

**EXHIBIT D**

**ELECTRIC PROGRAM INVESTMENT CHARGE (EPIC) SPECIAL  
CONTRACT TERMS AND CONDITIONS FOR THE CALIFORNIA  
SUSTAINABLE ENERGY ENTREPRENEUR DEVELOPMENT (CaISEED)  
INITIATIVE**

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| <b>ATTACHMENT 1 CONFIDENTIAL DELIVERABLES, PROJECT-RELEVANT PRE-EXISTING<br/>AND INDEPENDENTLY FUNDED INTELLECTUAL PROPERTY, CONTRACTOR-OWNED<br/>AND LICENSED INTELLECTUAL PROPERTY, AND SUBAWARDEE INTELLECTUAL<br/>PROPERTY .....</b> | <b>477</b>      |

# EXHIBIT D

## EPIC SPECIAL CONTRACT TERMS AND CONDITIONS

### 1. *Introduction*

This contract (Agreement) between the California Energy Commission (Energy Commission, or Commission) and the Contractor is funded by: (1) the Electric Program Investment Charge (EPIC), an electricity ratepayer surcharge authorized by the California Public Utilities Commission (CPUC); and (2) the Energy Resources Programs Account.

This Agreement includes: (1) the Agreement signature page (**form STD 213**); (2) the scope of work (**Exhibit A**); (3) the budget (**Exhibit B**); (4) the state general terms and conditions (**Exhibit C**); (5) these terms and conditions (**Exhibit D**); (6) any additional provisions that address the unique circumstances of the funded project (**Exhibit E**); (7) a contacts list (**Exhibit F**); (8) all attachments; and (9) all documents incorporated by reference.

All work and expenditure of funds (Commission-reimbursed and/or match share) must occur within the Agreement term specified on the STD 213 form.

The Contractor shall develop and implement the Sustainable Energy Entrepreneur Development (SEED) Initiative. The maximum Agreement amount is \$33,000,000, which consists of a maximum of \$9,000,000 for the Contractor's activities and a minimum of \$24,000,000 in grant awards (Subawards). The services being contracted for include awarding and managing the Subawards and providing technical consulting to the recipients of the Subawards (Subawardees). The Contractor's services to the Energy Commission are consulting services pursuant to Public Contract Code 10335.5 and are subject to DGS review under Public Contract Code Section 10295.

The Energy Commission is authorized to award grants under the EPIC Program enabling legislation, Public Resources Code Section 25711.5. The Contractor is a conduit of the grants that will be awarded to provide assistance to Subawardees, and the Subawards do not result in the performance of services by the Subawardee to the Energy Commission. The Energy Commission will not take title to equipment, copyrights, or patents acquired by the Subawardee; the Energy Commission does not have a statutory obligation to fund early stage energy technologies; and the performance under the Subaward is not controlled by the Energy Commission. The Subawardee is being provided assistance to carry out its own research project and is not providing services to the Energy Commission or Contractor. The Subaward directly benefits the Subawardee's research program. The products produced by the Subawardee are a by-product of the main purpose of the Subaward. The products are used to monitor the use of grant funds and do not result in a service to the Energy Commission or Contractor. The Subawards that are awarded to the Subawardees are grants exempt from DGS review under State Contract Manual 4.06.

### 2. *Documents Incorporated by Reference*

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

**Solicitation Documents (if applicable)**

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

**Department of General Services Terms and Conditions**

- c. Exhibit C, General Terms and Conditions (GTC 610)
- d. Contractor Certification Clauses (CCC 307), as incorporated by reference in Exhibit C (GTC 610), Section 11.

**CPUC Decision**

- e. Decision 13-11-025 (Decision Addressing Applications of the California Energy Commission, Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company for Approval of their Triennial Investment Plans for the Electric Program Investment Charge Program for the Years 2012 through 2014) <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M081/K773/81773445.PDF>
- f. Decision 15-04-020 (Decision Addressing Applications of the California Energy Commission, Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company for Approval of their Triennial Investment Plans for the Electric Program Investment Charge Program for the Years 2015 through 2017) <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M151/K183/151183650.PDF>

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

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

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

- h. 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)

**Federal Audit Requirements**

- i. 2 CFR Part 200, Subpart F (Sections 200.500 et seq.): Audits of States, Local Governments, and Non-Profit Organizations

**General Laws**

- j. Any federal, state, or local laws or regulations applicable to the project that are not expressly listed in this Agreement
- k. 10 CFR Part 600: U.S. Department of Energy Financial Assistance Regulations

**3. Standard of Performance**

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

The Contractor and its subcontractors shall bear any costs that result from failure to meet this standard, including the cost of re-performance of work that was not performed to the Commission Agreement Manager's reasonable satisfaction. Nothing contained in this section limits any of the rights or remedies available to the Energy Commission under law or at equity. The following provisions apply if the Commission Agreement Manager requires the re-performance of work:

- a. The Contractor and/or subcontractor shall bear the expense of re-performing any work that was not performed to the Commission Agreement Manager's reasonable satisfaction. The work must be completed within the original timeframe identified in the project schedule, unless the Commission Agreement Manager determines that re-performance is not possible within the timeframe. In this event, the Commission Agreement Manager will provide a new schedule for re-performance.
- b. The Contractor and/or subcontractor shall work any overtime required to meet the task deadline at no additional cost to the Energy Commission.

If the Contractor and/or subcontractor does not perform work to the Commission Agreement Manager's reasonable satisfaction but the Commission Agreement Manager does not require the re-performance of the work, the Commission Agreement Manager and Contractor Project Manager will negotiate a reasonable settlement for satisfactory services rendered. No previous payment will be considered a waiver of the Energy Commission's right to reimbursement.

#### **4. *Due Diligence***

The Contractor shall take timely action to move this project to completion. The Commission Agreement Manager will periodically evaluate the Schedule of Products and Due Dates for completion of Scope of Work tasks. If the Commission Agreement Manager determines that: (1) the Contractor has not been diligent in performing or completing the tasks in the Scope of Work; or (2) the time remaining in this Agreement is insufficient to complete all project tasks by the Agreement end date, the Commission Agreement Manager may recommend that this Agreement be terminated, and the Commission may terminate this Agreement without prejudice to any of the Commission's other remedies.

#### **5. *Performance Evaluation***

In accordance with California Public Contract Code Sections 10367 through 10370, the Energy Commission will prepare a performance evaluation upon the completion of this Agreement if it is a consulting services contract that totals \$5,000 or more. "Consulting services contract" is defined in California Public Contract Code Section 10335.5.

If the Energy Commission files an unsatisfactory evaluation with the Department of General Services (DGS), it will notify and send a copy of the evaluation to the Contractor within fifteen (15) days. The Contractor will have thirty (30) days to prepare and send a statement to the Energy Commission and DGS defending its performance. The Contractor's statement will be filed with the evaluation in the Energy Commission's contract file and with DGS for thirty-six (36) months.

In accordance with Public Contract Code Section 10370, neither the evaluation nor any Contractor statement will be a public record.

## 6. **Deliverables and Products**

- a. **“Deliverables”** are any tangible item specified for delivery to the Energy Commission by the Contractor in the Scope of Work, such as reports and summaries.
- The Contractor shall submit all deliverables identified in the Scope of Work to the Commission Agreement Manager, in the manner and form specified in the Scope of Work.
  - The Contractor shall also submit all deliverables prepared during the invoicing period to the Accounting Office along with the invoice, as specified in subsection (c) of Section 9 (Payment of Funds).

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

**“Products”** are any tangible item specified for delivery to the Contractor by the Subawardee in the Subaward, such as reports and summaries.

- The Contractor shall submit all products identified in the Subaward to the Commission Agreement Manager, in the same manner and form specified in the Subaward.
- The Contractor shall also submit all products prepared by the Subawardee during the invoicing period to the Accounting Office along with the invoice, as specified in subsection (c) of Section 9 (Payment of Funds).

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

- b. Confidential Deliverables and Products

Please see Section 22 (Confidentiality) for instructions regarding confidential deliverables and products.

- c. Rights in Deliverables and Products

The Energy Commission owns all deliverables identified in the Scope of Work and all Contractor Intellectual Property developed under this Agreement, unless otherwise specified in Attachment 1, Section 4 of this Exhibit. Please see Section 24 (Intellectual Property).

The Contractor shall include terms in its agreements with Subawardees to ensure that the Energy Commission owns all products identified in the Subaward, with the exception of products that fall within the definition of "Subawardee Intellectual Property." As between the Energy Commission, Contractor, and Subawardee, the Subawardee owns all Subawardee Intellectual Property developed under the Subaward (please see Section 24 (Intellectual Property)), and the Subawardee 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 "Subawardee Intellectual Property."

d. Failure to Submit Deliverables and Products

Failure to submit a deliverable required in the Scope of Work or a product required in the Subaward will be considered material noncompliance with the Agreement terms, unless the Commission Agreement Manager waives the failure in writing. Noncompliance allows the Energy Commission to take any actions, seek any remedies, or exercise any rights available to it, such as the withholding of future payments or awards, or the suspension or termination of the Agreement.

e. Final Report and Payment

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

f. Legal Statements on Deliverables and Products

- 1) All documents that result from work funded by this Agreement and are released to the public shall 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. The Energy Commission, the State of California, its employees, contractors, subcontractors, and subawardees make no warranty, express or implied, and assume no legal liability for the information in this document; nor does any party represent that the use of this information will not infringe upon privately owned rights. This 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 Contractor and Subawardee shall apply copyright notices to all documents prepared for this Agreement that are released to the public (including reports, articles submitted for publication, and all reprints) using the following form or any other form that may be reasonably specified by the Energy Commission.

**"©[Year of first publication of deliverable] [the Copyright Holder's name]. All Rights Reserved."**

## 7. **Amendments**

### a. Procedure for Requesting Changes

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

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

### b. Approval of Changes

Certain changes to the Agreement (e.g., changes that increase the Agreement amount or substitute one subcontractor for another) must be approved at a Commission business meeting or by the Executive Director (or his/her designee). All changes must be in writing. Changes not needing approval at a Commission business meeting will be documented in an amendment signed by both parties (electronic signatures are acceptable).

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

### c. Personnel or Subcontractor Changes

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

#### 1) Replacement of Key Personnel, Subcontractors, and Vendors

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

#### 2) Replacement of a Disabled Veteran Business Enterprise Subcontractor

Please see Section 11 (Disabled Veteran Business Enterprise Requirements)

#### 3) Addition of Subcontractors

In order to add subcontractors to Exhibit B, the Commission Agreement Manager must submit a "Subcontractor Addition" form (CEC-97) to the Commission Agreement Officer. The form identifies the new subcontractor, bidding method used (competitive or non-competitive), and the tasks the new subcontractor will perform. Please see Section 8 (Contracting and Procurement Procedures) for additional requirements.

#### 4) Assignment of New Personnel to an Existing Job Classification

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

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

Please see Section 8 (Contracting and Procurement Procedures) for additional requirements.

- 5) Promotion of Existing Personnel to an Existing Job Classification  
Contractor or subcontractor personnel that are identified in Exhibit B may be assigned to a higher-paying job classification identified in Exhibit B. If the Contractor performs any work under the new rate prior to the effective date of the amendment documenting the change, the Contractor will bear the expense of the difference between the new and old rates.
- 6) Addition of Job Classifications and Changes in Hours
- 7) Increased Direct Operating Expenses and Rates that Exceed the Expenses and Rates Identified in Exhibit B
- 8) Any changes in Subawards approved by the Energy Commission.

## **8. Contracting and Procurement Procedures**

This section provides general requirements for all agreements entered into between the Contractor and third parties (e.g., subcontractors and Subawardees) for the performance of this Agreement or any portion thereof.

- a. Contractor's Obligations to Subcontractors
  - 1) The Contractor is responsible for handling all contractual and administrative issues arising out of or related to any subcontracts it enters into for the performance of this Agreement.
  - 2) Nothing contained in this Agreement or otherwise creates any contractual relation between the Commission and any subcontractors, and no subcontract may relieve the Contractor of its responsibilities under this Agreement. The Contractor agrees to be as fully responsible to the Commission for the acts and omissions of its subcontractors or persons directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor.  
  
The Contractor's obligation to pay its subcontractors is an independent obligation from the Commission's obligation to make payments to the Contractor. As a result, the Commission has no obligation to pay or enforce the payment of any funds to any subcontractor.
  - 3) The Contractor is responsible for establishing and maintaining contractual agreements with and reimbursing each subcontractor for work performed in accordance with the terms of this Agreement.



- 4) The Contractor shall be responsible for all work performed by its subcontractors under this Agreement. This includes, but is not limited to:
  - Overseeing the subcontractor's work;
  - Ensuring that the subcontractor timely and diligently complete all work in a satisfactory, workmanlike manner;
  - Ensuring that all subcontractor costs submitted to the State for reimbursement are reasonable, allowable costs, and that no unallowable costs are submitted to the State for reimbursement.
- b. Contractor's Obligations to Subawardees
  - 1) The Contractor is responsible for handling all contractual and administrative issues arising out of or related to any Subawards it enters into under this Agreement.
  - 2) Nothing contained in this Agreement or otherwise creates any contractual relation between the Commission and any Subawardee, and no Subaward may relieve the Contractor of its responsibilities under this Agreement. The Contractor agrees to be as fully responsible to the Commission for the acts and omissions of Subawardees or persons directly or indirectly employed by any of the Subawardees as it is for the acts and omissions of persons directly employed by the Contractor.

The Contractor's obligation to pay its Subawardee is an independent obligation from the Commission's obligation to make payments to the Contractor. As a result, the Commission has no obligation to pay or enforce the payment of grant funds to any Subawardee.
  - 3) The Contractor is responsible for maintaining Subawards with and reimbursing each Subawardee for work performed in accordance with the terms of the Subaward.
  - 4) The Contractor is responsible for all work performed by Subawardees under this Agreement. This includes, but is not limited to:
    - Overseeing the Subawardee's work;
    - Ensuring that the Subawardee timely and diligently complete all work in a satisfactory, workmanlike manner;
    - Ensuring that all Subawardee costs **for subawards over \$150,000** submitted to the State for reimbursement are reasonable, allowable costs, and that no unallowable costs are submitted to the State for reimbursement.
    - **Ensuring that all Subawardee costs for subawards of \$150,000 or less have met the applicable milestone according to the milestone budget prior to payment and costs are reasonable and allowable.**
- c. Process for Adding Personnel and Subcontractors
  - 1) Prior to adding personnel or subcontractors to the Agreement, the Contractor will take the following actions:

- Offer the work to qualified personnel or subcontractors listed in the Agreement.
  - If all qualified personnel or subcontractors listed in the Agreement decline the work, provide the Commission Agreement Manager with documentation from the personnel or subcontractors that were offered and declined the work.
  - Request approval of the change by the Commission Agreement Manager, in accordance with Section 7(c).
- 2) The Contractor will use one of the following bidding procedures to select subcontractors that will be added to the Agreement:
- A competitive bid process with written evaluation criteria, which involves obtaining three or more bids and advertising the work to a suitable pool of subcontractors. Potential advertising sources include the California Contracts Register, the Contractor’s mailing lists, mass media, professional papers or journals, websites, and telephone and email solicitations.
  - A non-competitive bid process with a specific subcontractor.
- 3) In order to add subcontractors to Exhibit B, the Commission Agreement Manager must submit a “Subcontractor Addition” form (CEC-97) to the Commission Agreement Officer. The form identifies the new subcontractor, bidding method used (competitive or non-competitive), and the tasks the new subcontractor will perform.
- d. Process for Entering Into Subawards
- 1) As part of the work performed in accordance with the terms of this Agreement, the Contractor shall enter into Subawards to award Series A and Series B SEED grant funds pursuant to the Scope of Work.
  - 2) The Contractor shall use a competitive bid process with written evaluation criteria.
  - 3) Prior to entering into a Subaward, the Contractor shall do the following:
    - Recommend projects to the Energy Commission for grant funding with a recommendations package in accordance with Task 4 in Exhibit A, Scope of Work, and any additional information as requested by the CAM.
    - Receive written approval from the Energy Commission to enter into the Subaward.
  - 4) Subawardees may not be changed or substituted.
- e. Flow-Down Provisions
- Subcontracts funded in whole or in part by this Agreement shall include language conforming to the provisions below, unless the subcontracts are entered into with the University of California (UC) or the U.S. Department of Energy (DOE) national laboratories. The Contractor and its subcontractors may use the terms and conditions negotiated by the Energy Commission with UC for its subcontracts with UC.

In subcontracts with the Lawrence Livermore National Laboratory, Lawrence Berkeley National Laboratory, Sandia National Laboratories, the Contractor and its subcontractors may use the terms and conditions negotiated with the California Department of General Services for these laboratories. For subcontracts to all other DOE national laboratories, the Contractor and its subcontractors may use the terms and conditions negotiated by the Energy Commission with the Department of Energy. Please contact the Commission Agreement Officer for these terms.

- Standard of Performance (Section 3)
- Legal Statements on Deliverables (included in Section 6, "Deliverables")
- Travel and Per Diem (Section 10)
- Prevailing Wage (Section 12)
- Recordkeeping, Cost Accounting, and Auditing (Section 13)
- Equipment (Section 15)
- Conflicts of Interest (Section 16)
- Indemnification (Section 21)
- Confidentiality (Section 22)
- Pre-Existing and Independently Funded Intellectual Property (Section 23)
- Intellectual Property (Section 24)
- Royalty Payments to the Commission (Section 25)
- Access to Sites and Records (included in Section 26, "General Provisions")
- Nondiscrimination (included in Section 27, "Certifications and Compliance")
- Survival of the following sections:
  - Equipment (Section 15)
  - Recordkeeping, Cost Accounting, and Auditing (Section 13)
  - Indemnification (Section 21)
  - Pre-Existing and Independently Funded Intellectual Property (Section 22)
  - Intellectual Property (Section 24)
  - Royalty Payments to the Commission (Section 25)
  - Access to Sites and Records (included in Section 26, "General Provisions")

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

- A clear and accurate description of the material, deliverables, 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 Contractor, 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 obtaining the advance written consent of the Commission Agreement Manager and following the bidding procedures for selecting subcontractors described in subsection (b) above.

Subawards funded in whole or in part by this Agreement shall include language conforming to the provisions below:

- Standard of Performance (Section 3)
- Legal Statements on Deliverables (included in Section 6, “Deliverables”)
- Travel and Per Diem (Section 10)
- Prevailing Wage (Section 12)
- Recordkeeping, Cost Accounting, and Auditing (Section 13)
- Indemnification (Section 21)
- Confidentiality (Section 22)
- Pre-Existing and Independently Funded Intellectual Property (Section 23)
- Intellectual Property (Section 24)
- Royalty Payments to the Commission (Section 25)
- Access to Sites and Records (included in Section 26, “General Provisions”)
- Nondiscrimination (included in Section 27, “Certifications and Compliance”)
- Survival of the following sections:
  - Recordkeeping, Cost Accounting, and Auditing (Section 13)
  - Indemnification (Section 21)
  - Pre-Existing and Independently Funded Intellectual Property (Section 23)
  - Intellectual Property (Section 24)
  - Royalty Payments to the Commission (Section 25)
  - Access to Sites and Records (included in Section 26, “General Provisions”)

Subawards funded in whole or in part by this Agreement shall also include the following:

- A clear and accurate description of the material, deliverables, or services to be procured.
- **A detailed budget and timeline for subawards over \$150,000; a milestone budget and timeline for subawards of \$150,000 or less.**
- Provisions that allow for administrative, contractual, or legal remedies in instances where Subawardees breach Subaward terms, in addition to sanctions and penalties as may be appropriate.
- Provisions for termination by the Contractor, including termination procedures and the basis for settlement (see Section 20 (Termination of Subawards) for additional requirements).
- A statement that further assignments will not be made to any subsequent tier subcontractor without obtaining the advance written consent of the Contractor.

f. Audits

All subcontracts and Subawards entered into for the performance of this Agreement are subject to examination and audit by the Energy Commission and/or Bureau of State Audits for a period of three (3) years after payment of the Contractor's final invoice under this Agreement. The Energy Commission may audit subcontracts and Subawards that are relevant to the Contractor's royalty payment obligations or the Subawardee's royalty payments (see the "Royalty Payments to the Commission" section) for a period of ten (10) years after the Agreement's end date.

g. Copies of Subcontracts and Subawards

The Contractor shall provide a copy of its subcontracts and Subawards upon request by the Energy Commission.

h. Conflicting Subcontract Terms

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

i. Conflicting Subaward Terms

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

j. Notice of Termination

The Contractor shall provide written notification to the Commission Agreement Manager and Commission Agreement Officer of the termination of any subcontract or lower tier subcontract with a subcontractor identified in the Agreement, immediately upon termination of the subcontract. The Contractor shall not terminate any Subaward without prior written approval by the Commission (see Section 20 (Termination of Subawards)).

k. Penalties for Noncompliance

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

## 9. **Payment of Funds**

The Energy Commission agrees to reimburse the Contractor in arrears for actual allowable expenditures incurred in accordance with this Agreement, including the budget. The rates in the budget are caps, or the maximum amount allowed to be billed. All work and expenditure of funds (Commission-reimbursed and/or match share) must occur within the Agreement term specified on the Agreement signature page (form STD 213).

### a. **Conditions for Payment**

- 1) **Actual, allowable expenses:** The Contractor may only bill for expenses incurred at its actual direct labor, fringe benefit, and indirect rates, not to exceed the maximum rates specified in the budget. **For subawards of \$150,000 or less, the Contractor may bill for labor expenses incurred under the milestone payment basis.** See subsection (b) for a discussion of allowable and unallowable costs.
- 2) **Advance payment:** No payment will be made in advance of services rendered or expenses incurred, unless prior written approval has been obtained by the Contracts, Grants, and Loans Office, which may impose conditions on such payments. In the absence of this approval, payments will be made on a reimbursement basis for the Contractor's expenditures (i.e., after the Contractor has paid for a service, deliverable, supplies, or other approved budget item).
- 3) **Frequency of payment requests:** Unless otherwise specified in the Agreement, the Contractor may request payment from the Energy Commission at any time during the Agreement term. However, it is preferred that payment requests be submitted with the progress reports.
- 4) **Invoice Approval and Disputes:** Each request for payment is subject to the Commission Agreement Manager's approval. Payments will be made to the Contractor for undisputed invoices. An undisputed invoice is an invoice submitted by the Contractor for work performed, for which project expenditures, products and deliverables meet all Agreement conditions, and for which additional evidence is not required to determine its validity.  

The invoice will be disputed if all deliverables and products due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. If the invoice is disputed, the Contractor will be notified via a Dispute Notification Form within fifteen (15) working days of the Commission Agreement Manager's receipt of the invoice.
- 5) **Contractor's headquarters:** For purposes of payment, the Contractor's headquarters is the location of the Contractor's office where the majority of its employees assigned responsibilities for this Agreement are permanently assigned.
- 6) **Deadlines:** The final invoice must be received by the Energy Commission no later than thirty (30) calendar days after the Agreement end date.
- 7) **Prompt Payment:** The Energy Commission will make payments in accordance with the Prompt Payment Act (California Government Code Section 927 et seq.), which requires payment of properly submitted, undisputed invoices within 45 days of receipt or the automatic payment of late penalties.

- 8) **Expiration of Fiscal Year Funding:** If a funding source for this Agreement expires prior to the end date of the Agreement, the Contractor must submit all deliverables, products, and invoices to the Commission at least two months prior to the expiration date in order to receive payment from the source. For example, if the funding source expires on June 30, 2020, the Contractor must submit all deliverables, products, and invoices to the Energy Commission by April 30, 2020 to receive payment from the source.
- 9) **Multiple Non-Energy Commission Funding Sources:** No payment will be made for costs identified in Contractor invoices that have 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.
- 10) **Reduced funding:** If the Energy Commission does not receive sufficient funds under the Budget Act or from the investor-owned utility administrators of the EPIC program to fully fund the work identified in Exhibit A (Scope of Work), the following will occur:
  - a) If the Energy Commission has received a reduced amount of funds for the work, it may: (1) offer an Agreement amendment to the Contractor to reflect the reduced amount; or (2) cancel this Agreement (with no liability occurring to the State).
  - b) If the Energy Commission has received no funds for the work identified in Exhibit A: (1) this Agreement will be of no force and effect; (2) the State will have no obligation to pay any funds to the Contractor; and (3) the Contractor will have no obligation to perform any work under this Agreement.

b. Allowability of Costs

1) Allowable Costs

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

2) Unallowable Costs

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

- a) Contractor profit, fees, or mark-ups on any subcontracted budget item (including subcontracts of any tier). Subcontractors that receive funding under this Agreement may not charge profit for their subcontractors' costs. Subawardees that receive funding under this Agreement may not charge profit or mark-ups.
  - b) Contingency costs;
  - c) Imputed costs (e.g., cost of money);
  - d) Fines and penalties;
  - e) Losses;
  - f) Excess profit taxes; and
  - g) Unapproved, increased rates and fees for this Agreement
  - h) Subawardee reimbursable and match expenses incurred prior to Commission approval of the Subaward.
- 3) Except as provided for in this Agreement or applicable California law or regulations, the Contractor 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.

c. Payment Request Format

Each request for payment must consist of, but not be limited to, the following:

- 1) An invoice that includes a list of actual expenses incurred during the billing period, up to any budget rate caps. The Contractor may only bill the lower of actual rates or budget rate caps. Backup documentation is required at the time of invoice submittal. Unless otherwise specified in Exhibit B or the invoice template, the invoice must include the following:
  - a) Agreement number (and work authorization number, if applicable);
  - b) Date prepared;
  - c) Contractor's Federal tax ID number;
  - d) Billing period;
  - e) Contractor's actual labor expenditures, including hourly unloaded labor rates by individual name and classification, hours worked, and benefits (fully loaded rates may only be used if they are included in the Agreement budget);
  - f) Non-labor expenses, including fringe benefits, indirect overhead, and general/administrative expenses;
  - g) Operating expenses, including travel, equipment, materials, and other;
  - h) By budget line item (cost component) category, the budgeted amount, amount billed to date, currently billed amount, balance of funds;
  - i) Match fund expenditures (if applicable);
  - j) Receipts for travel (including departure and return times), equipment, materials, and miscellaneous; **and**



- k) Subcontractor/~~Subawardee~~ invoices that include all items above, for correspondence with the budget (e.g., if the budget lists hourly labor rates, the subcontractor's invoice should include hourly labor rates);
  - l) **Subawardee invoices for subawards over \$150,000 that include all items above, for correspondence with the budget (e.g., if the budget lists hourly labor rates, the subawardee's invoice should include hourly labor rates); and**
  - m) **Subawardee invoices for subawards of \$150,000 or less only require items a) through d) and items g) through j), along with documentation of the milestones achieved to account for labor expenditures.**
- 2) A progress report that documents evidence of progress, as described in the Scope of Work.
  - 3) Deliverables prepared by the Contractor during the invoicing period, as described in the Scope of Work.
  - 4) Products prepared by the Subawardee during the invoicing period, as described in the Subaward.

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

The Contractor must submit all invoices to the following address:

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

d. Certification

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

***I certify under penalty of perjury that the documents included in this request for payment are true and correct to the best of my knowledge and I, as an agent of [Company Name] have authority to submit this request. I certify that reimbursement for these costs has not and will not be received from any other sources, including but not limited to a government entity contract, subcontract, Subaward, or other procurement method. For work covered by this invoice, the Contractor and subcontractors have complied with the Agreement terms and the Subawardees have complied with the Subaward terms. Additionally, either proof has been provided that the work covered by the invoice is not a public work or prevailing wages were paid to eligible workers who provided labor for the work covered by this invoice, and the Contractor, subcontractor, and Subawardees have complied with California public works and prevailing wage laws.***

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

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

- The Contractor may bill at the federal provisional rate but must adjust annually to reflect its actual final rates for the year in accordance with the Labor, Fringe, and Indirect Invoicing Instructions contained in the budget (Exhibit B, Attachment 1).
- The cost pools used to develop the federal rates must be allocable to the Agreement, and the rates must be representative of the portion of costs benefiting the Agreement. For example, if the federal rate is for manufacturing overhead at the Contractor's manufacturing facility and the Agreement is for research and development at the Contractor's research facility, the federal indirect overhead rate would not be applicable to the Agreement.
- The federal rate must be adjusted to exclude any costs that are specifically prohibited in the Agreement.
- The Contractor may only bill up to the Agreement budget rate caps, unless and until an amendment to the budget is approved.

f. Retention

It is the Commission's policy to retain ten percent (10%) of any payment request or of the total Commission award at the end of the project. After the project is complete, the Contractor must submit a completed payment request form requesting release of the retention. The Commission Agreement Manager will review the project file and authorize release of the retention when satisfied that the terms of the Agreement have been fulfilled.

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). But, the Commission will not release retention for agreement tasks for administration or management of the Agreement and/or subcontractors. The tasks for which retention may be released prior to the end of the Agreement must be identified in Exhibit B (budget). No retention will be withheld for payment requests that will reimburse Subawardees since the payments to Subawardees are for grants and not for services rendered to the State.

**10. Travel and Per Diem**

- a. Travel not listed in the Agreement or work authorization budget requires prior written authorization from the Commission Agreement Manager and Commission Agreement Officer.
- b. No reimbursement for food or beverages will be made other than for allowable per diem charges.

- c. The Contractor will be reimbursed for authorized travel and per diem up to, but not to exceed, the rates allowed nonrepresented state employees. Current allowable travel reimbursement rates can be obtained from the Commission's web site at [http://www.energy.ca.gov/contracts/TRAVEL\\_PER\\_DIEM.PDF](http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF).

Travel expense claims must detail expenses using the allowable rates, and the Contractor must sign and date each travel expense claim before submitting it to the Commission for payment. Expenses must be listed by trip, including dates and times of departure and return. Travel expense claims supporting receipts and expense documentation must be attached to the Contractor's Payment Request. A vehicle license number is required when claiming mileage, parking, or toll charges. Questions regarding allowable travel expenses or per diem should be addressed to the Commission Agreement Manager.

- d. The Contractor shall ensure that its Subcontractors and Subawardees also comply with the travel and per diem requirements above, including by ensuring all agreements with its Subcontractors and Subawardees contain the above terms regarding reimbursement.

#### **11. Disabled Veteran Business Enterprise (DVBE) Requirements**

The following terms apply to the Contractor and its Subcontractors but not to Subawards because Subawards are grants and not state service contracts, and the DVBE requirements do not apply to state grants.

- a. Identification and Use of DVBEs

**"Disabled Veteran Business Enterprise"** means a business that is certified by the California Department of General Services as meeting the requirements in California Military and Veterans Code Section 999(b)(7).

If the Contractor made a commitment to achieve DVBE participation for this Agreement, it shall identify each DVBE that will perform work under this Agreement in Exhibit B (budget). As the award of this Agreement is based in part on the Contractor's DVBE commitment, the Contractor shall use each identified DVBE for work under this Agreement.

- b. Reporting

The Contractor shall certify the following in a report to the Commission Agreement Officer, within sixty (60) days of receiving final payment under the Agreement:

- 1) The total amount the Contractor received under the Agreement for itself and its Subcontractors but not for Subawards;
- 2) The name and address of the DVBE(s) that participated in the performance of the Agreement;
- 3) The amount that each DVBE received from the Contractor;
- 4) That all payments under the Agreement have been made to the DVBEs; and
- 5) The actual percentage of DVBE participation that was achieved.

In accordance with California Military and Veterans Code Section 999.5(d), a person or entity that knowingly provides false information will be subject to a civil penalty for each violation.

c. Replacement of a DVBE Subcontractor

In accordance with California Military and Veterans Code Section 999.5(e), a DVBE subcontractor may only be replaced by another DVBE subcontractor, and must be approved by the California Department of General Services. If the Contractor believes that an identified DVBE must be replaced, it must inform the Commission Agreement Manager and Commission Agreement Officer in writing of the reason for the DVBE replacement.

If the DVBE is replaced, the Contractor will complete revised certification forms (provided by the Commission Agreement Officer) that identify the new DVBE, and the Agreement will be amended as specified in Section 7.

d. Grounds for Termination, Damages, and Penalties

Without limiting the Commission's available remedies, the Contractor's failure to adhere to its committed DVBE participation level or to the requirements of this section may be cause for termination of the Agreement, recovery of damages, and/or penalties as outlined in California Military and Veterans Code Section 999.9 and Public Contract Code Section 10115.10.

## 12. **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 Contractor 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 Agreement, the Contractor 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 Agreement, the Contractor must either:

- 1) Timely obtain a legally binding determination from DIR or a court of competent jurisdiction before work begins on the project that the proposed project is not a public work; or
- 2) Assume that the project is a public work and ensure that:
  - Prevailing wages are paid unless and until DIR or a court of competent jurisdiction determines that the project is not a public work;

- The project budget for labor reflects these prevailing wage requirements; and
- The project complies with all other requirements of prevailing wage law, including but not limited to keeping accurate payroll records and complying with all working hour requirements and apprenticeship obligations.

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

c. Subcontractors/Subawardees and Flow-down Requirements

The Contractor shall ensure that its subcontractors and Subawardees also comply with the public works/prevailing wage requirements above. The Contractor will ensure that all agreements with its subcontractors and Subawardees under this Agreement contain terms regarding payment of prevailing wages on public works projects that reflect the terms of this Section 12, including the indemnification in part d. The Contractor is responsible for any failure of its subcontractors or Subawardees to comply with California prevailing wage and public works laws.

d. Indemnification and Breach

Any failure of the Contractor, its subcontractors, or Subawardees to comply with the requirements in this Section 12 will constitute breach of this Agreement, which allows the Commission to take any actions, seek any remedies, or exercise any rights available to it, including excusing the Commission's performance of this Agreement at the Commission's option, and will be at the Contractor's sole risk. In such a case, the Commission may refuse payment to the Contractor of any amount under this Agreement and the Commission will be released, at its option, from any further performance of this Agreement or any portion thereof. The Contractor shall indemnify the Energy Commission and hold it harmless for any and all financial consequences arising out of or resulting from the failure of the Contractor, its subcontractors, or Subawardees to pay prevailing wages or to otherwise comply with the requirements of prevailing wage law.

e. Budget

The Contractor'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 Contractor may wish to contact the California Department of Industrial Relations (DIR) or a qualified labor attorney for guidance.

f. Covered Trades

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

g. Questions

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

h. Certification

The Contractor shall certify to the Energy Commission on each payment request form either that: (a) prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and the Contractor, subcontractors, and Subawardees 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 Contractor 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 Contractor will submit to the Energy Commission the above-described certificate signed by the Contractor and all contractors, subcontractors, and Subawardees performing public works activities on the project. Absent this certificate, the Contractor will have no right to any funds under this Agreement, and the Commission will be relieved of any obligation to pay any funds.

**13. Recordkeeping, Cost Accounting, and Auditing**

a. Cost Accounting

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

b. Retention of Records

The Contractor shall retain all project records (including financial records, progress reports, and payment requests) for a minimum of three (3) years after the final payment has been received, unless otherwise specified in the Agreement.

c. Accounting Procedures

The costs of the Contractor, subcontractors, and Subawardees **for awards over \$150,000** will be determined on the basis of their respective accounting system procedures and practices employed as of the effective date of this Agreement, provided that each uses generally accepted accounting principles and cost reimbursement practices. The Contractor'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 Contractor's accounting system must distinguish between direct and indirect costs, and Contractor and Subawardee 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.

**Subawardees for awards of \$150,000 or less are required to submit invoices based on a milestone payment basis. These Subawardees are not required to maintain cost accounting practices, but costs must be reasonable and allowable.**

d. Audit Rights

The Contractor shall 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, including costs claimed for Subawardees. The Energy Commission, another state agency, and/or a public accounting firm designated by the Energy Commission may audit the Contractor's accounting records at all reasonable times, with prior notice by the Energy Commission.

It is the intent of the parties that the audits will ordinarily be performed not more frequently than once every twelve (12) months during the performance of the work and once at any time within three (3) years after payment by the Energy Commission of the Contractor's final invoice. However, performance of any such interim audits by the Energy Commission does not preclude further audit. The Energy Commission may audit books, records, documents, and other evidence relevant to the Contractor's royalty payment obligations or Subawardee's royalty payment obligations (see Section 25 (Royalty Payments to the Commission)) for a period of ten (10) years after payment of the Contractor's final invoice.

The Contractor shall 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 Contractor will include a similar right of the state to audit records and interview staff in any subcontract or Subaward related to the performance of this Agreement.

**Audits of subawards of \$150,000 or less will take into account the payment of invoices based on milestone payment basis and audit for completion of milestones for labor expenditures rather than for full cost-based accounting. Costs must be reasonable and allowable.**

e. Refund to the Energy Commission

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

f. Audit Cost

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

g. Match or Cost Share

If the budget includes a match share requirement, the Contractor's commitment of resources, as described in this Agreement, is a required expenditure for receipt of Energy Commission funds. The funds will be released only if the required match percentages are expended. The Contractor shall 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.

**14. Permits and Clearances**

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

**15. Equipment**

a. Title and Disposition

The Energy Commission has title to equipment acquired by the Contractor and subcontractors in whole or in part with Energy Commission funds. The Contractor and subcontractors (and through terms the Contractor shall have in its subcontract agreements), may not sell, lease, or encumber the property (e.g., place a legal burden on the property such as a lien) without the Commission Agreement Manager's prior written approval.

Upon termination of the Agreement, the Energy Commission may:

- 1) Authorize the continued use of the equipment to further project goals; or
- 2) Request delivery of the equipment to the Energy Commission at the Commission's expense.

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

b. Financing Statement

The Commission Agreement Officer will file a Uniform Commercial Code (UCC.1) Financing Statement with the California Secretary of State's Office for equipment purchased by the Contractor with Agreement funds. Invoices for such equipment will not be processed until the statement has been filed.

c. Liability

The Contractor shall assume all risk for maintenance, repair, destruction, and damage to the equipment while it is in the Contractor's possession or is subject to its control. The Contractor is not required to repair or replace equipment that is intended as part of the project to undergo significant modification or testing to the point of damage or destruction.

d. Purchase of Equipment by Subawardee

As between the Energy Commission, Contractor, and Subawardees, legal title to equipment acquired by the Subawardee with grant funds shall vest in the Subawardee. With the exception of pre-existing UCC-1 blanket liens, the Subawardee shall not further encumber or sell the equipment except for the sole purpose of using the proceeds of such sale or encumbrance for the direct benefit of the Subaward funded by this Agreement. In such circumstance, the Subawardee



shall provide written notice to the Contractor of such proposed sale or encumbrance at least 30 days in advance of any sale or encumbrance, stating the purpose of the sale or encumbrance, and specifying how the proceeds of the sale or encumbrance will be used.

Contractor shall ensure that Subawards contain terms indicating that during the term of the Subaward, the Subawardee shall use the Equipment for the Subaward for which it was acquired. The Subawardee shall be solely responsible for the possession, use, storage, and maintenance of the Equipment, for maintaining appropriate insurance on the Equipment sufficient to cover its replacement value in case of loss, and for complying with any environmental laws applicable to the Equipment.

The Contractor shall not hold any interest in equipment acquired by the Subawardee for the purpose of the Subaward. The Contractor shall ensure all agreements with its Subawardees contain the above terms regarding equipment purchased by the Subawardee.

**16. Conflicts of Interest**

a. Potential or Actual Conflicts of Interest

The Contractor represents that it is familiar with California conflict of interest laws, and agrees to comply with those laws in performing this Agreement (e.g., Gov. Code § 81000 et seq., and Gov. Code § 1090 et seq.). The Contractor certifies that, as of the effective date of this Agreement, it was unaware of any facts constituting a conflict of interest. The Contractor shall avoid all conflicts of interest in performing this Agreement, including in selecting Subawards to recommend to the Energy Commission for funding.

The Contractor shall continuously review new and upcoming projects in which members of its team may be involved for potential conflicts of interest. The Contractor shall inform the Commission Agreement Manager as soon as a question arises about whether a conflict may exist. The Commission's Chief Counsel's Office and the Commission Agreement Manager will determine what constitutes a potential or actual conflict of interest. Without limiting any of its other available rights, remedies, or actions, the Energy Commission reserves the right to redirect work and funding if the Chief Counsel's Office determines that there is a potential or actual conflict of interest.

Contractors and all subcontractors involved in planning, developing, soliciting bids, scoring, negotiating, or executing an agreement with a subawardee pursuant to this contract shall not negotiate, make arrangements, or enter into any other agreement or working relationship with a subawardee in which the contractor or subcontractor receives payment from the subawardee until the subawardee's agreement under the CalSEED Program has ended.

If such an agreement or working relationship began prior to and exists at the start of the subawardee's agreement under the CalSEED Program, the Contractor or subcontractor shall complete the agreement or working relationship as soon as possible. And during the pendency of the pre-existing agreement or working relationship, the Contractor or subcontractor shall not score applications or participate in the creation of an agreement under the CalSEED Program with any applicant or subawardee with whom the pre-existing agreement or relationship exists.

In addition, a TAC member shall not score applications or participate in the creation of an agreement under the CalSEED Program with any applicant or subawardee with whom the TAC member has a pre-existing agreement or working relationship.

b. Appearances of Conflicts of Interest

The Contractor acknowledges that in governmental contracting even the appearance of a conflict of interest can be harmful to the interest of the State. Thus, the Contractor agrees to refrain from any practices, activities, or relationships that appear to conflict with the Contractor's obligations under this Agreement, unless the Contractor receives prior written approval of the Commission. In the event the Contractor is uncertain whether the appearance of a conflict of interest may exist, the Contractor shall submit to the Commission Agreement Manager a written description of the relevant details.

c. Rules Regarding Current and Former Energy Commission Employees

Please see the CONFLICT of INTEREST provision in the Contractor Certification Clauses (CCC 307) incorporated by reference into these terms from the Department of General Services' required terms (GTC 610), which are also incorporated by reference in Exhibit C.

d. Economic Interest Statement Requirement

The California Political Reform Act requires individuals holding positions designated within an agency's conflict of interest code to file a Statement of Economic Interests (Form 700) at certain times. The Energy Commission's conflict of interest code designates "consultants" among the positions that must file a Form 700 (see Title 20 California Code of Regulations §§2401 and 2402).

The Energy Commission considers all of the Contractor's and subcontractors' employees working on (providing labor) on Subtasks 1.5, Project Meetings and Briefings, Subtask 1.7, Annual Reports, Subtask 1.8, Final Report, Subtask 1.9, Final Meeting and Technical Tasks 2 through 7 to be "consultants" and requires them to file an original Form 700 with the Energy Commission. (See Government Code Sections 82019 and 87302). Employees solely working on Task 1, other than Subtasks 1.5, Project Meetings and Briefings, Subtask 1.7, Annual Reports, Subtask 1.8, Final Report and Subtask 1.9, Final Meeting do not have to fill out Form 700's unless directed to do so by the Energy Commission. The Energy Commission reserves the right to have anyone working under this Agreement fill out Form 700's.

Each of the Contractor's and subcontractors' employees performing work (labor) under the Agreement on Subtasks 1.5, Project Meetings and Briefings, Subtask 1.7, Annual Reports, Subtask 1.8, Final Report, Subtask 1.9, Final Meeting and Technical Tasks 2 through 7 or as directed by the Energy Commission must file a Form 700 within the required timeframes, which include the following:

- Assuming Office Statement. Must be filed within 30 days of beginning work under the Agreement. Beginning work means when the employee actually performs work under the Agreement; it does not mean the start date of the Agreement unless the employee starts work on the start date.
- Annual Statement. Must be filed annually, no later than April 1.
- Leaving Office Statement. Must be filed within 30 days of ceasing to perform work under the Agreement (e.g., removed as a subcontractor, completion of assigned tasks) or within 30 days after the Agreement ends.

**Please note that not filing the Form 700 when required can result in automatic daily fines and other consequences.**

Consultants for the Energy Commission must “disclose pursuant to the broadest disclosure category in the code” unless the Executive Director determines a lesser disclosure category applies (see 20 California Code of Regulations § 2402(a)). The Energy Commission’s broadest disclosure category is 1, which requires:

Designated positions assigned to this category must report all interest in real property, sources of income, including receipt of gifts, loans, and travel payments, and investments and business positions in business entities. (20 California Code of Regulations § 2402(b))

Upon request of the Contractor, the Energy Commission will determine whether a more narrow disclosure category is appropriate given the duties to be performed.

File all original Form 700's in person at, or by mail to, the following address (e-mails and faxes are not acceptable):

Energy Commission Filing Officer – Form 700 Filing  
Selection, Training & Equal Employment Opportunity Office  
1516 Ninth Street, MS-52  
Sacramento, CA 95814

e. Prohibition on Participating in Energy Commission Funding Opportunities

Under this Agreement, the Contractor and its subcontractors will assist the Energy Commission in developing competitive solicitations and scoring applications. Accordingly, the Contractor, subcontractors, and individuals identified as consultants are prohibited from participating and agree not to participate (e.g., as an applicant, subcontractor, or match-funding partner) in any Energy Commission solicitation or funding opportunity for which work is done under this Agreement.

In addition to being contractually bound by this provision, Contractor acknowledges and understands that because of its participation in this Agreement, the separate restrictions under Public Contract Code Section 10365.5 also prohibit it, and its subcontractors in certain circumstances, from performing related future work.

California Public Contract Code Section 10365.5 states: "no person, firm, or subsidiary thereof that has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, the procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract." "Consulting services contract" is defined in California Public Contract Code Section 10335.5.

This restriction does not apply to any person, firm, or subsidiary thereof that has been awarded a subcontract of a consulting services contract that amounts to no more than ten percent (10%) of the total monetary value of the consulting services contract.

- f. Contractor will flow-down these terms to ensure compliance from subcontractors.

## **17. Disputes**

In the event the Contractor has a dispute or grievance regarding this Agreement, the Contractor shall utilize the following dispute resolution procedures. The Contractor shall continue with its responsibilities under this Agreement during any dispute.

### Energy Commission Dispute Resolution Level 1

The Contractor shall first discuss the problem informally with the Commission Agreement Manager. If the problem cannot be resolved at this stage, the Contractor shall direct the grievance together with any evidence, in writing, to the Commission Agreement Officer. The Contractor's written grievance must state the issues in the dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Contractor shall bear the burden of establishing the factual, legal and equitable merit of its position. The Commission Agreement Officer and the Program Office Manager will make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. If the dispute is complex, the Commission Agreement Officer may for good cause extend his or her time for response, not to exceed an additional ten (10) working days. The Commission Agreement Officer shall respond in writing to the Contractor, indicating a decision supported by reasons. Should the Contractor disagree with the Commission Agreement Officer's decision, the Contractor may appeal to the second level.

### Energy Commission Dispute Resolution Level 2

If the Contractor is not satisfied with the decision at Level 1, the Contractor shall submit a letter to the Executive Director indicating why the Commission Agreement Officer's decision is incorrect or unacceptable. Contractor shall attach to it the Contractor's original statement of the dispute with supporting documents, along with a copy of the Commission Agreement Officer's response. This letter shall be sent to the Executive Director at the Energy Commission within ten (10) working days from receipt of the Commission Agreement Officer's decision. If the dispute is complex, the Executive Director or designee may for good cause extend the time for Contractor's response, not to exceed an additional ten (10) working days. A written

decision signed by the Executive Director or designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter. If the dispute is complex, the Executive Director or designee may for good cause extend the time for the Executive Director's response, not to exceed an additional ten (10) working days. The Executive Director or designee may in his or her sole discretion meet with one or more mutually-agreed representative(s) of the Contractor to review the issues. If the Executive Director decides to meet with the Contractor's representative(s), the parties shall mutually agree to extend the Executive Director's time to provide a written response pending completion of the discussions. Alternatively, the Executive Director may in his or her discretion exercise the option of referring Contractor's dispute to the Energy Commission at a publicly-scheduled business meeting.

### Energy Commission Dispute Resolution Level 3

Should the Contractor disagree with the Executive Director's decision, the Contractor may appeal to the Energy Commission at a publicly-scheduled business meeting. Contractor shall state in writing the issues in the dispute, the Contractor's position, the factual and legal authority for the Contractor's position, the remedy sought, and shall attach a legible copy of all documents submitted by both parties at the Level 1 and Level 2 stages. Contractor will be provided with the current procedures for placing the written appeal on an Energy Commission Business Meeting Agenda, and Contractor shall follow said procedures.

### **18. Stop Work**

The Commission Agreement Officer may, at any time by written notice to the Contractor, require the Contractor to stop all or any part of the work tasks in this Agreement. The Commission Agreement Officer may also, at any time by written notice to the Contractor, require the Contractor to stop all or any part of the Subawardee's work in the Subaward. Stop work orders may be issued for any reason including, but not limited to, the breach or apparent breach of any term of this Agreement, the project actually or potentially exceeding budget, failure of the Contractor upon request to account for the use or disposition of funds, actual or apparent failure of the Contractor to meet the standard of performance, accounting, billing and/or invoicing irregularities, out of scope work, delays in the Project Schedule, misrepresentations or any other factor that the Energy Commission considers in its discretion might negatively impact the public benefit to be gained from the project and/or the prudent expenditure of public funds.

- a. Compliance. Upon receipt of such stop work order, the Contractor shall immediately (1) cease incurring any project expenses for which it will seek reimbursement; (2) refrain from invoicing the Energy Commission for expenses incurred after the date of receipt of the stop work order; (3) take all other necessary steps to comply with the stop work order; and (4) use its best efforts to eliminate or minimize the incurrence of any and all further reimbursable costs allocable to the work stopped. Unless and until the Commission Agreement Officer lifts the stop work order in writing, the Contractor may not utilize Agreement funds for the payment of any work performed or expenses incurred after the date of receipt of the stop work order. The Contractor may use its own funds to continue the work under the Agreement, or if the Contractor has other legal sources of funding, it may

continue the work using such alternative funds, in which case the Contractor shall maintain complete and accurate documentation of the source of payment for all such work performed and/or expenses incurred after the date of the stop work order.

- b. **Equitable Adjustment.** If factually and legally justified, an equitable adjustment may be made by the Energy Commission in its discretion upon written request by the Contractor. The Contractor shall have the burden of proving its legal entitlement to, and the amount of, any requested equitable adjustment in its favor. An equitable adjustment in favor of the Contractor shall not be made if the stop work order is the primary result of the Contractor's breach of the Agreement or other fault on the part of Contractor. Such adjustment request must be made by the Contractor no later than thirty (30) days after the date of the stop work order. The Contractor shall not receive an equitable adjustment in its favor if the Contractor breached the Agreement or otherwise is at fault or was the cause of the requested equitable adjustment.
- c. **Canceling a Stop Work Order.** The Contractor may resume work and normal contract invoicing only upon receipt of written instructions from the Commission Agreement Officer lifting the stop work order.

**19. Termination of the Contract**

- a. Purpose

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

- b. Breach

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

c. For Cause

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

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

- Partial or complete loss of match funds;
- Reorganization to a business entity unsatisfactory to the Energy Commission;
- Retention or hiring of subcontractors, or replacement or addition of personnel, that fail to perform to the standards and requirements of this Agreement;
- The Contractor’s inability to pay its debts as they become due and/or the Contractor’s default of an obligation that impacts its ability to perform under this Agreement; or
- Significant change in state or Energy Commission policy such that the work or product being funded would not be supported by the Commission.

d. Without Cause

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

**20. Termination of Subawards**

The Commission retains the right to terminate Subawards under this Agreement. The Contractor shall terminate a Subaward only with prior written approval by the Commission Agreement Manager. The Contractor may request the Commission’s approval to terminate a Subaward by submitting a written request to the Commission Agreement Manager that describes why the Subaward should be terminated. If the Commission decides to terminate the Subaward, the Contractor shall terminate the Subaward according to Section 19 (Termination of the Contract), but as applied between the Contractor and Subawardee.

**21. Indemnification**

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

## **22. Confidentiality**

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

Prior to the effective date of this Agreement, the Contractor will identify all deliverables (or information contained within deliverables) that it considers to be confidential, in addition to the legal basis for confidentiality, in Attachment 1 to this Exhibit. If the Energy Commission agrees that the information is confidential, it will not disclose it except as provided in subsection (b).

- 1) During the Agreement, if the Contractor develops additional deliverables (or information contained within deliverables) not originally anticipated as confidential, it shall follow the procedures for a request for designation of confidential information specified in Title 20 California Code of Regulations (CCR) Section 2505.

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

- 2) When submitting deliverables containing confidential information, the Contractor shall mark each page of any document containing confidential information as "confidential", and present it in a sealed package to the Contracts, Grants, and Loans Office.

The Commission Agreement Manger may require the Contractor to submit a non-confidential version of the deliverable, if it is feasible to separate the confidential information from the non-confidential information. The Contractor is not required to submit such deliverables in a sealed package.

### **b. Disclosure of Confidential Information**

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

The Contractor, and its subcontractors (through terms in subcontract agreements) shall identify solicitations developed by the Contractor and subcontractors as confidential under California Government Code section 6255 and will keep them confidential until the solicitation is released to the public or a court of competent jurisdiction order the documents made public. In addition, the Contractor, and its subcontractors (through terms in subcontract agreements) shall identify applications received for the solicitations as confidential under California Government Code section 6255 and will keep them confidential until the Notice of Proposed Awards (NOPA) is issued by the Energy Commission. After the NOPA is posted, applications will be publically available unless an application for confidentiality is made to and approved by the Energy Commission pursuant to Title 20 CCR section 2505.



c. Waiver of Consequential Damages

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

Damages that the Energy Commission, the California Public Utilities Commission, and the state of California will not be responsible for include but are not limited to: lost profit; lost savings or revenue; lost goodwill; lost use of the deliverable 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 Contractor's Disclosure of Deliverables

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

**23. Pre-Existing and Independently Funded Intellectual Property**

a. Ownership

The Energy Commission makes no ownership, license, or royalty claims to pre-existing intellectual property, independently funded intellectual property, or project-relevant pre-existing or independently funded intellectual property. **"Ownership"** means exclusive possession and control of all rights to property, including the right to use and transfer property. Intellectual property licenses and royalties are discussed in Section 24 (Intellectual Property) and Section 25 (Royalty Payments to the Commission).

- 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 Contractor or a third party owned or possessed prior to the effective date of this Agreement and that have not been developed, altered, or reduced to practice with Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.

- 2) **“Independently funded intellectual property”** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice by the Contractor or a third party during or after the Agreement term without Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.

“Works of authorship” does not include written deliverables and products created for Agreement or Subaward reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices. The Commission owns such deliverables and 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 deliverable or product under this Agreement.

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

1) Identification of Property

The Contractor shall 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 deliverable under this Agreement. Attachment 1 must be amended by an amendment (see the “Amendments” section).

For each Subaward, the Contractor shall identify all project-relevant pre-existing intellectual property in Attachment 1 to this Exhibit prior to the effective date of the Subaward 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 the Subaward. Attachment 1 may be amended by an amendment (see the “Amendments” section).

The Contractor 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 deliverable under this Agreement.

For each Subaward, the Contractor will identify all project-relevant independently funded intellectual property and the source of funding for the property in Attachment 1 to this Exhibit prior to the effective date of the Subaward 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 the Subaward.

a) 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 Section 24 (Intellectual Property) and Section 25 (Royalty Payments to the Commission).

2) Access to Property

The extent of Energy 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 deliverable or product; or (b) establish a baseline for repayment purposes.

The California Public Utilities Commission has the same access rights as the Energy Commission to project-relevant pre-existing and independently funded intellectual property that is used to support a premise, postulate, or conclusion referred to or expressed in any deliverable or product funded in whole or in part by EPIC under this Agreement.

Upon the Commission Agreement Manager's request, the Contractor shall provide the Commission Agreement Manager and any reviewers designated by the Energy Commission (or the California Public Utilities Commission, if applicable) with access to review the Contractor's and Subawardee's project-relevant pre-existing and independently funded intellectual property. If the property has been designated as confidential as specified in Section 22 (Confidentiality), the Energy Commission will only disclose it under the circumstances specified in Title 20 CCR sections 2506, 2507, and 2508.

3) Preservation of Property

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

The Energy Commission will have reasonable access to the project-relevant pre-existing or independently funded property throughout the retention period. The California Public Utilities Commission has the same access rights as the Energy Commission to property used to support a premise, postulate, or conclusion referred to or expressed in any deliverable funded in whole or in part by EPIC under this Agreement.

## 24. **Intellectual Property**

### a. **Ownership**

**“Contractor 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 Contractor or its subcontractors 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.

- 1) The Energy Commission owns all Contractor Intellectual Property, unless the Commission authorizes the Contractor’s ownership of intellectual property. All intellectual property owned by the Contractor will be identified in Attachment 1 to this Exhibit and will be designated as **“Contractor-Owned Intellectual Property.”** Failure to identify Contractor-Owned Intellectual Property in Attachment 1 may result in the Commission’s ownership of the Contractor Intellectual Property.
- 2) The Energy Commission owns all deliverables identified in the Scope of Work.

**“Subawardee 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 Subawardee with Agreement or match funds during or after the Subaward term; (b) any associated proprietary rights to these items, such as patent and copyright; and (c) any upgrades or revisions to these items.

- 1) As between the Energy Commission, Contractor, and Subawardees, the Subawardee owns all Subawardee Intellectual Property, subject to the licenses described in subsection c. The Contractor shall require Subawardees to be subject to the licenses described in subsection c below.
- 2) The Energy Commission owns, and the Contractor shall ensure that each Subaward contains terms indicating that the Energy Commission owns, all products identified in the Subaward, with the exception of products that fall within the definition of “Subawardee Intellectual Property.”

### b. **Intellectual Property Licenses for Contractor-Owned Intellectual Property**

- 1) If the Contractor-Owned Intellectual Property is funded in whole or in part by EPIC, both the Energy Commission and the California Public Utilities Commission have a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce the Contractor-Owned Intellectual Property for governmental purposes.

If the contractor-owned intellectual property is funded exclusively by ERPA, only the Energy Commission has the license described above. Energy Commission and California Public Utilities Commission licenses are transferable only to load-serving entities for the purpose described below.

- 2) If the Contractor-Owned Intellectual Property is funded in whole or in part by EPIC, both the Energy Commission and the California Public Utilities Commission may grant load-serving entities a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce the Contractor-Owned Intellectual Property to enhance the entities' service to EPIC ratepayers. "Load-serving entity" means a company or other organization that provides electricity to EPIC ratepayers.

The licenses are transferable to third parties only for the purpose of facilitating the load-serving entity's enhancement of service to EPIC ratepayers. Load-serving entities must obtain prior written approval from the Energy Commission or California Public Utilities Commission (whichever agency granted the load-serving entity the license) in order to transfer the license to a third party.

- 3) The Energy Commission may grant the Contractor a license to use, publish, translate, modify, and/or reproduce Contractor Intellectual Property. Such intellectual property will be identified in Attachment 1 to this Exhibit and will be designated as "**Contractor-Licensed Intellectual Property.**"
- 4) If any intellectual property that is subject to the licenses above has been designated as confidential as specified in Section 22, all license holders will only disclose the Contractor 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 22 (Confidentiality).

c. Intellectual Property Licenses for Subawardee's Intellectual Property

The Contractor agrees to the following rights and shall include terms in each Subaward to ensure such rights exist.

- 1) Both the Energy Commission and the California Public Utilities Commission have a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce Subawardee's Intellectual Property for governmental purposes. The licenses are transferable only to load-serving entities for the purpose described below.

**Under limited circumstances, both the Energy Commission and the California Public Utilities Commission may grant load-serving entities a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce Subawardee's Intellectual Property to enhance the entities' service to EPIC ratepayers. The intellectual property that may be licensed to load-serving entities is limited to models and analytical tools that can be used to inform distribution planning and decision-making that benefits electric ratepayers. No intellectual property licenses for any other type of developed technology will be granted to load-**

**servicing entities by the Energy Commission or the California Public Utilities Commission under this Agreement.**

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

The licenses are transferable to third parties only for the purpose of facilitating the load-serving entity’s enhancement of service to EPIC ratepayers. Load-serving entities must obtain prior written approval from the Energy Commission or California Public Utilities Commission (whichever agency granted the load-serving entity the license) in order to transfer the license to a third party.

- 2) The Subawardee has a non-exclusive, non-transferable, irrevocable, worldwide, perpetual license to use, publish, translate, modify, and reproduce written products created for Subaward reporting and management purposes, such as reports and summaries.
- 3) If any Subawardee Intellectual Property that is subject to the licenses above has been designated as confidential as specified in Section 23 (Confidentiality), 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 Subawardee Intellectual Property are informed of and abide by the disclosure limitations in Section 22 (Confidentiality).

d. Energy Commission’s Rights to Inventions

The Contractor agrees to the following rights and shall include terms in its subcontracts and Subawards to ensure such rights exist.

**“Invention”** means Contractor-Owned Intellectual Property or Subawardee Intellectual Property that is patentable.

1) March-In Rights

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

2) Notice of Patent

If any patent is issued for an invention by the Contractor, a subcontractor, or a Subawardee, the Contractor shall send the Commission Agreement Manager written notice of the issuance within three (3) months of the issuance date. The notice shall include the patent title, issuance number, and a general description of the invention.

3) Legal Notice

The Contractor, subcontractor, Subawardee, and all persons and/or entities obtaining an ownership interest in patentable Contractor-Owned Intellectual Property or Subawardee Intellectual Property shall 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 agreement number 300-15-007. The Energy Commission has certain rights to this invention.”**

e. Access to and Preservation of Contractor-Owned Intellectual Property

1) Access to Intellectual Property

Upon the Commission Agreement Manager’s request, the Contractor shall provide the Commission Agreement Manager and any individuals designated by the Energy Commission with access to Contractor-Owned Intellectual Property and Subawardee Intellectual Property in order to exercise the license and march-in rights described above, and to determine any royalty payments due under the Agreement.

If the Contractor-Owned Intellectual Property or Subawardee Intellectual Property is funded in whole or in part by EPIC, the Contractor shall provide the California Public Utilities Commission with the same access rights as the Energy Commission.

2) Preservation of Intellectual Property

The Contractor shall preserve Contractor Intellectual Property and ensure that Subawardees preserve Subawardee Intellectual Property at their respective expenses for at least ten (10) years from the Agreement’s end date, unless the Contractor agrees to a longer retention period.

f. Intellectual Property Indemnity

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

The Contractor, subcontractors, and Subawardees, through terms the Contractor shall include in its subcontracts and Subawards, shall defend and indemnify the Energy Commission and the California Public Utilities Commission from and against any claim, lawsuit, or other proceeding, loss, cost, liability, or expense (including court costs and reasonable fees of attorneys and other professionals) arising out of: (i) any third party claim that a deliverable 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 Contractor or its employees, subcontractors, Subawardees, or agents in connection with or related to the deliverables or the Contractor's performance under this Agreement.

- g. The Contractor shall include the intellectual property provisions above in its agreements with all subcontractors and Subawardees.

**25. Royalty Payments to the Commission**

**"Sale," "sales," and "sold"** mean the sale, license, lease, or other transfer of Contractor Intellectual Property or Subawardee Intellectual Property. **"Sales Price"** means the price at which the Contractor Intellectual Property or Subawardee Intellectual Property is sold, excluding sales tax.

- a. The Contractor and Subawardees shall pay the Energy Commission a royalty of one and one-half percent (1.5%) of the sales price of all sales for which the Contractor or Subawardee respectively receives a payment, beginning on the Agreement's effective date and extending for ten (10) years from the Agreement's end date.
- b. The Contractor and Subawardees shall make payments in annual installments due on the first day of March in the calendar year immediately following the year during which the Contractor or Subawardee respectively received any payment for sales.
- c. The Contractor and Subawardees are not required to make a royalty payment for any calendar year in which payments for their respective sales are less than \$1000. Total royalty payments will be limited to three (3) times the amount of Commission funds respectively received by the Contractor (not including the amount in Subawards) and by Subawardees under the Agreement.
- d. If intellectual property was developed in part with match funds during the Agreement term, the royalty payment will be reduced in accordance with the percentage of intellectual property development activities that were funded with match funds. For example, if 10% of the development activities were funded with match funds during the Agreement and payments for sales totaled \$100,000 in one year, the Contractor would owe the Energy Commission \$1350 for the year (1.5% of \$100,000 = \$1500; 10% of \$1500 = \$150; \$1500 - \$150 = \$1350).



- e. The Contractor and Subawardees 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 Commission funds respectively received by the Contractor (not including the amount in Subawards) and by Subawardees under the Agreement and made within five (5) years of the Agreement's end date. The payment amount due under the early buyout option will not be reduced by the percentage of match funds as described above.
- f. The Contractor and Subawardees shall not make any sale of intellectual property for consideration other than fair market value. Such activity constitutes breach, and will obligate the Contractor or Subawardee to repay within sixty (60) days the early buyout amount due without limiting any of the Energy Commission's other available rights, remedies, or actions.
- g. Royalty payments not made within fifteen (15) days of the due date will constitute breach. The payments will become debt obligations of the Contractor or Subawardee to the Energy Commission, due upon demand and bearing interest at the maximum interest rate allowed by law without limiting any of the Energy Commission's other available rights, remedies, or actions.
- h. The Contractor and Subawardees shall maintain separate accounts within their respective financial and other records for the purpose of tracking components of sales and royalties due to the Energy Commission under this Agreement.
- i. Payments to the Energy Commission are subject to audit as provided for under the Recordkeeping, Cost Accounting, and Auditing section.
- j. The Contractor will include these royalty provisions in its agreements with all subcontractors who develop or assist with the development of Contractor Intellectual Property, and Subawardees who develop Subawardee Intellectual Property.
- k. Each Subaward the Contractor enters into must expressly name the Energy Commission as a third-party beneficiary of royalty payments the Subawardee receives for the Subawardee Intellectual Property. The Contractor is not entitled to receive any royalty payments from the Subawardee. The Contractor must require the Subawardee to make royalty payments directly to the Energy Commission. The Commission Agreement Manager will provide the Contractor guidance regarding the process required for the Subawardee to submit royalty payments directly to the Commission.

**26. 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 Contractor and its agents, subcontractors, Subawardees, and employees will act in an independent capacity and not as officers, employees, or agents of the State of California.

c. Assignment

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

d. Timeliness

Time is of the essence in this Agreement.

e. Severability

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

f. Waiver

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

g. Assurances

The Commission reserves the right to seek further written assurances from the Contractor 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 Contractor will promptly notify the Energy Commission of the occurrence of any of the following for itself and each Subcontractor and Subawardee:
  - 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 Agreement or any Subaward.
  - 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 Contractor or Subawardee for patent, copyright, trademark, service mark, and/or trade secret infringement that could affect the Energy Commission's rights.
- 2) The Contractor shall provide the Commission Agreement Manager with written notice of a planned change or reorganization of the type of business entity under which it does business. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. If the Energy Commission does not seek to amend this Agreement or enter into a new agreement with the changed or new entity for any reason (including that the Commission is not satisfied that the new entity can perform in the same manner as the Contractor), it may terminate this Agreement as provided in Section 19 (Termination of the Contract).

i. Access to Sites and Records

Energy Commission staff and representatives shall have reasonable access to all project sites and records related to this Agreement. California Public Utilities Commission staff and representatives shall have reasonable access to all project sites and records related to the EPIC-funded work completed under 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 shall survive the completion or termination date of this Agreement for any reason. The provisions include but are not limited to:

- Legal Statements on Deliverables (included in Section 6, "Deliverables")
- Payment of Funds (Section 9)
- Recordkeeping, Cost Accounting, and Auditing (Section 13)
- Equipment (Section 15)
- Conflicts of Interest (Section 16)
- Disputes (Section 17)
- Termination of the Contract (Section 19)
- Termination of Subawards (Section 20)
- Indemnification (Section 21)
- Pre-Existing and Independently Funded Intellectual Property (Section 23)
- Intellectual Property (Section 24)
- Royalty Payments to the Commission (Section 25)
- Change in Business (see this section)
- Access to Sites and Records (see this section)

**27. *Certifications and Compliance***

a. Federal, State, and Local Laws

The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

b. General Terms and Conditions

The Contractor shall comply with all state general terms and conditions incorporated by reference in Exhibit C, including the Contractor Certification Clauses (CCC 307).

**28. *Definitions***

- ***Agreement Term*** means the length of this Agreement, as specified on the Agreement signature page (form STD 213).
- ***Budget Reallocation*** means the movement of funds between tasks identified in the budget (Exhibit B).

- **Confidential Information** means information that the Contractor has satisfactorily identified as confidential in Attachment 1 to this Exhibit and that the Energy Commission has agreed to designate as confidential under Title 20 California Code of Regulations section 2505.
- **Contractor 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 Contractor or its subcontractors 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.
- **Contractor-Licensed Intellectual Property** means Contractor Intellectual Property licensed from the Energy Commission to the Contractor. Contractor-Licensed Intellectual Property must be identified in Attachment 1 to this Exhibit.
- **Contractor-Owned Intellectual Property** means Contractor Intellectual Property that is owned by the Contractor, with the Energy Commission's permission. Contractor-Owned Intellectual Property must be identified in Attachment 1 to this Exhibit.
- **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.
- **Deliverable** means any tangible item specified for delivery to the Energy Commission by the Contractor in the Scope of Work.
- **Disabled Veteran Business Enterprise (DVBE)** means a business that is certified by the California Department of General Services as meeting the requirements of California Military and Veterans Code Section 999(b)(7).
- **Effective Date** means the date on which this Agreement has been signed by the last party required to sign, provided that the Agreement has been approved by the Energy Commission at a business meeting (or by the Executive Director or his/her designee), and by the California Department of General Services.
- **EPIC** means the Electric Program Investment Charge, an electricity ratepayer-funded surcharge authorized by the California Public Utilities Commission in December 2011.
- **Equipment** means products, objects, machinery, apparatus, implements, or tools that are purchased or constructed with Energy Commission funds for the project, and that have a useful life of at least one year and an acquisition unit cost of at least \$5,000. "Equipment" includes products, objects, machinery, apparatus, implements, or tools that are composed by over thirty percent (30%) of materials purchased for the project. For purposes of determining depreciated value of equipment used in the Agreement, the project will terminate at the end of the normal useful life of the equipment purchased and/or developed with Energy Commission funds. The Energy Commission may determine the normal useful life of the equipment.

- **Independently Funded Intellectual Property** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice by the Contractor or a third party during or after the Agreement term without Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.

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

- **Invention** means Contractor-Owned Intellectual Property or Subawardee 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 Contractor or a third party for a project funded by the Energy Commission. If this Agreement resulted from a solicitation, refer to the solicitation’s discussion of match funding for guidelines specific to the project.
- **Materials** means the substances used to construct a finished object, commodity, device, article, or product, such as equipment.
- **Ownership** means exclusive possession of all rights to property, including the right to use and transfer property.
- **Pre-existing Intellectual Property** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that the Contractor or a third party owned or possessed prior to the effective date of this Agreement and that have not been developed, altered, or reduced to practice with Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.
- **Product** means any tangible item specified for delivery to the Contractor by the Subawardee in the Subaward.
- **Project** means the entire effort undertaken and planned by the Contractor and consisting of the work funded by the Energy Commission. The project may coincide with or extend beyond the Agreement term.
- **Project-Relevant Pre-existing Intellectual Property and Project-Relevant Independently Funded Intellectual Property** mean pre-existing and independently funded intellectual property used to support a premise, postulate, or conclusion referred to or expressed in any deliverable under this Agreement.
- **Sale, Sales, and Sold** mean the sale, license, lease, or other transfer of intellectual property.

- **Sales Price** means the price at which Contractor Intellectual Property or Subawardee 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** means an agreement between the Contractor and Subawardee.
- **Subawardee** means the recipient of Series A or Series B grant funding from the SEED Initiative.
- **Subawardee 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 Subawardee or its subcontractors with Agreement or match funds during or after the Subaward term; (b) any associated proprietary rights to these items, such as patent and copyright; and (c) any upgrades or revisions to these items.

**ATTACHMENT 1 Confidential Deliverables, Project-Relevant Pre-Existing and Independently Funded Intellectual Property, Contractor-Owned and Licensed Intellectual Property, and Subawardee Intellectual Property**

**1. Instructions**

Identification of Confidential Information

- **Prior to the effective date of the Agreement**, the Contractor must identify in **Section 2** of this attachment any deliverables (or information contained within deliverables) that it considers to be confidential. If the Energy Commission agrees that the information is confidential, it will not disclose it except as provided in Section 22 (Confidentiality) of these terms and conditions.
- **During the Agreement**, if the Contractor develops additional information not originally anticipated as confidential, it must follow the procedures for a request for designation of confidential information specified in Title 20 California Code of Regulations (CCR) section 2505.

The Energy Commission's Executive Director will make the confidentiality determination. Following this determination, the confidential information must be added to this attachment through an amendment (see Section 7 (Amendments)). The Energy Commission will not disclose information subject to an application for confidential designation except as provided in Section 22 (Confidentiality).

- **When submitting deliverables containing confidential information**, the Contractor must mark each page of any document containing confidential information as "confidential" and present it in a sealed package to the Contracts, Grants, and Loans Office.

The Commission Agreement Manager may require the Contractor to submit a non-confidential version of the deliverable, if it is feasible to separate the confidential information from the non-confidential information.

Identification of Project-Relevant Independently Funded and Pre-Existing Intellectual Property

- The Contractor must identify all project-relevant pre-existing intellectual property and project-relevant independently funded intellectual property in **Section 3** of this attachment 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 deliverable under the Agreement. This attachment must be amended by an amendment (see Section 7 (Amendments)).
  - **"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 deliverable under the Agreement.
  - **"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 Contractor or a third party owned or possessed prior to the effective date of this Agreement and that have not been developed, altered, or reduced to practice with Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.

- **“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 Contractor or a third party during or after the Agreement term without Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.

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

- **Failure to identify project-relevant pre-existing or independently funded intellectual property** in this attachment may result in the property’s designation as “Contractor Intellectual Property” that is subject to licenses and royalties, as described in Section 24 (Intellectual Property) and Section 25 (Royalty Payments to the Commission).

#### Identification of Contractor-Owned Intellectual Property

- All Contractor-Owned Intellectual Property must be identified in **Section 4** of this attachment, as specified in Section 24 (Intellectual Property).
  - **“Contractor-Owned Intellectual Property”** means Contractor Intellectual Property owned by the Contractor, with the Energy Commission’s permission.
- **Failure to identify Contractor-Owned Intellectual Property** in this attachment may result in the Commission’s ownership of the intellectual property.

#### Identification of Contractor-Licensed Intellectual Property

- All Contractor-Licensed Intellectual Property must be identified in **Section 5** of this attachment, as specified in Section 24 (Intellectual Property).
  - **“Contractor-Licensed Intellectual Property”** means Contractor Intellectual Property licensed from the Energy Commission to the Contractor.
- **Failure to identify Contractor-Licensed Intellectual Property** in this attachment will result in the Contractor’s lack of a license to use, publish, translate, modify, and/or reproduce the intellectual property.



## 2. Confidential Deliverables and/or Confidential Information Contained within Deliverables

The Energy Commission designates the following deliverables (or information contained within deliverables) as confidential, in accordance with Title 20 California Code of Regulations section 2505(c)(2)(B).

|   |  |
|---|--|
| <b>Deliverable name</b>   | <b>NONE</b>  |
| <b>Task/subtask number</b>  |  |
| <b>Information to be kept confidential</b>  | <input type="checkbox"/> Entire deliverable<br><input type="checkbox"/> Selected information within deliverable ( <i>describe below; be as specific as possible</i> ):   |
| <b>Legal basis for confidentiality designation</b>  | <input type="checkbox"/> California Public Records Act, located in California Government Code Sections 6250 et seq. ( <i>identify the relevant section(s) and subsections(s) below</i> ):<br><br><input type="checkbox"/> Other law ( <i>identify below, including the relevant section(s) and subsections(s)</i> ): |
| <b>Term of confidentiality</b>  | MM-DD-YY to MM-DD-YY   |
| <p><b>Trade secrets only</b></p> <p>Answer the following questions if the deliverable/information described above is considered a trade secret (i.e., confidential business information that provides the business with a competitive advantage):</p> <ol style="list-style-type: none"> <li>1. What is the nature of the competitive advantage provided by the deliverable/information?</li> <li>2. How would the competitive advantage be lost by disclosure? (generally describe the value of the deliverable/information and the ease or difficulty with which it may be legitimately acquired or duplicated by others).</li> </ol> |  |

**3. Project-Relevant Pre-Existing Intellectual Property and Project-Relevant Independently Funded Intellectual Property**

The Contractor has identified the following items as “project-relevant pre-existing intellectual property” and/or “project-relevant independently funded intellectual property, as defined in Sections 23 (Pre-Existing and Independently Funded Intellectual Property) and 28 (Definitions) of these terms and conditions. The Commission makes no ownership, license, or royalty claims to this property, and may only access it for the purposes described in Section 23 (Pre-Existing and Independently Funded Intellectual Property).

| Name/Title of Intellectual Property   | NONE  |
|---|---|
| <b>Type of Intellectual Property</b>  | <input type="checkbox"/> Project-relevant pre-existing intellectual property<br><input type="checkbox"/> Project-relevant independently funded intellectual property<br><br><input type="checkbox"/> Invention <input type="checkbox"/> Process<br><input type="checkbox"/> Technology <input type="checkbox"/> Technique<br><input type="checkbox"/> Design <input type="checkbox"/> Work of Authorship<br><input type="checkbox"/> Drawing <input type="checkbox"/> Trademark/ Service mark<br><input type="checkbox"/> Data <input type="checkbox"/> Logo<br><input type="checkbox"/> Software<br><input type="checkbox"/> Formula |
| <b>Registered or Pending Intellectual Property (i.e., copyrights, patents, or trademarks that are registered or pending with the U.S. Copyright Office or the U.S. Patent and Trademark Office)</b> | <input type="checkbox"/> Copyright <input type="checkbox"/> Patent <input type="checkbox"/> Trademark/ Service mark<br>Name of owner:<br>Number and date:<br><hr/> <i>For pending applications</i><br>Name of applicant:<br>Application number and date:  |
| <b>Unregistered Intellectual Property</b>   | <input type="checkbox"/> Copyright <input type="checkbox"/> Trademark/ Service mark<br><input type="checkbox"/> Trade Secret<br>Name of owner:  |
| <b>Description of how the property will be or has been used to support a premise, postulate, or conclusion referred to or expressed in any deliverable under the Agreement</b>                      |   |

#### 4. Contractor-Owned Intellectual Property

The Commission has authorized the Contractor's ownership of the following Contractor Intellectual Property, as specified in Section 24 (Intellectual Property):

|   |  |  |
|---|--|--|
| <b>Name/Title of Intellectual Property</b>                                  | <b>NONE</b>  |  |
| <b>Task Number(s) that Involve Development of the Intellectual Property</b> |  |  |
| <b>Type of Intellectual Property</b>  | <input type="checkbox"/> Invention<br><input type="checkbox"/> Technology<br><input type="checkbox"/> Design<br><input type="checkbox"/> Drawing<br><input type="checkbox"/> Data<br><input type="checkbox"/> Software<br><input type="checkbox"/> Formula | <input type="checkbox"/> Process<br><input type="checkbox"/> Technique<br><input type="checkbox"/> Work of Authorship<br><input type="checkbox"/> Trademark/ Service mark<br><input type="checkbox"/> Logo |

## 5. Contractor-Licensed Intellectual Property

The Commission has granted a license to the Contractor for the following Contractor Intellectual Property, as specified in Section 24 (Intellectual Property):

|   |   |  |
|---|---|--|
| <b>Name/Title of Intellectual Property</b>                                  | <b>NONE</b>   |  |
| <b>Task Number(s) that Involve Development of the Intellectual Property</b> |   |  |
| <b>Type of Intellectual Property</b>  | <input type="checkbox"/> Invention<br><input type="checkbox"/> Technology<br><input type="checkbox"/> Design<br><input type="checkbox"/> Drawing<br><input type="checkbox"/> Data<br><input type="checkbox"/> Software<br><input type="checkbox"/> Formula  | <input type="checkbox"/> Process<br><input type="checkbox"/> Technique<br><input type="checkbox"/> Work of Authorship<br><input type="checkbox"/> Trademark/ Service mark<br><input type="checkbox"/> Logo |
| <b>Scope of License</b>   | <input type="checkbox"/> No-cost<br><input type="checkbox"/> Worldwide<br><input type="checkbox"/> Perpetual<br><input type="checkbox"/> Non-exclusive<br><input type="checkbox"/> Transferable ( <i>transfers are subject to the royalty requirements in Section 26</i> ).<br><br><b>If the “No-cost,” “Worldwide,” and/or “Perpetual” boxes are not checked above, describe the cost terms and geographic and/or time restrictions below:</b> |  |
| <b>Permitted Uses</b>   | <input type="checkbox"/> Use<br><input type="checkbox"/> Publish<br><input type="checkbox"/> Translate  | <input type="checkbox"/> Modify<br><input type="checkbox"/> Reproduce<br><br><b>Describe how the intellectual property will be used, published, translated, modified, and/or reproduced:</b>               |