower.org

TO CONTRACTOR: [CONTRACTOR NAME]  
ATTN: [CONTRACTOR]  
[CONTRACTOR STREET ADDRESS]  
[CONTRACTOR CITY & ZIP]  
[CONTRACTOR EMAIL]

20. **No Waiver of Breach:** The waiver by SCP 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.
21. **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.
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 the Superior Court of California for the County of Sonoma, except that when the action is subject to the exclusive jurisdiction of the United States such action shall be brought and tried in the federal district court for the judicial district in which the County of Sonoma is located.

24. **Exhibits; Order of Precedence:**

a. **Exhibits.** This Agreement includes the following Exhibits:

i. Exhibit A – Scope of Services

ii. Exhibit B – Fee Schedule

iii. **Optional Exhibits.** Consultant 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

iv. Exhibit E - CEC Grant Agreement

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, except between any conflicts that exist between this Agreement and the CEC Grant Agreement, in which case the CEC Grant Agreement shall prevail. In the event of a conflict between the Exhibits, the order of precedence set forth in section 24(a) applies.

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. **Attorney Fees:** The prevailing party in any litigation to interpret or enforce this Agreement shall be entitled to recover its reasonable attorneys' fees and costs.

31. **Joint Powers Authority.** Consultant hereby acknowledges that SCP 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 SCP 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 SCP. Consultant agrees that SCP shall solely be responsible for all debts, obligations and liabilities accruing and arising out of the Agreement and Consultant agrees that it shall have no rights against, and shall not make any claim, take any actions or assert any remedies against, any of SCP's members, any cities or counties participating in SCP's community choice aggregation program, or any of SCP's retail customers in connection with this Agreement.

32. **Representatives.**

- a. SCP's Representative. The SCP hereby designates **\*\*\*INSERT TITLE\*\*\***, or his or her designee, to act as its representative for the performance of this Agreement ("SCP's Representative"). SCP's Representative shall have the power to act on behalf of the SCP for all purposes under this Agreement. Consultant shall not accept direction or orders from any person other than the SCP's Representative or his or her designee.
- b. Consultant's Representative. Before starting the Services, Consultant shall submit in writing the name, qualifications and experience of its proposed representative who shall be subject to the review and approval of the SCP ("Contractor's Representative"). Following approval by the SCP, Consultant's Representative shall have full authority to represent and act on behalf of Consultant for all purposes under this Agreement. Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

*[SIGNATURES TO APPEAR ON FOLLOWING PAGE]*

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**

**CONSULTANT**

**BY:** \_\_\_\_\_  
**Michael Koszalka**  
**Chief Operating Officer**

**BY:** \_\_\_\_\_  
**[Name]**

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**APPROVED AS TO FORM**

**BY:** \_\_\_\_\_  
**General Counsel**

**DATE:** \_\_\_\_\_

## **Exhibit A: Scope of Services**

See Attachment B – Scope of Services

## **Exhibit B: Budget & Fee Schedule**

[Insert Budget & Fee Schedule]

## Exhibit C: Non-Disclosure Agreement

This Non-Disclosure Agreement (“NDA”) the Agreement and SCP Customer Service Policy A.1 (Customer Confidentiality) govern the disclosure of SCP’s confidential customer information to Consultant (“Disclosure Provisions”). The Parties hereby mutually agree that:

1. Representations & Warranties. Subject to the terms and conditions of this NDA, Confidential Information (as defined below), including, without limitation information regarding customers of SCP (“SCP Customers”), may be disclosed to Consultant by SCP (or SCP’s data management consultant, at SCP’s direction) from time to time as provided by the Disclosure Provisions and solely for the purposes set forth on EXHIBIT A (Scope of Services). Such disclosure is subject to the following legal continuing representations and warranties by Consultant:
  - (a) Consultant represents and warrants that it has all necessary authority to enter into this NDA, and that it is a binding enforceable NDA according to its terms;
  - (b) Consultant represents and warrants that the authorized representative(s) executing this NDA is (are) authorized to execute this NDA on behalf of the Consultant; and
  - (c) Consultant confirms its understanding that the Confidential Information, including information regarding SCP Customers, is of a highly sensitive confidential and proprietary nature, and that such information will be held in trust by Consultant for the benefit of SCP and solely used as contemplated under the Disclosure Provisions for the purposes set forth on EXHIBIT A, and that any other use of the information is prohibited.
  - (d) Consultant represents and warrants that it will implement and maintain expert, industry standard best practice, and no less than reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for purposes not set forth on EXHIBIT A.
2. Confidential Information Defined. “Confidential Information”, as used in this NDA, refers to all information SCP discloses to Consultant which SCP might reasonably expect Consultant not to disclose to other persons or use for unauthorized purposes, and any derivative thereof, and includes, without limitation, the following:
  - (a) Information about SCP Customers, including, without limitation: (i) names; (ii) addresses; (iii) telephone numbers; (iv) service agreement numbers; (v) meter and other identification numbers; (vi) SCP-designated account numbers; (vii) meter numbers; (viii) electricity and gas usage (including monthly usage, monthly maximum demand, electrical or gas consumption as defined in Public Utilities Code Section 8380, load, and other data detailing electricity or gas needs and patterns of usage); (ix) billing information (including rate schedule, baseline zone, CARE participation, end use code (heat source) service voltage, medical baseline, meter cycle, bill cycle, balanced payment plan and other plans); (x) payment / deposit status; (xi) number of units; and (xii) other similar information specific to SCP Customers individually or in the aggregate;
  - (b) Certain data constituting “Covered Information” as that term is defined in California Public Utilities Commission (“CPUC”) Decision 12-08-045, and any successor CPUC Decision; and
  - (c) Any SCP market, resource or procurement information considered by SCP to be proprietary and/or confidential.

- (d) Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by Consultant or its representatives that are derived from or based on Confidential Information disclosed by SCP, regardless of the form of media in which it is prepared, recorded or retained.
3. Exclusions. Except for electric and gas usage information provided to Consultant pursuant to this NDA, Confidential Information does not include information that Consultant proves (a) was properly in the possession of Consultant at the time of disclosure; (b) is or becomes publicly known through no fault of Consultant, its employees or representatives; or (c) was independently developed by Consultant, its employees or representatives without access to any Confidential Information.
  4. Disclosure Prohibited. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by Consultant, or used for any purpose other than the purposes set forth on EXHIBIT A.
  5. Protection of Confidential Information. Consultant shall, at all times and in perpetuity, hold the Confidential Information in trust for SCP's benefit, keep in the strictest confidence the Confidential Information, and take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Consultant shall implement and maintain expert, industry standard best practice, and no less than reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for purposes not set forth on EXHIBIT A. Specifically, Consultant shall restrict access to Confidential Information, and to materials prepared in connection with the Confidential Information, to those employees or representatives of Consultant who have a "need to know" such Confidential Information in the course of their duties with respect to the Consultant program and who agree in writing to be bound by the nondisclosure and confidentiality obligations of this NDA. Prior to disclosing any Confidential Information to its employees or representatives, Consultant shall require such employees or representatives to whom Confidential Information is to be disclosed to review this NDA and to agree to be bound by the terms of this NDA in writing.
  6. Liability for Employees/Representatives, Notification of Disclosure. Consultant shall be strictly liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this NDA; however, such liability shall not limit or prevent any actions by SCP directly against such employees or representatives for improper disclosure and/or use. In no event shall Consultant or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. Consultant shall immediately notify SCP in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by Consultant or any of its employees or representatives. However, nothing in this NDA shall obligate the SCP to monitor or enforce the Consultant's compliance with the terms of this NDA.
  7. Compliance with CPUC Decisions and SCP Policies. Consultant shall comply with:
    - (a) CPUC Decision No. 12-08-045. The consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Decision No. 12-08-045, and any modifications or successors to that decision.
    - (b) SCP Information Technology (IT) Security Policy A.4. Consultant acknowledges that it is in receipt of and will comply with SCP's A.4 Information Technology (IT) Security Policy. Consultant will inform SCP immediately of any breach of that policy

(EXHIBIT C.1)

- (c) SCP Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy A.5. Consultant acknowledges that it is in receipt of and will comply with SCP's A.5 Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy. Consultant will inform SCP immediately of any breach of that policy (EXHIBIT C.2)
8. Equitable Relief. Consultant acknowledges that disclosure or misappropriation of any Confidential Information will cause irreparable harm to SCP and/or SCP Customers, the amount of which may be difficult to assess. Accordingly, Consultant hereby confirms that SCP shall be entitled to apply to a court of competent jurisdiction or the California Public Utilities Commission for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Consultant or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the SCP, in law or equity.
9. Indemnification. In addition to all other remedies, to the furthest extent permitted by law Consultant shall indemnify, defend (with counsel appointed by SCP to defend at Consultant's expense) and hold harmless SCP, its officials, officers, employees, volunteers, and agents, and any public agency which is a party to the joint powers agreement pursuant to which SCP is organized under section 6500 of the Government Code and their officials, officers, employees, volunteers, and agents (collectively, the "Indemnified Parties") from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to (1) the negligence (active or passive, ordinary or gross), recklessness, willful misconduct, or other errors or omissions of Consultant or Consultant's officials, officers, employees, volunteers, and agents, or (2) Consultant's performance of or obligations or omissions under this NDA. Consultant agrees to provide a complete defense for any such claim or action brought against the Indemnified Parties. Consultant's obligations under this Section apply whether or not there is comparative negligence of the Indemnified Parties, except that that Consultant's obligations hereunder exclude SCP's sole negligence, active negligence or willful misconduct but only to the extent required by applicable law.
10. Return or Destruction of Confidential Information. When Consultant fully performs the purposes set forth on EXHIBIT A, or if at any time Consultant ceases performance or SCP requires Consultant cease performance of the purposes set forth on EXHIBIT A, Consultant shall immediately return or destroy (with reasonable prior written notice to SCP itemizing the materials destroyed) all Confidential Information then in its possession at the request of SCP. Notwithstanding the foregoing, the nondisclosure obligations of this NDA shall survive any termination of this NDA.
11. Termination. Either Party may terminate this NDA for any reason or no reason, with or without cause, by providing thirty (30) days prior written notice to the other party of its intention to terminate; *provided, however*, that the terms of this NDA remain applicable to any Confidential Information already created or received under the NDA as set forth elsewhere in this NDA.
12. Notice. All notice to be provided under this NDA, may be made via electronic mail or to the addresses outlined in the Notice provision of the Agreement.
13. Assignment. This NDA shall be binding on and inure to the benefit of the successors and permitted assigns of the Parties. This NDA shall not be assigned, however, without the prior written consent of the non-assigning Party, which consent may be withheld due to the confidential nature of the information, data and materials covered.

14. Entire NDA. This NDA sets forth the entire understanding of the Parties with respect to the subject matter contained herein, and supersedes all prior discussions, negotiations, understandings, communications, correspondence and representations, whether oral or written.
15. Amendment. This NDA shall not be amended, modified or waived except by an instrument in writing, signed by both Parties, and, specifically, shall not be modified or waived by course of performance, course of dealing or usage of trade.
16. Waiver. Any waiver of a right under this NDA shall be in writing, but no such writing shall be deemed a subsequent waiver of that right, or any other right or remedy.
17. Choice of Law, Venue. This NDA shall be interpreted and enforced in accordance with the laws of the State of California, without reference to its principles on conflicts of laws. Any action to enforce the terms of this NDA or for the breach of this NDA, shall be brought and tried in the Superior Court of California for the County of Sonoma, except that when the action is subject to the exclusive jurisdiction of the United States such action shall be brought and tried in the federal district court for the judicial district in which the County of Sonoma is located.
18. Captions. The captions in this NDA are solely for convenience of reference. They are not a part of this NDA and shall have no effect on its construction or interpretation.
19. Survival of Terms. All express representations, waivers, indemnifications, obligations to maintain confidentiality and limitations of liability included in this NDA shall survive its completion or termination.
20. Severability. If any provision of this NDA, or portion thereof, is deemed unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such enforceability or invalidity shall not affect the enforceability of any other provision of this NDA.
21. Construction. This NDA shall be construed as if each Party was its author and the language of the NDA shall not be construed against one party against the other on the basis of one party drafting the NDA.
22. Counterparts. This NDA may be executed in one or more counterparts, each of which will be deemed to be an original of this NDA and all of which, when taken together, will be deemed to constitute one and the same agreement.



## **EXHIBIT C.1**

### **Information Technology (IT) Security Policy A.4**

Adopted February 7, 2019

Information Technology (IT) is a critical Sonoma Clean Power Authority (SCP) asset and will be managed to ensure that it remains accurate, confidential, and available for authorized business activities only. Proper management of information technology is required to support regulatory compliance, minimize legal liability, reduce the risk of criminal activity, and to sustain stakeholder and customer satisfaction.

SCP is dependent on information technology to conduct business operations. The Chief Executive Officer, Director of Internal Operations, and Director of Customer Service, in collaboration with the IT Consultant have been designated as the IT Security Team (IST) and are responsible for communicating IT policies and standards, helping all personnel achieve compliance with policies and standards, and reporting to management on any non-compliance or areas of risk.

SCP will make information technology accessible only to authorized employees or designated vendors as needed and such information shall only be used for authorized agency purposes. To ensure protection of information technology, operational guidelines will be in place for employees and designated vendors to follow which adhere to the principles below:

- Access to specific information technology is to be assigned to SCP employees or designated vendors with the minimum level of access necessary to perform respective responsibilities.
- Access to information technology will be made available only to the extent necessary to support authorized business functions.
- Security systems are to be structured with multiple layers of security, including physical, network, host, and personnel security measures.
- The degree of information security protection is to be commensurate with the impact of inadvertent or intentional misuse, improper disclosure, damage or loss.
- Adequate controls will divide sensitive duties among more than one individual to provide checks and balances that help ensure operational guidelines are followed.
- Security is not an optional component of operations. All SCP staff and designated vendors are required to protect information. All staff and designated vendors that use or have access to SCP information technology are personally responsible for exercising the proper control over information according to the operational guidelines provided to them.

Operational guidelines for treatment of information technology are subject to change as needed to protect SCP based on any changes in systems, threats, and practices. All substantive changes will be brought back before SCP's Board of Directors for formal approval.

*[End of Exhibit C.1.]*

## **EXHIBIT C.2**

### **Advance Metering Infrastructure (AMI) Data Security and Privacy Policy A.5**

Adopted February 7, 2019

Sonoma Clean Power Authority (SCP) developed the following policy for ensuring the privacy and security of AMI data and customer usage information pursuant to Attachment B of the California Public Utilities Commission Decision 12-08-045.

#### **1) GENERAL**

- (a) SCP shall implement reasonable administrative, technical, and physical safeguards to protect covered information from unauthorized access, destruction, use, modification, or disclosure.
- (b) SCP and all third parties shall provide reasonable training to all employees and contractors who use, store or process covered information as needed.
- (c) SCP shall collect, store, use, and disclose only as much covered information as is reasonably necessary or as authorized by the Commission to accomplish a specific primary purpose.

#### **2) TRANSPARENCY AND NOTIFICATION**

- (a) SCP shall provide customers with meaningful, clear, accurate, specific, and comprehensive notice regarding; the accessing, collection, storage, use, and disclosure of AMI data. Provided, however, that SCP is using AMI data solely for a primary purpose, it is not required to provide separate notice.
- (b) SCP shall provide written notice when; confirming a new customer account and at least once a year. The notice shall inform customers how they may obtain a copy of SCP's notice regarding the accessing, collection, storage, use, and disclosure of AMI data (aka "covered information") and shall provide a conspicuous link to the notice on the home page of their website and include a link to their notice in all electronic correspondence to customers.
  - The notice shall be labeled Notice of Accessing, Collecting, Storing, Using and Disclosing Energy Usage Information and shall—be written in easily understandable language and be no longer than is necessary to convey the requisite information.
  - The notice and the posted privacy policy shall state clearly— the identity of SCP, the effective date of the notice or posted privacy policy, SCP's process for altering the notice or posted privacy policy, including how the customer will be informed of any alterations, and where prior versions will be made available to customers, and the title and contact information, including email address, postal address, and telephone number, of an official at SCP who can assist the customer with privacy questions, concerns, or complaints regarding the collection, storage, use, or distribution of covered information.
  - The notice shall provide an explicit description of— each category of covered information collected, used, stored or disclosed, and for each category of covered information, the reasonably specific purposes for which it will be collected, stored, used, or disclosed.

- Each category of covered information that is disclosed to third parties, and, for each such category, (i) the purposes for which it is disclosed, and (ii) the categories of third parties to which it is disclosed, and the identities of those third parties to whom data is disclosed for secondary purposes, and the secondary purposes for which the information is disclosed; the approximate period of time that covered information will be retained by the covered entity a description of the means by which customers may view, inquire about, or dispute their covered information, and the means, if any, by which customers may limit the collection, use, storage or disclosure of covered information and the consequences to customers if they exercise such limits.
- (c) SCP shall provide to customers upon request convenient and secure access to their covered information— in an easily readable format that is at a level no less detailed than that at which the covered entity discloses the data to third parties.

### **3) USE, DISCLOSURE, AND CUSTOMER AUTHORIZATION**

- (a) SCP may disclose covered information without customer consent to a third party acting under contract with the Commission for the purpose of providing services authorized pursuant to an order or resolution of the Commission or to a governmental entity for the purpose of providing energy efficiency or energy efficiency evaluation services pursuant to an order or resolution of the Commission.
- (b) SCP may disclose covered information to a third party without customer consent when explicitly ordered to do so by the Commission; or for a primary purpose being carried out under contract with and on behalf of SCP provided that the covered entity disclosing the data shall, by contract, require the third party to agree to access, collect, store, use, and disclose the covered information under policies, practices and notification requirements no less protective than those under which the covered entity itself operates.
- (c) Any entity that receives covered information derived initially from SCP may disclose such covered information to another entity with SCP's consent, but without customer consent for a primary purpose, provided that the entity disclosing the covered information shall, by contract, require the entity receiving the covered information to use the covered information only for such primary purpose and to agree to store, use, and disclose the covered information under policies, practices and notification requirements no less protective than those under which the covered entity from which the covered information was initially derived operates.
- (d) When SCP discloses covered information to a third party under this subsection (reference is to subsection 6(c) of Attachment B to CPUC Decision 12-08-045) it shall specify by contract, unless otherwise ordered by the Commission, that it shall be considered a material breach if the third party engages in a pattern or practice of accessing, storing, using or disclosing the covered information in violation of the third party's contractual obligations to handle the covered information under policies no less protective than those under which the covered entity from which the covered information was initially derived.
- (e) If SCP finds that a third party contractor to which it disclosed covered information is

engaged in a pattern or practice of accessing, storing, using or disclosing covered information in violation of the third party's contractual obligations related to handling covered information, SCP shall promptly cease disclosing covered information to such third party.

- (f) If SCP receives a customer complaint about a covered entity disclosing covered information to a Commission-authorized or customer-authorized third party and the third party's misuse of data or other violation of the privacy rules, SCP shall upon customer request or at the Commission's direction, promptly cease disclosing that customer's information to such third party. SCP shall notify the Commission of any such complaints or suspected violations.
- (g) No covered entity shall use or disclose covered information for any secondary purpose without obtaining the customer's prior, express, written authorization for each type of secondary purpose. This authorization is not required when information is – (i) provided pursuant to a legal process; (ii) provided in situations of imminent threat to life or property; or (iii) authorized by the Commission pursuant to its jurisdiction and control.
- (h) Separate authorization by each customer must be obtained for all disclosures of covered information except as otherwise provided for herein.
- (i) SCP shall permit customers to cancel authorization for any secondary purpose of their covered information by the same mechanism initially used to grant authorization.
- (j) The consent of a residential customer shall continue without expiration, but an entity receiving information pursuant to a residential customer's authorization shall contact the customer, at least annually, to inform the customer of the authorization granted and to provide an opportunity for revocation. The consent of a non-residential customer shall continue in the same way, but an entity receiving information pursuant to a nonresidential customer's authorization shall contact the customer, to inform the customer of the authorization granted and to provide an opportunity for revocation either upon the termination of the contract, or annually if there is no contract.
- (k) SCP shall permit the use of aggregated usage data that is removed of all personally-identifiable information to be used for analysis, reporting or program management provided that the release of that data does not disclose or reveal specific customer information because of the size of the group, rate classification, or nature of the information.

*[End of Exhibit C.2.]*  
*[End of Exhibit C]*

## Exhibit D: Prevailing Wage Requirements

1. **General.** Pursuant to California Labor Code § 1720 *et seq.*, the Services are subject to the prevailing wage requirements applicable to the locality in which the Services are 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 SCP 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 Services. 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 Services on grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person, or any other protected characteristic, 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 16 of the Agreement.
5. **Labor Code Requirements.**
  - a. **Prevailing Wages.** Consultant is aware of the requirements of California Labor Code Section 1720 *et seq.*, and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.*, (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. Since the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. SCP shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Contract upon request. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at Consultant’s principal place of business and at the project site. Consultant shall defend, indemnify and hold the SCP, its officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Consultant and any subcontractor shall forfeit a penalty of up to \$200 per calendar day or portion thereof for each worker paid less than the prevailing wage rates.
  - b. **Apprenticeable Crafts.** When Consultant employs workmen in an apprenticeable

craft or trade, Consultant shall comply with the provisions of Section 1777.5 of the California Labor Code with respect to the employment of properly registered apprentices upon public works. The primary responsibility for compliance with said section for all apprenticeable occupations shall be with Consultant. The Consultant or any subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding \$100 for each full calendar day of noncompliance, or such greater amount as provided by law.

- c. Hours of Work. Consultant is advised that eight (8) hours labor constitutes a legal day's work. Pursuant to Section 1813 of the California Labor Code, Consultant shall forfeit a penalty of \$25.00 per worker for each day that each worker is permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, except when payment for overtime is made at not less than one and one half (1-1/2) times the basic rate for that worker.
- d. Payroll Records. Consultant and each subcontractor shall keep an accurate payroll record, 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 by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Consultant in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, Consultant shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with this section. Should noncompliance still be evident after such 10-day period, Consultant shall, as a penalty to SCP, forfeit not more than \$100.00 for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. A contractor who is found to have violated the provisions of law regarding wages on Public Works with the intent to defraud shall be ineligible to bid on Public Works contracts for a period of one to three years as determined by the Labor Commissioner. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on Consultant. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.
- e. Contractor and Subcontractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. Consultant is directed to review, fill out and execute the SCP's Public Works Consultant Registration Certification on file with SCP prior to contract

execution. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

- f. Labor Compliance; Stop Orders. The Services are subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Consultant's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of Services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay subject to any applicable liquidated damages and shall not be compensable by the SCP. Consultant shall defend, indemnify and hold the SCP, its officials, officers, employees, and any public agency which is a party to the joint powers agreement pursuant to which SCP is organized under section 6500 et seq. of the Government Code and their officials, officers, employees, volunteers, and agents, free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

[END OF EXHIBIT D]

**Exhibit E: CEC Grant Agreement**

Exhibit E references the EPIC Grant Terms and Conditions, see next page.



# Exhibit E to Attachment C: Agreement for Professional Services

## EXHIBIT C

### 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

## EXHIBIT C

### TERMS AND CONDITIONS

#### 1. **INTRODUCTION**

This grant agreement (Agreement) between the California Energy Commission (Energy Commission, Commission, or CEC) 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 (CEC-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 (this Exhibit C and if included, Exhibit D) will govern in the event of a conflict with the documents below, with the exception of the documents in subsections (e) and (f) below. Where this Agreement or California laws and regulations are silent or do not apply, the CEC will use the federal cost principles and acquisition regulations listed below as guidance in determining whether reimbursement of claimed costs is allowable. Documents incorporated by reference include:

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

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

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

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

##### **Federal Acquisition Regulations (*applicable to commercial organizations*)**

- d. 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**

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

## **General Laws**

- f. 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 Subrecipients, and any lower tiered level of Sub-Subrecipients, and Vendors, and their employees are responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures for the type of work performed.

### **4. DUE DILIGENCE**

The Recipient must take timely actions that, taken collectively, move this project to completion. The Commission Agreement Manager (CAM) will periodically evaluate the project schedule for completion of Scope of Work tasks. If the CAM determines that: (1) the 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 CAM 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 CEC in the Scope of Work, such as reports and summaries.

If the CAM determines that a product is substandard given its description and intended use as described in this Agreement, the CAM, without prejudice to any of the CEC’s other remedies, may refuse to authorize payment for the product and any subsequent products that rely on or are based upon the product under this Agreement.

- b. Confidential Products

Please see Section 18 (Confidential Recipient Information) for instructions regarding confidential recipient information in products.

c. Rights in Products

The CEC owns all products identified in the Scope of Work, with the exception of products that fall within the definition of “intellectual property.” As between the CEC and the Recipient, 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

A Recipient’s failure to submit a product required in the Scope of Work may be considered material noncompliance with the Agreement terms. Without prejudice to any other remedies, noncompliance may result in CEC actions such as the withholding of future payments or awards, or the suspension or termination of the Agreement.

e. Final Report and Payment

The Recipient may only submit a request for the final payment (including any retention) after the final report is completed, submitted to the CAM, and Energy Research and Development Division management has verified satisfactory completion of work.

f. Legal Statements on Products

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

**LEGAL NOTICE**

**This document was prepared as a result of work sponsored by the California Energy Commission. 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 CEC.

“©[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 CAM for any change to the Agreement. The request must include:

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

### b. Approval of Changes

Unless otherwise allowed in this Agreement, no amendment or variation of this Agreement shall be valid unless made in writing and signed by both of the parties except for the CEC’s unilateral termination rights in Section 16 of these terms. No oral understanding or agreement is binding on any of the parties. Changes to the Agreement must be approved at a CEC business meeting or by the Executive Director (or his/her designee).

Upon Recipient’s request, the CAM or Commission Agreement Officer will provide the Recipient with a document titled “Changes to Grants – Level of Approval and Notification Chart” commonly referred to as the “Changes Chart.” This document explains the level of CEC approval required for a proposed change.

### c. Personnel Changes

Except when replacing “key personnel,” the Recipient, Subrecipients, and any lower-tiered level of Sub-Subrecipient, and Vendors can make changes to their respective personnel without written approval. Although changes to “key personnel” do require written approval, that approval can be requested and granted through an email communication or other form of written communication.

Recipients may be reimbursed for actual expenses incurred by new “key personnel” during the term of the Agreement, even if written approval comes after an individual begins work on the project. However, if the replacement is not approved, then the CEC will not reimburse for any expenses charged for the individual. Accordingly, Recipients are strongly encouraged to obtain advance written approval for “key personnel” or risk not being reimbursed for their work.

Recipient must keep the CAM informed of personnel changes through monthly calls and quarterly progress reports. In addition to any other rights and remedies available to the CEC, the CEC retains its authority to issue a Stop Work Order if it becomes clear that the personnel, key or otherwise, of the Recipient, a Subrecipient, any lower-tiered level of Sub-Subrecipient, or Vendor are unable to fulfill their responsibilities under the Agreement. In addition to all other rights and remedies, the CEC shall not pay (or may require Recipient to repay if the CEC has already paid) for personnel who are unnecessary to complete the scope of work or otherwise perform under the Agreement.

d. Budget Reallocations

No CEC approval is needed for a Recipient, Subrecipient, or any lower-tiered level of Sub-Subrecipient to move funds **within** each of the following Budget Categories listed in Exhibit B: Direct Labor, Fringe Benefits, Travel, Equipment, Materials and Miscellaneous, Subrecipients and Vendors, and Indirect Costs. However, please note per parts e. and h., directly below in this Section 6, any new Materials and Miscellaneous, Equipment, Subrecipient, Sub-Subrecipient or any lower-tiered level of Sub-Subrecipient or Vendor not listed in the Exhibit B does need approval prior to reimbursement. If the Recipient wants to move funds between Budget Categories or submits an invoice that if paid would exceed a Budget Category, the Recipient has at least the following choices:

- 1) Request an amendment from the CEC. The CEC shall not pay the invoice if and until an amendment is executed. In its sole discretion, the CEC might pay the portion of the invoice that does not involve the amount that goes beyond the Budget Category.
- 2) Retract the invoice and resubmit a corrected one that keeps within Budget Categories. The Recipient can treat the amount paid beyond the Budget Category as match funds if the expenditure meets all of the applicable Agreement requirements for match funds.

Neither this nor any other flexibility in these terms for approval without executing an amendment allows the Recipient, Subrecipient, Sub-Subrecipient, any lower-tiered level of Sub-Subrecipient, or Vendor to exceed the overall Agreement amount.

e. New Items Under Materials and Miscellaneous, and Equipment

Without having to execute an amendment to this Agreement, the CAM must approve in writing of any new materials and miscellaneous expenses of \$5,000 or more or new equipment the Recipient, Subrecipient, any lower-tiered level of Sub-Subrecipient, or Vendor plans to purchase and be reimbursed under this Agreement that is not already listed in Exhibit B, Budget. To accomplish this, the Recipient can submit either prior to

invoicing or with its invoice a completed form titled “NEW EQUIPMENT/M&M FORM” which includes a description of the item and a brief explanation of the need for the item. The CAM will approve items that he or she determines to be necessary to the Agreement and do not exceed budgeted amounts for each Budget Category unless Recipient follows the process in this Section 6, part d. directly above.

Any restrictions in the solicitation or elsewhere in the Agreement still apply to the specific items under Materials and Miscellaneous, and Equipment that can be purchased using CEC Funds or Match Share Funds. The restrictions still apply even though a CAM does not have to approve new materials and miscellaneous expenses under \$5,000.

f. Assignment of New Personnel to a New or Existing Job Classification

The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can assign new personnel to a new or existing job classification without CEC approval. However, the Recipient shall keep the CAM informed of all personnel changes and provide any information requested by the CAM during monthly calls and/or quarterly progress reports.

g. Promotion of Existing Personnel to a New or Existing Job Classification

The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can promote existing personnel to a new or existing job classification without CEC approval. However, the Recipient shall keep the CAM informed of all personnel changes and provide any information requested by the CAM during monthly calls and/or quarterly progress reports. However, as stated in section 8.c. below, the CEC will not pay more than the total amount in each Budget Category, including Direct Labor, without an amendment.

h. Replacing Subrecipients or Vendors

Under these Terms, all changes of Subrecipients and Vendors require advance written approval by at least the CAM. A higher level of approval may be required based on CEC policy. Required approvals are included in the “Changes to Grants – Level of Approval and Notification Chart” commonly referred to as the “Changes Chart.”

Recipients may be reimbursed for actual expenses incurred by a new Vendor during the term of this Agreement, even if CEC written approval comes after the entity has completed work on the project. However, if the new Vendor is not approved by the CEC, the CEC will not reimburse for any expenses charged for the entity. Accordingly, Recipients are strongly encouraged to obtain **advance** written approval for new Vendors or risk not being reimbursed for their work.

However, any work completed by an entity that may replace an existing Subrecipient WILL NOT BE REIMBURSED for any work completed prior to advance written approval. If a Subrecipient expends funds prior to approval, they can only be claimed as Match Funds.

## **7. CONTRACTING AND PROCUREMENT PROCEDURES**

This section provides general requirements for Subawards entered into between the Recipient and Subrecipients and Vendors for the performance of this Agreement.

### **a. Recipient's Obligations to Subrecipients and Vendors**

- 1) The Recipient is responsible for handling all contractual and administrative issues arising out of or related to any Subawards it enters into for the performance of this Agreement.
- 2) Except for the "CEC as Third-Party Beneficiary" term (see section 22.m), nothing contained in this Agreement or otherwise creates any contractual relation between the CEC and any Subrecipients and Vendors, and no Subaward may relieve the Recipient of its responsibilities under this Agreement. The Recipient agrees to be as fully responsible to the CEC for the acts and omissions of its Subrecipients and Vendors or persons directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Recipient.

The Recipient's obligation to pay its Subrecipients and Vendors is an independent obligation from the CEC's obligation to make payments to the Recipient. As a result, the CEC has no obligation to pay or enforce the payment of any funds to any Subrecipient or Vendor.

- 3) The Recipient is responsible for establishing and maintaining Subawards with and reimbursing each Subrecipient and Vendor for work performed in accordance with the terms of this Agreement.
- 4) A Subrecipient is defined as a person or entity that receives grant funds directly from the Recipient and is entrusted by the Recipient to make decisions about how to conduct some of the Agreement's activities. A Subrecipient's role involves discretion over grant activities and is not merely just selling goods or services.

Characteristics that support the classification of the entity as a Subrecipient include when the entity:

- Has its performance measured in relation to whether objectives of a CEC program were met;



- Has responsibility for programmatic decision-making;
- Is responsible for adherence to applicable CEC program requirements specified in the CEC award agreement;
- In accordance with its agreement, uses the CEC funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the Recipient or Subrecipient; or,
- Provides match share funding contributions to this Agreement.

A Sub-Subrecipient has the same meaning as a Subrecipient except that it receives grant funds from a Subrecipient. There can also be further levels below of Sub-Subrecipients.

5) A Vendor is defined as a person or entity that sells goods or services to the Recipient, Subrecipient, or any lower-tiered level of Sub-Subrecipient, in exchange for some of the grant funds, and does not make decisions about how to perform the Agreement's activities. The Vendor's role is ministerial and does not involve discretion over Agreement activities. A Vendor is an entity selected through a competitive process or is otherwise providing a product or service at a fair and reasonable price. Characteristics indicative of a procurement relationship between the Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient and a Vendor are when the Vendor:

- Provides the goods and services within normal business operations;
- Provides similar goods or services to many different purchasers;
- Normally operates in a competitive environment;
- Provides goods or services that are ancillary to the operation of the CEC program; and
- May not be subject to compliance with all of the requirements of the CEC program as a result of the agreement, though similar requirements may apply for other reasons.

b. Subrecipient Flow-Down Terms

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

- Standard of Performance (Section 3)
- Legal Statements on Products (included in Section 5, “Products”). This term does not have to be included if the Subrecipient will not generate any Products.
- Profit (Section 7.g.)
- Travel and Per Diem (Section 9). This term does not have to be included if the Subrecipient will not be reimbursed for travel with CEC funds.
- Prevailing Wage (Section 10)
- Recordkeeping, Cost Accounting, and Auditing (Section 11)
- Equipment (Section 14). This term does not have to be included if the Subrecipient will not be reimbursed for equipment with CEC funds.
- Termination, Executive Order N-6-22 – Russia Sanctions (Section 16.d)
- Indemnification (Section 17)
- Confidential Recipient Information (Section 18). This term does not have to be included if the Subrecipient will not have access to or generate Confidential Recipient Information as defined in Section 18.
- Pre-Existing and Independently Funded Intellectual Property (Section 19)
- Intellectual Property (Section 20)
- Royalty Payments to the Commission (Section 21)
- Access to Sites and Records (included in Section 22, “General Provisions”)
- CEC as Third-Party Beneficiary (included in Section 22, “General Provisions”)
- Nondiscrimination (included in Section 23, “Certifications and Compliance”)
- California Taxpayer Access to Publicly Funded Research Act (Section 24)
- Receipt of Confidential Information and Personal Information (Section 26)
  
- Survival of the following sections:
  - Equipment (Section 14)
  - Recordkeeping, Cost Accounting, and Auditing (Section 11)
  - Pre-Existing and Independently Funded Intellectual Property (Section 19)
  - Intellectual Property (Section 20)
  - Royalty Payments to the Commission (Section 21)
  - Access to Sites and Records (included in Section 22, “General Provisions”)
  - CEC as Third Party Beneficiary (included in Section 22, “General Provisions”)
  - California Taxpayer Access to Publicly Funded Research Act (Section 24)
  - Receipt of Confidential Information and Personal Information (Section 26)

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

- A clear and accurate description of the material, products, or services to be procured.
- A detailed budget and timeline.
- Provisions that allow for administrative, contractual, or legal remedies in instances where subcontractors breach contract terms, in addition to sanctions and penalties as may be appropriate.
- Provisions for termination by the 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. Vendor Flow-Down Terms

The flow-down requirements either come from the CEC or the law. Recipient does not have to include any of the CEC-created Subrecipient flow-down terms in its Subawards with Vendors unless it is necessary for the Recipient to meet its obligations to the CEC under this Agreement. But the Recipient is still required to make sure Vendors comply with all applicable laws. For example, the Recipient still must ensure any Vendor complies with applicable Public Work Requirements, including the payment of prevailing wage, and also with the Nondiscrimination clause. These are requirements under the law.

The Recipient does not have to include in its Subawards with Vendors, CEC-created terms, such as Equipment, Travel and Per Diem, Retention of Records, and Audits, if the Recipient does not need them to fulfill its obligations to the CEC. An example of when the Recipient might need to include a CEC-created term in a Vendor Subaward is if intellectual property and royalty payments are involved. The Recipient must ensure the CEC has the intellectual property rights required under this Agreement and receives royalty payments due. If, for example, a Vendor creates intellectual property that the Recipient provides to the CEC as part of this Agreement, the Recipient shall ensure its Vendor Subaward secures the appropriate rights. Another example is the receipt of confidential information of personal information. If a vendor will have access to confidential information of personal information provided by the Energy Commission or a third-party for the performance of this Agreement, the Recipient must ensure its agreement with the vendor includes the Energy Commission's special terms and conditions for the receipt of confidential information and personal information before the vendor has access to any such information.

d. Audits

All Subawards entered into for the performance of this Agreement are subject to examination and audit by the CEC and/or Bureau of State Audits for a period of three (3) years after payment of the Recipient's final invoice under this Agreement. The CEC may audit Subawards that are relevant to the Recipient's royalty payment obligations (see Section 21) for a period of ten (10) years after this Agreement's end date.

e. Copies of Subawards

**The Recipient must provide a copy of its Subawards upon request by the CEC.**

f. Conflicting Subcontract Terms

Prior to the execution of this Agreement, the Recipient will notify the CAM of any known or reasonably foreseeable conflicts between this Agreement and any of its Subawards (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 CAM of the conflict within fifteen (15) days of discovery. The CEC may, without prejudice to its other remedies, terminate this Agreement if any conflict impairs or diminishes its value.

g. Profit

- 1) Recipient shall ensure that only Subrecipients, Sub-Subrecipients, and Vendors meeting the definition of an "Unrelated Company" include in their budgets, invoice for, and receive a profit.
- 2) For purposes of this Agreement, an Unrelated Company is defined as a for-profit business, appropriately licensed and in good standing, that does NOT meet any of the following criteria:
  - a) Directly or indirectly, partially or fully owns or controls Recipient. This includes, but is not limited to, owning 5% or more of Recipient's stock.
  - b) Is directly or indirectly, partially or fully owned or controlled by Recipient. This includes, but is not limited to, having 5% or more of stock owned by Recipient.
  - c) Has one or more common employees, including, but not limited to, owners, officers, directors, or managers, with Recipient.
  - d) Shares a Parent Company with Recipient. For purposes of this Agreement, Parent Company is defined as an entity that directly or indirectly, partially or fully owns or controls both the Recipient

and the Subrecipient or Sub-Subrecipient or shares the same employees with them. This includes, but is not limited to, owning 5% or more of stock in both the Recipient and Subrecipient or Sub-Subrecipient.

- e) Does not, for any other reason, have an arm's-length relationship (e.g., a relationship involving independent, competing interests) with the Recipient. This could be due to any reason, including but not limited to, both entities being part of the same business group or could stem from family or personal ties between officials of the two entities.
- 3) Recipient shall further ensure the profit to each Unrelated Company that is a Subrecipient or a Sub-Subrecipient does not exceed 10% of only the CEC funds the Unrelated Company will receive. None of the following count towards the 10% profit maximum:
- a) The Profit Amount Itself. For example, assume Recipient and its Subrecipient SubX agree to a total, all inclusive, budget amount of \$200,000 in CEC funds. SubX cannot claim \$20,000 of this as profit. If \$180,000 is the base for expenses on which profit is calculated, 10% is only \$18,000 and not \$20,000.
  - b) Non-CEC Funds in any Form. Only CEC funds a recipient will receive can count towards profit. For example, assume Recipient's Subrecipient SubX has a budget showing it receiving \$100,000 in CEC funds (not including the profit amount) and \$50,000 in federal funds with the federal funds counting as match under the CEC's grant. The maximum SubX can be paid with CEC funds for profit is 10% of \$100,000 CEC funds, or \$10,000 (assuming the \$100,000 CEC base does not include any of the other expenses that cannot be included in calculating profit). The \$50,000 in federal funds does not count towards the profit calculation because it is not CEC funds.
  - c) Equipment. Continuing the example from b), assume SubX's \$100,000 CEC budget shows \$10,000 earmarked for equipment. The maximum SubX can be paid with CEC funds for profit is 10% of \$90,000, or \$9,000 (assuming the \$90,000 base does not include any of the other expenses that cannot be included in calculating profit).
  - d) Amounts Paid to Sub-Subrecipients and Vendors. Continuing the example from b) and c), assume SubX's \$100,000 CEC budget also shows \$20,000 earmarked to pay Sub-SubY. SubX cannot include in its profit calculation the \$20,000 to Sub-SubY. The maximum SubX can be paid with CEC funds for profit is 10% of \$70,000 (\$100,000 in CEC funds minus \$10,000

in equipment from c) above and minus \$20,000 to Sub-SubY) or \$7,000.

Vendor Unrelated Companies do not have a 10% profit maximum and also do not have to adhere to the same restrictions in a) through d) directly above. However, as stated in the requirements for Vendors in Section 7.a.5) in this Exhibit C, Recipient must be able to demonstrate that the Vendor was selected through a competitive process or is otherwise providing a product or service at a fair and reasonable price.

- 4) Profit can only be paid by the CEC as the amounts on which it is based are invoiced and paid. Profit will NOT be advanced. Continuing the example from 2.d) above, assume SubX submits an invoice for \$5,000 (of its \$70,000) in costs on which profit is based, and the Recipient includes SubX's invoice as part of its invoice to the CEC. The Recipient can include in the invoice, and the CEC will pay, assuming other Agreement requirements are met, \$500 in profit on this particular invoice. Please realize that Retention (see Section 8.n. in these Terms) may reduce the CEC's overall payment on the invoice.
- 5) Budget changes may affect an Unrelated Company's profit. For example, funds moved from a Subrecipient's direct labor, a category counting towards the profit calculation, to a Sub-Subrecipient, a category that does not count towards the profit calculation, would reduce the allowable profit.

#### h. Penalties for Noncompliance

Without limiting the CEC's other remedies, failure to comply with the above requirements may result in the termination of this Agreement and repayment of any profit amounts in violation of these terms.

## **8. PAYMENT OF FUNDS**

### a. Definitions

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

- "Advance Payment" means the CEC pays 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 Cost.  
Incurred Costs for equipment DO NOT include purchase orders unless accompanied by an invoice, bill, or receipt that shows the payment amount due to the seller for the equipment.
- “Paid Cost” means an expense for which the Recipient has already made payment.

b. Advance Payments

Recipients can receive Advance Payments only for Subrecipients or any lower-tiered level of Sub-Subrecipient with the U.S. Department of Energy laboratories. Otherwise, Advance Payments are NOT allowed under this Agreement. The CEC in its sole discretion, and not the Recipient, decides if the CEC will make an Advance Payment.

c. Reimbursable Cost Requirements

In addition to any other requirements in this Agreement, the CEC is only obligated to reimburse the 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.

The only exception to the CEC paying actual expenses is rounding to the nearest cent. The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient shall round invoiced amounts to the nearest cent (\$0.01) using standard rounding, which is rounding down from \$0.000 through \$0.004, and rounding up for \$0.005 through \$0.009. Rounding cannot be used to exceed the amount in any Budget Category or exceed the total Agreement amount.

In Exhibit B, the Budget, the rates for Direct Labor and Fringe Benefits are treated as estimates and not capped rates. The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can invoice at higher rates as long as it is only invoicing for actual expenditures it has made. However, the CEC will not pay more than the total amount in each Budget Category without an amendment, or for more than the total Agreement amount.

Please note that rates listed in Exhibit B, the Budget, are NOT “negotiated rates” that can be charged – documentation must be made available upon request to show that the rates charged reflect actual costs incurred.

This Exhibit C’s terms allow the Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient to receive reimbursement for actual Indirect Costs. A Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient may choose among three options described below. However, the option selected cannot increase the Indirect Cost amount included in the application upon

which the application was scored. Once the Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient has received payment for Indirect Costs for one of the options, it cannot switch. It is locked into that option.

#### Option 1: De Minimis

The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can elect to invoice and receive a de minimis amount at the set rate of 10% of the Modified Total Direct Costs (MTDC) for Indirect Costs. This cannot be combined with any other Indirect Rate option.

MTDC is defined for purposes of this Agreement as all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, rental costs, tuition remission, scholarships and fellowships, and the portion of each subaward in excess of \$25,000. This is the same definition used in federal grants. Keeping this the same as the federal definition should make it easy for entities that have both federal and CEC grants and elect this option.

Entities choosing this de minimis option for Indirect Costs will not have to provide backup documentation for the de minimis amount and will not be audited on it.

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

A Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient that has a federally approved indirect rate from DCAA or another Federal agency may use the approved indirect rate for this Agreement. A copy of the Federal agency's letter must be provided, and the letter, or the letter together with other supporting documentation, must allow the CEC to verify that the rates charged to the CEC are the federally-approved rates.

This rate will typically shift annually, and this shift is generally acceptable. This is the only Indirect Cost option that is not strictly subject to the maximum rate cap that typically applies to Indirect Costs. If the federal rate decreases from year to year, that will be a cost savings under this budget category. If the federal rate increases from year to year, this will require a budget reallocation. If the CEC, in its sole discretion, determines that a budget reallocation to accommodate an increased Indirect Rate would risk the ultimate success of this Agreement, or is otherwise not in its best interest, the CEC reserves, in addition to all of its other rights and remedies, the right to either propose a smaller increase that would not risk the ultimate success of the project, or refuse to increase the Indirect Rate. For any increase the CEC will not reimburse from CEC Funds, the entity can choose to charge the increase as Match Funds.



If this Option 2 is chosen, the entity will not be audited on this budget category.

### Option 3: Indirect Costs based on Cost Allocation Plan

A Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient may choose to budget for Indirect Costs based on the entity's cost allocation plan. The amount of Indirect Costs included in Exhibit B cannot be increased through a budget reallocation. If this option is selected, Indirect Costs are subject to audit, and the entity is required to provide backup documentation upon request proving the actual amount of their Indirect Costs.

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

The Recipient, Subrecipients, and all lower-tiered Subrecipients shall pay ALL Incurred Costs 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 CEC 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 entities from creating long lead times for Incurred Costs (e.g., invoicing and receiving payment from the CEC but not paying for the Incurred Costs for weeks or months).

The Recipient shall only invoice the CEC, Subrecipients shall only invoice the Recipient (and so on for any lower-tiered level of Sub-Subrecipients), for Incurred Costs it will pay within 14 calendar days of receiving payment of CEC funds. 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, Subrecipient, and any lower-tiered level of Sub-Subrecipient has received CEC funds and does not pay within 14 calendar days, the entity shall on the very next business day after the 14 calendar days submit repayment of the unpaid amount back to the CEC. Repaid funds will be placed back into the Agreement and will be available to reimburse allowable costs in accordance with this Agreement. When making a repayment under this provision, the Recipient shall specify "Repayment of Unspent Funds under Agreement [Insert this Agreement #]." Recipient shall remit the repayment to:

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

This repayment requirement of the Recipient is in addition to any other rights the CEC 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 CEC can treat the Recipient's breach of either requirement as a material breach. Recipient can contact the CAM for any questions about the logistics of making repayments.

e. Payment Requests

The Recipient may request payment from the CEC at any time during the term of this Agreement but no more frequently than monthly. The final payment request, including retention, MUST be received by the CEC no later than the Agreement end date.

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

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

**All 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 CAM'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 meet all Agreement conditions, and for which additional evidence is not required to determine its validity.

The invoice will be disputed if the invoice is inaccurate or if it does not comply with the terms of this Agreement. If the invoice is disputed, the Recipient will be notified in writing.

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, Subrecipient, and any lower-tiered level of Sub-Subrecipient invoices that have been or will be reimbursed by another source, including but not limited to an agreement with another government entity.

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

i. Reduced funding:

If the CEC does not receive sufficient funds under the Budget Act 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:

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

j. Allowability of Costs

1) Allowable Costs

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

2) Unallowable Costs

Recipient shall not invoice or obtain from the CEC any profit for itself under this Agreement. This Agreement is a grant for the Recipient's project. This is not a services contract to the state. The Recipient is already receiving the benefit of the grant funds. The CEC shall not pay profit to the Recipient on top of the benefit it is receiving from the grant funds in this Agreement. Some Subrecipients and Sub-Subrecipients may

be able to receive up to 10% profit (please refer to section 7.g. in these terms).

Below are examples of other unallowable costs. Details concerning the allowability of costs are available from the CEC's Accounting Office.

- a) Contingency costs;
- b) Imputed costs (e.g., cost of money);
- c) Fines and penalties;
- d) Losses;
- e) Excess profit taxes; and
- f) Unapproved, increased rates and fees for this Agreement.

- 3) 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

The Recipient, and any Subrecipients or lower-tiered level of Sub-Subrecipient with a total budget of \$100,000 or more, shall use the Invoice Template and any further modifications to it, provided by the CAM. The CAM can change the Invoice Template without amending this Agreement.

Please submit invoices electronically per the instructions included in the document entitled "Procedures for Submitting and Reviewing Grant Invoices Electronically" available at <https://www.energy.ca.gov/media/4469>.

Recipient shall provide documentation showing the Recipient's payment of Incurred Costs as soon as possible and not later than three working days from a request from CEC personnel.

l. Certification

The Recipient, and any Subrecipients or lower-tiered level of Sub-Subrecipient with a total budget of \$100,000 or more shall include and sign the certification provided by the CAM in the Invoice Template. The CAM can change this certification without amending this Agreement.

m. Retention

The CEC shall retain 10 percent of any payment request or 10 percent of the total CEC award at the end of the Agreement. The CEC has the sole discretion to decide which of these methods of retention will be used in this Agreement. The Recipient must submit a completed payment request requesting release of the retention within the required timeframe (see part e.

“Payment Requests” above in this term). The Commission Agreement Manager will review the project file and, when satisfied that the terms of the funding Agreement have been fulfilled, will authorize release of the retention.

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

When the CEC withholds 10% retention from each invoice, the Recipient can choose to flow down the retention requirement to its Subrecipients 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 Subrecipients.
- The retention flowed down to Subrecipients can only be up to a total of 10% of the amount of CEC funds the Subrecipient 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 Subrecipients or Vendors.
- Here are three examples:
  - i. A Subrecipient submits an invoice for \$100,000 to the Recipient, and the Recipient in turn submits it to the CEC. The CEC will only pay \$90,000 of the invoice and the Recipient can elect to pay only \$90,000 to the Subrecipient.
  - ii. The Subrecipient 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 CEC’s U.S. Department of Energy Terms and Conditions. The Recipient in turn submits the advance requests to the CEC for payment. The CEC 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 CEC will only pay \$18,000 to the Recipient, and the Recipient cannot withhold the \$2,000 difference from Subrecipients or Vendor reimbursements.

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

## 9. TRAVEL AND PER DIEM

- a. Travel not listed in Exhibit B, the Budget, can be added without an amendment via CAM approval. CAM approval can come in one of two forms: written authorization from the CAM prior to the trip being taken, or through the invoice review. Outside of a budget reallocation, additional travel requests are submitted using the CEC's [Travel Form](#). Any travel taken that is not listed in Exhibit B, the Budget, or not pre-approved by the CAM in writing, is at the financial risk of the Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient taking the trip. Please note that the Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient cannot invoice and be paid for more than the total amount in the Travel Budget Category without an amendment, or for more than the total Agreement amount.
- 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 listed on the ECAMS Resources webpage. Because the rates on the ECAMS Resources webpage can change over time, Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient will be allowed to be reimbursed for the rates in the Grant Manual when the trip expenses become an Incurred Cost. The CEC shall notify the Recipient in writing by way of the Active Agreements listserve if the travel rates in the Grant Manual change. Please sign up for the Active Agreements listserve to stay informed of all updates.
- d. Lodging  

The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can invoice at standard room rates. The CEC will not reimburse for luxury accommodations.
- e. Airfare  

The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can invoice at coach rates on commercial flights. The CEC will not pay for upgrades on flights.
- f. Rental Car  

The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can invoice for vehicles appropriate for the purpose of the travel. The CEC will not reimburse expenses for luxury vehicles.

g. Bus/Train

The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can invoice for standard coach rates. The CEC will not reimburse for upgrades.

h. Per Diem

Per diem is allowable for actual costs incurred up to the total daily maximum for the following combined expenses:

- Meals
- Incidentals (i.e., tips for hotel staff and taxi/ride share drivers)
- Parking
- Tolls
- Taxi/ride share

The CEC will not reimburse any expenses under this Agreement for alcoholic beverages. In addition, the daily per diem is for the individual expenses of those traveling and working on the Agreement only. It cannot be used to pay expenses of others (e.g., it cannot be used to buy a meal for someone else).

**10. PREVAILING WAGE**

a. Requirement

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

b. Determination of Project’s Status

Only the California Department of Industrial Relations (DIR) and courts of competent jurisdiction may issue legally binding determinations that a particular project is or is not a public work. If the 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. Subrecipient and Vendor Flow-down Requirements

The Recipient will ensure that its Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors also comply with the public works/prevailing wage requirements above. As applicable, the Recipient will ensure that all agreements with its Subrecipients and Vendors to perform work related to this Project contain the above terms regarding payment of prevailing wages on public works projects, and also as applicable that Subrecipients and Vendors also contain these terms. The Recipient is responsible for any failure of its Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors to comply with California prevailing wage and public works laws.

d. Indemnification and Breach

Any failure of the Recipient or its Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors to comply with the above requirements will constitute breach of this Agreement which excuses the CEC's performance of this Agreement at the CEC's option, and will be at the Recipient's sole risk. In such a case, the CEC will refuse payment to the Recipient of any amount under this award and the CEC will be released, at its option, from any further performance of this Agreement or any portion thereof. The Recipient will indemnify the CEC 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 CEC on each payment request form either that: (a) prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and the 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 CEC the above-described certificate signed by the Recipient and all Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors performing public works activities on the project. Absent this certificate, the Recipient will have no right to any funds under this Agreement, and CEC will be relieved of any obligation to pay any funds.

**11. RECORDKEEPING, COST ACCOUNTING, AND AUDITING**

a. Cost Accounting

The 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 CEC 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 CEC, another state agency, and/or a public accounting firm designated by the CEC may audit the Recipient's accounting records at all reasonable times, with prior notice by the CEC.

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 CEC of the Recipient's final invoice. However, performance of any such interim audits by the CEC does not preclude further audit. The CEC may audit books, records, documents, and other evidence relevant to the Recipient's royalty payment obligations (see Section 21) 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 CEC determines that any invoiced and paid amounts exceed the actual allowable incurred costs, the Recipient will repay the amounts to the CEC within thirty (30) days of request or as otherwise agreed by the CEC and the Recipient. If the CEC 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 CEC will bear the cost of conducting the audit unless the audit reveals an error detrimental to the CEC that exceeds more than ten percent (10%) or \$5,000 (whichever is greater) of: (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 CEC for reasonable costs and expenses incurred by the CEC in conducting the audit.

f. Match or Cost Share

If the budget includes a match share requirement, the Recipient's commitment of resources, as described in this Agreement, is a required expenditure for receipt of CEC funds. The funds will be released only if the required match percentages are expended concurrently or in advance of the CEC funds. The Commission Agreement Manager, in writing and with supervisor approval, can authorize a Recipient to spend CEC funds in advance of Match Funds pursuant to a Match Fund Spending Plan. The Plan must estimate how Match funds and CEC funds will be spent over each quarter and briefly explain why it is not practical to spend Match Funds concurrent with CEC funds. While this term allows flexibility, the Recipient agrees to spend the agreed match as soon as practical during the Agreement in order to resume proportionality between CEC funds and Match funds spent. The 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 CAM satisfactory evidence of this insurance upon the CAM'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 CAM satisfactory evidence of the insurance upon the CAM'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**

As between the Recipient and CEC, 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, encumber the property (i.e., place a legal burden on the property such as a lien), or even transfer possession of it during the Agreement term without the CAM's prior written approval.

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

### **15. STOP WORK**

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

- a. Compliance. Upon receipt of a stop work order, the Recipient must immediately take all necessary steps to comply with the order and to stop the incurrence of costs allocable to the CEC.
- b. Canceling a Stop Work Order. The Recipient may resume the work only upon receipt of written instructions from CEC staff.

### **16. TERMINATION**

- a. Purpose

Because the CEC 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 CEC, the CEC 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 CEC.

b. With Cause

The CEC may, for cause, terminate this Agreement upon giving five (5) calendar days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations. The Recipient will relinquish possession of equipment purchased for this Agreement with CEC funds to the CEC, or the Recipient may purchase the equipment as provided by the terms of this Agreement or otherwise by the CEC, with approval of the CEC. The term “for cause” includes but is not limited to the following:

- Partial or complete loss of match funds;
- Reorganization to a business entity unsatisfactory to the Energy Commission;
- Retention or hiring of Subrecipients or Vendors, 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 CEC policy such that the work or product being funded would not be supported by the Commission.

c. Without Cause

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

d. Executive Order N-6-22 – Russia Sanctions

On On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Recipient is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide Recipient advance written notice of such termination, allowing Recipient at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.

## **17. INDEMNIFICATION**

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

## **18. CONFIDENTIAL RECIPIENT INFORMATION**

### **a. Identification of Confidential Recipient Information**

- 1) For the purposes of this Section, “Confidential Recipient Information” refers to information belonging to the Recipient that the Recipient has satisfactorily identified as confidential and the Energy Commission has agreed to designate as confidential under Title 20 California Code of Regulations Section.
- 2) Prior to the effective date of this Agreement, the Recipient will identify all products (or information contained within products) it considers Confidential Recipient Information, and provide the legal basis for confidentiality, in Attachment 1 to this Exhibit. If the CEC agrees the information is confidential, it will not disclose it except as provided in subsection (b).
- 3) During the Agreement, if the Recipient obtains or develops additional products (or information contained within products) not originally identified as Confidential Recipient Information in Attachment 1 to this Exhibit, the Recipient will follow the procedures for a request for designation of confidential information as specified in Title 20 California Code of Regulations (CCR) Section 2505.

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

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

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

b. Disclosure of Confidential Recipient Information

The CEC will only disclose Confidential Recipient Information under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508. All Confidential Recipient 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 CEC's confidentiality designation.

c. Waiver of Consequential Damages

In no event will the CEC, 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 Confidential Recipient Information, even if the CEC has been advised of the possibility of such damages.

Damages that the CEC, 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 Disclosure of Products

During the Agreement, the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors must receive written approval from the CAM prior to disclosing the contents of any draft product to a third party. However, if the CEC makes a public statement about the content of any product provided by the Recipient and the Recipient believes the statement is incorrect, the Recipient may state publicly what it believes is correct.

## **19. PRE-EXISTING AND INDEPENDENTLY FUNDED INTELLECTUAL PROPERTY**

a. Ownership

The CEC makes no ownership, license, or royalty claims to pre-existing intellectual property, independently funded intellectual property, or project-relevant pre-existing or independently funded intellectual property.

**"Ownership"** 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 20 and 21.

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

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

- 3) **“Project-relevant pre-existing intellectual property” and “project-relevant independently funded intellectual property”** mean pre-existing and independently funded intellectual property 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 (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 20 and 21.

2) Access to Property

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

Upon the CAM's request, the Recipient will provide the CAM and any reviewers designated by the CEC or the California Public Utilities Commission with access to review the Recipient's project-relevant pre-existing and independently funded intellectual property. If the property has been designated as confidential as specified in Section 18, the CEC 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 CEC and the California Public Utilities Commission will have reasonable access to the project-relevant pre-existing or independently funded property throughout the retention period.

**20. 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 CEC 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 CEC in the Scope of Work.

- 3) Nothing in this Agreement gives the Recipient any rights to “Confidential Information” and “Personal Information” as defined in Section 26, other than using Confidential Information and Personal Information for the limited purpose of performing Recipient’s work under this Agreement in accordance with Section 26.

## 1. Intellectual Property Licenses

- 1) Both the CEC 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) Under limited circumstances, both the CEC 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. **The intellectual property that may be licensed to load-serving entities is limited to analytical tools and models that can be used to inform distribution planning and decision-making that benefits electric ratepayers.**

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

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 CEC 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.
- 4) If any intellectual property that is subject to the licenses above has been designated as confidential as specified in Section 18, all license holders will only disclose the intellectual property under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508.

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 18.

## 2. Energy Commission's Rights to Inventions

**"Invention"** means intellectual property that is patentable.

### 1) March-In Rights

At the CEC's request, the Recipient will forfeit and assign to the CEC 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 CEC 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 CAM written notice of the issuance within three (3) months of the issuance date. The notice must include the patent title, issuance number, and a general description of the invention.

3) Legal Notice

The Recipient and all persons and/or entities obtaining an ownership interest in patentable 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-18-022. The Energy Commission has certain rights to this invention.”**

b. Access to and Preservation of Intellectual Property

1) Access to Intellectual Property

Upon the CAM’s request, the Recipient will provide the CAM and any individuals designated by the CEC 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.

c. 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 CEC 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.

## 21. 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, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors will pay the Energy Commission a royalty of one and one-half percent (1.5%) of the sales price of all sales for which the entity receives a payment, beginning on the Agreement's effective date and extending for ten (10) years from the Agreement's end date.
- b. The Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors will make payments in annual installments due on the first day of March in the calendar year immediately following the year during which the Recipient received any payment for sales.
- c. The Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors is not required to make a royalty payment for any calendar year in which payments for sales are less than \$1000. Total royalty payments will be limited to three (3) times the **total** amount of funds paid by the CEC under the Agreement (and not the amount of CEC funds received by the entity). For example, if the CEC has paid \$1 million total under the Agreement, but a Subrecipient has only received \$200,000 of the CEC funds and owes royalties, the royalty payments are capped at \$3 million, and not \$600,000.
- d. If intellectual property was developed in part with match funds during the Agreement term, the royalty payment owed by the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors will be reduced in accordance with the percentage of intellectual property development activities that were funded with match funds that the entity itself provided. For example, if 10% of the development activities were funded by the Recipient with match funds during the Agreement and the Recipient's payments for sales totaled \$100,000 in one year, the Recipient would owe the Energy Commission \$1,350 for the year (1.5% of \$100,000 = \$1,500; 10% of \$1,500 = \$150; \$1,500 - \$150 = \$1,350).

If the CEC is providing funds to the Recipient under this Agreement as a project match partner and CEC 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-CEC funds during the Agreement term. For example, if 80% of the development activities were funded with Recipient and/or third-party funds during the Agreement and payments for sales totaled \$100,000 in one year, the Recipient would owe the CEC \$300 for the year (1.5% of \$100,000 = \$1,500; 80% of \$1,500 = \$1,200; \$1,500 - \$1200 = \$300).

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

## 22. GENERAL PROVISIONS

a. Governing Law

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

b. Independent Capacity

In the performance of this Agreement, the Recipient and its agents, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors, and their respective employees will act in an independent capacity and not as officers, employees, or agents of the CEC or the State of California.

c. Assignment

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

d. Timeliness

Time is of the essence in this Agreement.

e. Severability

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

f. Waiver

No waiver of any breach of this Agreement constitutes waiver of any other breach. All 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 CEC 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, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors for patent, copyright, trademark, service mark, and/or trade secret infringement that could affect the CEC's rights.

2) The Recipient must provide the CAM with written notice of a planned change or reorganization of the type of business entity under which it does business. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. If the CEC does not seek to amend this Agreement or enter into a new agreement with the changed or new entity for any reason (including that the CEC is not satisfied that the new entity can perform in the same manner as the Recipient), it may terminate this Agreement as provided in the "Termination" section.

i. Access to Sites and Records

CEC 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)
- Termination (Section 16)
- Indemnification (Section 17)
- Pre-Existing and Independently Funded Intellectual Property (Section 19)
- Intellectual Property (Section 20)
- Royalty Payments to the Commission (Section 21)
- California Taxpayer Access to Publicly Funded Research Act (Section 24)



- Receipt of Confidential Information and Personal Information (Section 26)
- Change in Business (see this section)
- Access to Sites and Records (see this section)
- Venue (see this section)
- CEC as Third-Party Beneficiary (see this section)

I. Venue

Any court action to enforce any part of this Agreement shall be venued in Sacramento County.

m. CEC as Third-Party Beneficiary

The Recipient shall ensure that in all of its agreements with Subrecipients and in all Subrecipient agreements with Sub-Subrecipients (and so forth through every lower-tiered level of Sub-Subrecipients) that the CEC is specifically named as a third-party beneficiary to the agreement. In addition, the term shall state the entity agrees that if the CEC brings a court action, the entity agrees to venue in Sacramento County.

**23. CERTIFICATIONS AND COMPLIANCE**

a. Federal, State, and Local Laws

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

b. Nondiscrimination Statement of Compliance

During the performance of this Agreement, the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, or denial of family care leave. The Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors will ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4.1 of Title 2 of

the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full. The Recipient Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors shall give written notice of their obligations under this section to labor organizations with which they have a collective bargaining or other Agreement.

The Recipient will include the nondiscrimination and compliance provisions of this section in all agreements with Subrecipients, that perform work under this Agreement.

c. Drug-Free Workplace Certification

By signing this Agreement, the 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 CEC determines that any of the following has occurred: (1) the Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

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

- f. Air or Water Pollution Violation

Under state laws, the Recipient shall not be:

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

g. Americans With Disabilities Act

By signing this Agreement, the 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.

**24. CALIFORNIA TAXPAYER ACCESS TO PUBLICLY FUNDED RESEARCH ACT**

- a. As a condition to receiving funding under this Agreement, the Recipient agrees to fully comply with the California Taxpayer Access to Publicly Funded Research Act (California Government Code sections 13989 et seq., the “Act”) and provisions of this section, which apply to publications describing knowledge, an invention, or technology funded within the scope of this Agreement.
- b. For purposes of complying with the Act and this section of the Agreement, the following definitions shall apply.
- 1) “Peer-Reviewed Manuscript” means a manuscript after it has been peer reviewed and in the form in which it has been accepted for publication in a scientific journal.
  - 2) “Research Grant” in the Act and “this Agreement” in this section mean this Agreement.
  - 3) “State Agency” in the Act means the Energy Commission.
- c. The Recipient shall provide for free public access to any Peer-Reviewed Manuscript developed within the scope of this Agreement.
- d. The Recipient shall ensure that any publishing or copyright agreements concerning Peer-Reviewed Manuscripts:
- 1) Fully comply with California Government Code section 13989.6;
  - 2) Do not conflict with the Energy Commission’s rights under this Agreement;
  - 3) Secure for the Energy Commission the rights provided under this Agreement, including the rights to Intellectual Property as specified in Section 20; and
  - 4) Recognize the free public access to the Peer-Reviewed Manuscript.
- e. The Recipient shall report to the CEC the final disposition of any Peer-Reviewed Manuscript, including but not limited to if it was published; when it was published; where it was published; and, when the 12-month time

period expires, where the Peer-Reviewed Manuscript will be available for open access.

- f. Not later than 12 months after the official date of publication, or sooner if specified in the Schedule of Products, the Recipient shall make available to the CEC an electronic version of any Peer-Reviewed Manuscript that is developed within the scope of this Agreement.
- g. The Recipient shall make publicly accessible an electronic version of any Peer-Reviewed Manuscript that is developed within the scope of this Agreement, not later than 12 months after the official date of publication, on a repository approved in writing by the CEC, including but not limited to the University of California's eScholarship Repository at the California Digital Library; the California State University's ScholarWorks at the Systemwide Digital Library; or PubMed Central. The Recipient shall notify the CEC when the Peer-Reviewed Manuscript is available on an CEC-approved repository.
- h. If the Recipient is unable to ensure that its Peer-Reviewed Manuscript is accessible on an CEC-approved, publicly accessible repository, the Recipient may comply by providing the manuscript to the CEC not later than 12 months after the official date of publication.
- i. For any publications other than a Peer-Reviewed Manuscript, (herein referred to as "Other Publications") including scientific meeting abstracts, developed within the scope of this Agreement, the Recipient shall:
  - 1) Provide an electronic version of the Other Publications to the CEC not later than 12 months after the official date of publication.
  - 2) Ensure that any publishing or copyright agreements concerning Other Publications:
    - a. Do not conflict with the CEC's rights under this Agreement.
    - b. Secure for the CEC the rights provided under this Agreement, including the rights to Intellectual Property as specified in Section 20.
- j. The Act states that "Grantees are authorized to use grant money for publication costs, including fees charged by a publisher for color and page charges, or fees for digital distribution." Recipient agrees that for purposes of this Agreement, the Recipient is only authorized to use funds under this Agreement, including Matching funds, for these purposes **if the expenses are included in the Agreement's Budget and meet the other Agreement requirements for payment, including that the CEC will only reimburse the Recipient for expenditures incurred during the Agreement term. If these expenses are not included in the Budget, both parties must agree and amend the Budget to include such**

**expenditures before Recipient is authorized to use Agreement funds, either reimbursable expenses or match, for these purposes.**

- k. Should a conflict exist between the terms in this Section 24 and other terms of this Agreement, the terms in this section prevail.

## **25. COMMISSION REMEDIES FOR RECIPIENT'S NON-COMPLIANCE**

Without limiting any of its other remedies, the CEC may, for Recipient's noncompliance of any Agreement requirement, withhold future payments, demand and be entitled to repayment of past reimbursements, or suspend or terminate this Agreement. The tasks in the Scope of Work are non-severable, and completion of all of them is material to this Agreement. Thus, the Commission, without limiting its other remedies, is entitled to repayment of all funds paid to Recipient if the Recipient does not timely complete all tasks in the Scope of Work.

If over the course of performing under this Agreement, the CEC and the Recipient agree that a change is warranted to the Scope of Work, the parties can amend this Agreement.

## **26. RECEIPT OF CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION**

- a. For the purposes of this Section, "confidential information" refers to information the CEC has designated as confidential pursuant to Title 20 CCR Section 2505 et seq., information the CEC has otherwise deemed or stated to be confidential, and other information exempt from public disclosure under the provisions of the California Public Records Act or other applicable state or federal laws.
- b. For the purposes of this Section, "personal information" refers to information that meets the definition of "personal information" in California Civil Code section 1798.3(a) or one of the data elements set forth in California Civil Code section 1798.29(g)(1) or (g)(2). **Personal information is a type of confidential information and is therefore subject to all requirements for confidential information provided in this Agreement and applicable law. However, there are additional requirements specific to personal information.**
- c. For the purposes of this Section, "special terms for confidential information" refers to the CEC's special terms and conditions for the receipt of confidential information and personal information. The CEC's special terms for confidential information include, but are not limited to, having in place an Information Security Program Plan and obtaining nondisclosure agreements from all individuals who will be provided access to confidential information or personal information.
- d. If the Recipient will receive confidential information or personal information from the CEC or a third-party for the performance of this Agreement, the Recipient must first agree to and comply with the CEC's special terms for confidential information.

- e. If any other individual or entity participating in any way with this Agreement, including but not limited to subcontractors, subawardees, vendors, and other project partners, will receive confidential information or personal information from the CEC or a third-party for the performance of this Agreement, that individual or entity must first agree to and comply with the CEC's special terms for confidential information. The Recipient must flow-down the CEC's special terms for confidential information into each subcontract, subaward, vendor agreement, or other project partner agreement that will be provided access to confidential information or personal information before the individual or entity has access to any such information. Recipient must also require all individuals and entities to flow-down this Section to any lower tier subcontractors, subawardees, vendors, project partners, and other individual or entity participating in any way with this Agreement that will be provided access to Confidential Information or Personal Information before the individual or entity has access to any such information.
- f. If this Agreement does not include the CEC's special terms for confidential information and CEC determines the Recipient or any other individual or entity participating in any way with this Agreement will receive confidential information or personal information from the CEC or a third-party for the performance of this Agreement, the CEC reserves the option to amend this Agreement to add its special terms for confidential information.
- g. Except as provided in Title 20 CCR Sections 2506, 2507, and 2508, and the CEC's special terms for confidential information, Recipient or any other individual or entity participating in any way with this Agreement may not disclose any information provided to it by the CEC or a third party for the performance of this Agreement if the information has been designated as confidential or is the subject of a pending application for confidential designation.

## **27. DEFINITIONS**

- **Agreement** means this grant agreement executed between the CEC and the Recipient.
- **Agreement Term** means the length of this Agreement, as specified on the Agreement signature page (form CEC-146).
- **Budget Categories** means the following categories in Exhibit B, Budget: Direct Labor, Fringe Benefits, Travel, Equipment, Materials and Miscellaneous, Subrecipients and Vendors, and Indirect Costs and Profit. Budget Category means one of these Budget Categories.
- **CAM** means Commission Agreement Manager.
- **CEC** means California Energy Commission.

- **Data** means any recorded information that relates to the project funded by the Agreement, whether created or collected before or after the Agreement's effective date.
- **Effective Date** means the date on which this Agreement is signed by the last party required to sign, provided that signature occurs after the Agreement has been approved by the CEC at a business meeting or by the Executive Director or his/her designee.
- **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 CEC funds. The CEC may determine the normal useful life of the equipment.
- **Incurred Costs** means an expense for which the Recipient has become liable (legally obligated) to pay.
- **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, Subrecipients, any lower-tiered level of Sub-Subrecipients, Vendors, or a third party during or after the Agreement term without CEC or match funds; and (b) associated proprietary rights to these items that are obtained without CEC or match funds, such as patent and copyright.



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

- **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, Subrecipients, any lower-tiered level of Sub-Subrecipients, Vendors, or a third party for a project funded by the CEC. If this Agreement resulted from a solicitation, refer to the solicitation’s discussion of match funding for guidelines specific to the project.
- **Materials** means the substances used to construct, or as part of, a finished object, commodity, device, article, or product and that does not meet the definition of Equipment.
- **MTDC (Modified Total Direct Costs)** means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of which subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, rental costs, tuition remission, scholarships and fellowships, and the portion of each subaward in excess of \$25,000.
- **Ownership** means exclusive possession of all rights to property, including the right to use and transfer property.
- **Paid Costs** means an expense for which the Recipient has already made payment.

- **Pre-existing intellectual property** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, Vendors, or a third party owned or possessed prior to the effective date of this Agreement and that have not been developed, altered, or reduced to practice with CEC or match funds; and (b) associated proprietary rights to these items that are obtained without CEC or match funds, such as patent and copyright.
- **Product** means any tangible item specified for delivery to the CEC in the Scope of Work.
- **Project** means the entire effort undertaken and planned by the Recipient and consisting of the work funded by the CEC. The project may coincide with or extend beyond the Agreement term.
- **Project-relevant pre-existing intellectual property and project-relevant independently funded intellectual property** means 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.
- **Recipient** means the entity that executed this Agreement with the CEC.
- **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.
- **Subaward** for the Recipient means all agreements it has with Subrecipients and Vendors. For a Subrecipient, a Subaward means all agreements it has with Sub-Subrecipients and Vendors. For any lower-tiered level of Sub-Subrecipient, a Subaward means all agreements it has with its own Sub-Subrecipients and Vendors.
- **Subrecipient (formerly Subcontractor)** means a person or entity that receives grant funds directly from the Recipient and is entrusted by the Recipient to make decisions about how to conduct some of this Agreement's activities. A Subrecipients role involves discretion over grant activities and is not merely just selling goods or services.

- **Sub-Subrecipient** has the same meaning as a Subrecipient except that it receives grant funds from a Subrecipient or any lower tier level of a Sub-Subrecipient.
- **Unrelated Company** has the meaning set forth in section 7.g. of this Exhibit C.
- **Vendor** means a person or entity that sells goods or services to the Recipient, Subrecipient, or any lower-tiered level of Sub-Subrecipient, in exchange for some of the grant funds, and does not make decisions about how to perform the grant's activities. The Vendor's role is ministerial and does not involve discretion over this Agreement's activities.