

STANDARD AGREEMENT

STD. 213 (NEW 02/98)

AGREEMENT NUMBER 500-xx-xxx
REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below
-
- STATE AGENCY'S NAME
State Energy Resources Conservation and Development Commission (Energy Commission)
-
- CONTRACTOR'S NAME
The Regents of the University of California, **Campus**
-
2. The term of this Agreement is: **November 15, 2007 through November 13, 2009** The effective date of this Agreement is either the start date or the approval date by the Dept. of General Services, whichever is later. No work shall commence until the effective date.
-
3. The maximum amount of this Agreement is: \$ **2,300,000.00**

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:
- | | | |
|---|-----------|---------|
| Exhibit A – Scope of Work | 19 | Page(s) |
| Exhibit A – Attachments | 15 | Page(s) |
| Exhibit B – Budget Detail and Payment Provision | 4 | Page(s) |
| Exhibit B – Attachments | 9 | Page(s) |
| Exhibit C – General Terms and Conditions* | *GIA 610 | |
| Exhibit D – Special Terms and Conditions | 3 | Page(s) |
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| Exhibit G-2-A– Intellectual Property DOE – General | 3 | Page(s) |
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| Exhibit H-2 – Definitions DOE | 5 | Page(s) |

*View at <http://www.ols.dgs.ca.gov/Standard%20Language/default.htm>.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		CALIFORNIA Department of General Services Use Only
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) The Regents of the University of California on behalf of the Campus campus		
BY (Authorized Signature) —	DATE SIGNED)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS 9500 Gilman Dr. Mailcode 0210, La Jolla, CA 92093-0210		
STATE OF CALIFORNIA		
AGENCY NAME State Energy Resources Conservation and Development Commission		
BY (Authorized Signature) —	DATE SIGNED	
PRINTED NAME AND TITLE OF PERSON SIGNING Rachel L. Grant Kiley, Contracts Grants and Loans Office Manager		
ADDRESS 1516 Ninth Street, Sacramento, CA 95814		

EXHIBIT B

Budget Detail and Payment Provisions

1. INVOICING PROCEDURES

- A. For services rendered in accordance with the terms of this Agreement, and upon receipt and approval of the invoices, the Commission agrees to compensate UC for actual expenditures incurred in accordance with the approved budget.

Invoices shall be submitted in duplicate not more frequently than monthly to:

California Energy Commission
Accounting Office, MS-2
1516 9th Street, First Floor
Sacramento, California 95814

- B. Payment Request Format

The Commission will accept computer-generated invoices or the equivalent without backup documentation to verify the expense. Backup source documentation shall be retained by UC for audit purposes.

A request for payment shall reference the Agreement number and shall consist of, but not be limited to the following:

- 1) An invoice that is a summary of actual expenses incurred for time worked at the actual direct labor and fringe during the billing period in accordance with the budget as follows:
 - a) Date prepared and billing period;
 - b) Personal services (Total labor costs including fringe benefits);
 - c) Subcontractor invoices;
 - d) Equipment;
 - e) Travel and per diem;
 - f) Miscellaneous expenses (including materials and supplies);
 - g) Indirect costs (not to exceed 25%);
 - h) By Budget line item (cost component) category, list budgeted amount, amount billed to date, current billing, and balance of funds.

- 2) Any progress reports and products that were due during the invoice period, as detailed in the Exhibit A.

2. BUDGET CONTINGENCY CLAUSE

It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the work identified in Exhibit A, the Commission may either terminate the Agreement pursuant to the Termination provision, or offer an Agreement amendment to UC to reflect the reduced amount(s).

3. TRAVEL AND PER DIEM RATES

- A. UC shall be reimbursed for travel and per diem for trips in accordance with the Regents-approved rates for UC employees. UC shall provide a copy of the current Regents-approved rates and the rates for other Performing Institutions to the Commission upon request. Travel expenses in excess of Regents-approved rates cannot be reimbursed. Origination and destination points for calculating travel expenses shall be from the office location where the employees performing on the Agreement are permanently assigned.
- B. The Budget shall identify the purpose, the amount and destination for each trip. Those trips identified in the Budget are considered approved. Travel not listed in the Budget shall require prior written (including fax or e-mail) authorization from the Commission Contract Manager and Commission Contracts Officer.
- C. Any Department of Energy (DOE) authorized travel shall be reimbursed on the same basis as the DOE approved rates in effect during this Agreement.
- D. UC must document travel expenses in its financial records as follows:
 - 1) Expenses must be detailed using the current UC Regents / DOE-approved rates.
 - 2) Expenses must be listed by trip, including dates and times of departure and return.
 - 3) UC/DOE must retain receipts for travel expenses claimed for audit and verification.

- E. Travel by employees from other public and/or public educational entities shall be reimbursed in accordance with the rates approved by their governing bodies.

Trips made by all other parties shall be reimbursed in accordance with the prevailing rates for Non-Represented State of California Employees. The Commission will supply a copy of these rates to UCOP upon request.

- 4. **RETENTION**: No retention will be withheld under this Agreement.

- 5. **PAYMENT TERMS AND CONDITIONS**

- A. UC shall use the salary and wage rates commensurate with approved personnel status and level of expertise.
- B. The indirect cost rate for UC shall not exceed 25%. This rate shall apply to Modified Total Direct Costs as defined in OMB Circular No. A-21.
- C. Each invoice is subject to Commission Contract Manager approval. The Commission Contract Manager will not process any payment request if the following conditions have not been met:
 - 1) All required deliverables and reports have been submitted and are in accordance with the Standard of Performance clause.
 - 2) All appropriate permits or permit waivers from governmental agencies have been issued.
- D. Payments shall be made to UC for undisputed invoices. An undisputed invoice is an invoice submitted by UC for services rendered and for which additional evidence is not required to determine its validity. UC will be notified via a Dispute Notification Form, within 15 working days of receipt of an invoice, if the Commission disputes the submitted invoice. On any disputed invoice, the Commission shall withhold payment only on that portion of the invoice that is disputed.
- E. The final invoice must be received by the Commission no later than 60 calendar days after the Agreement termination date.
- F. The Commission will pay for State or local sales or use taxes on the services rendered or equipment, parts or software supplied to the Commission pursuant to this Agreement. The State of California is exempt from Federal excise taxes, and no payment will be made for any excise taxes levied on employee's wages.

G. Advance Payment

- 1) In the event that advance payments are necessary, UC shall submit the first invoice for advance payment when the Agreement is approved. Thereafter, UC shall submit all invoices on a calendar quarter basis.
- 2) If the estimated period of performance exceeds ninety (90) days and the estimated cost exceeds \$25,000, the Commission shall advance funds incrementally. In such a case, UC will initially invoice the Commission in an amount sufficient to permit the work to proceed for one hundred and eighty (180) days and thereafter invoice the Commission to maintain approximately a ninety (90) day period that is funded in advance.
- 3) The Commission is advancing payment to UC. UC may make advance payments to UC campuses, Federal Laboratories, California State Agencies, the California State University and Community College systems, and Federal Agencies. UC shall not provide advance payment to any other type of entity performing services without prior written approval from the Commission.
- 4) A reconciliation report, reflecting actual costs, shall be submitted every quarter after the initial advance payment. This report is due within 30 days after the end of each quarter. The reconciliation report shall include detail as provided in the Payment Request Format clause.
- 5) Other than the initial advance payment, the Commission Contract Manager will approve advance payments provided that the Commission Contract Manager has received and approved the progress reports, and any other deliverables required for the previous period.
- 6) Upon completion or termination of the Agreement, UC shall refund any excess funds to the Commission within sixty (60) calendar days.

6. **BUDGET DETAIL**

The line item budget for this Agreement shall include, but not be limited to: personal services, subcontracts, equipment, travel and per diem, miscellaneous expenses (including materials and supplies) and indirect costs. (See the remainder of Exhibit B for the details.)

7. ALLOWABLE COSTS

Allowable costs shall be determined in accordance with Office of Management and Budget (OMB) circular No. A-21, "Cost Principles Applicable to Grants, Contracts, and Other Agreements with Institutions of Higher Education," incorporated by reference as part of this Agreement.

8. REIMBURSEMENT EXCLUSION

Reimbursement for costs identified in invoices has not and will not be received from any other sources, including but not limited to a Government Entity contract or subcontract or other procurement method.

EXHIBIT D

Special Terms and Conditions

1. CONTRACT MANAGEMENT

- A. The individuals managing this Agreement, for both parties, are listed in Exhibit F. Any changes in personnel identified in Exhibit F shall be communicated in writing by either party. UC Project Manager cannot be replaced or substituted without prior written approval of the Commission Contract Manager, such approval will not be unreasonably withheld.
- B. The UC Project Manager and the Commission Contract Manager are responsible for the day to day project status, decisions and communications with each other. The Commission Contract Manager reviews all project deliverables, reports and invoices.

2. STANDARD OF PERFORMANCE

- A. UC and non-UC personnel performing work under this Agreement shall be responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures.
- B. In the event that UC or non-UC personnel fail to perform in accordance with the foregoing standard of performance, the Commission Contract Manager and UC Project Manager shall seek to negotiate in good faith an equitable resolution satisfactory to both parties.
- C. Nothing contained in the section is intended to limit any of the rights or remedies, which the Commission may have under law.

3. REPORT STANDARDS

- A. Progress Reports and Final Reports shall be submitted in accordance with Exhibit A.
- B. All documents that will be released to the public, including reports, deliverables, and articles submitted for publication and all reprints, shall include the following legend:

"LEGAL NOTICE"

"This report was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this report; nor does any party represent that the use of this information will not infringe upon privately owned rights."

4. TERMINATION

A. Default

In the event of any default of this Agreement, the Commission may, without prejudice to any of its other legal remedies, terminate this Agreement upon five (5)-days written notice to UC in accordance with Section 6, Notice, below.

B. For Cause

The Commission may, for cause, and at its option, terminate this Agreement upon giving thirty (30)-days' advance written notice to UC. In such event, UC agrees to use all reasonable efforts to mitigate its expenses and obligations.

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

- 1) Loss or redirection of State or Federal funding for this Agreement;
- 2) Significant change in State or Commission policy such that the work or product being funded would not be supported by the Commission;
- 3) Change in Commission's staffing such that the work or product being funded can be done by staff of the Commission.

C. Allowable Costs

OMB Circular No. A-21, Section J.50, shall be used to determine allowable termination costs, but not in excess of the maximum amount of this Agreement.

5. WAIVER

No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of the Commission to enforce at any time any of the provisions of this Contract, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Contract or any part of it or the right of the Commission to thereafter enforce each and every such provision.

6. NOTICE

Legal notice to either party may be given using the following delivery methods, certified mail, Federal Express, United Parcel Service, or personal delivery, providing evidence of receipt, to the respective parties identified in Exhibit F.

Delivery by fax or e-mail is not considered notice for the purpose of this Agreement. Legal notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In which case, the effective date shall be postponed 24 hours, or whenever the next business day occurs.

7. STOP WORK

The Commission Contract Officer may, at any time, by written notice to UC, to require UC to stop or suspend work on any or all tasks in this Agreement. Stop Work Orders may be issued for reasons such as a project exceeding budget, standard of performance, out of scope work, delay in project schedule, misrepresentations and the like.

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

8. INDEPENDENT CONTRACTOR

UC, and the agents and employees of UC, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the Commission.

9. HARASSMENT TRAINING

All employees of Contractor and any subcontractor who provide service under this Agreement and maintain work space at the Energy Commission shall take annual training on the prevention of discrimination and harassment. The Energy Commission shall provide the online training course at no charge to Contractor or subcontractors. However, Contractor and subcontractors shall not invoice for the time spent taking the course. Contractor shall ensure that all employees of Contractor and any subcontractor who provide service under this Agreement and represent the Energy Commission in public hearings and workshops, but do not maintain office space at the Energy Commission, receive training on prevention of discrimination and harassment.

EXHIBIT E Additional Provisions

1. BUDGET REALLOCATION

A. The Energy Commission, through its Contract Manager and Contract Officer, and the Contractor can agree upon and make certain budget reallocations without a formal amendment to this Agreement as long as ALL of the following conditions are met:

- 1) For agreements without work authorizations, the total of all budget reallocations cannot exceed ten percent (10%) with a cap of \$75,000 of the Agreement Amount. For purposes of this provision, "Agreement Amount" means the total amount of Energy Commission funds being paid to Contractor under this Agreement. It does not include any match funds provided by Contractor.

For example, if under an agreement the Energy Commission agrees to pay a contractor \$100,000 and the contractor is supplying \$500,000 in match funding, the ten percent (10%) limitation applies to the \$100,000. Only up to \$10,000 of Energy Commission funds can be reallocated without a formal amendment. If under an agreement the Energy Commission agrees to pay a contractor \$800,000, ten percent would be \$80,000 but the cap is \$75,000, so the most that could be reallocated without a formal amendment is \$75,000.

- 2) For agreements with work authorizations, budget reallocations up to ten percent (10%) with a cap of \$75,000 of the entire agreement can be made. E Budget reallocations up to ten percent (10%) of each work authorization can be made so long as the total amount of all work authorization budget reallocations does not exceed 10 percent of the agreement amount and is within the cap of \$75,000.

For example, assume an Agreement Amount is \$175,000 and the agreement has two work authorizations, WA1 and WA2. WA1 has a budget of \$100,000, and WA2 has a budget of \$50,000. \$10,000 (10% of \$100,000) can be moved within WA1. \$5,000 (10% of \$50,000) can be moved within WA2. In addition to this, \$2,500 (10% of \$25,000, the Agreement Amount of \$175,000 minus the combined work authorization budgets of \$150,000) can be made to the portion of the Agreement Amount not associated with work authorizations. The total of these budget reallocations does not exceed ten percent of the agreement amount or the \$75,000 cap.

- 3) The budget reallocation cannot substantially change the Scope of Work. Examples of budget reallocations that do not substantially change the Scope of Work include, but are not limited to, the following:
 - Increasing or decreasing the overall travel budget.
 - Increasing or decreasing the equipment budget.
 - Increasing or decreasing the number of personnel assigned to complete tasks. This does not include increasing the rates of the personnel and classifications listed in the budget. Increasing personnel rates requires a formal amendment. The addition of personnel also requires a formal amendment unless there is already an identified classification of rates in the budget that the new personnel will be filling.
 - 4) The budget reallocation only involves moving funds between tasks, line items, or categories. The total Agreement Amount and the total budget of any work authorizations must remain unchanged. Increasing the total amount of the Agreement requires a formal amendment.
 - 5) The budget reallocation does not increase the percentage rate of Fringe Benefits, Indirect Costs, General and Administrative Costs, or Profit.
- B. To effectuate a budget reallocation under this section, the Contractor must make a request in writing to both the Contract Manager and the Contract Officer. Both the Contract Manager and Contract Officer will then approve or disapprove the request in writing; the approval or disapproval is not effective or binding unless signed by both the Contract Manager and the Contract Officer. Oral communications cannot be used or relied upon. Electronic communication is acceptable for changes below the limits described in section 1 above. If the request is approved, the Contract Manager shall revise the Budget Attachments to reflect the changes and send them to the Contract Officer and Contractor.
- C. Any desired budget reallocations that do not meet the four criteria in this section must be made through a formal amendment. For purposes of this provision, a “formal amendment” means that all of the following must occur: approval by the Energy Commission at a Commission Business Meeting, a written amendment signed by both parties, and approval by the California Department of General Services.
- D. Attempted budget reallocations that do not meet the requirements of this section are not legally binding upon the parties.

- E. If there are significant variances in the performance of the Agreement in relation to what was estimated at the outset, the UC Project Manager will report them along with recommended mitigating actions for consideration by the Commission Contract Manager. UC Project Manager has a continuing obligation to report in a timely fashion any significant variances affecting performance of the Agreement. Examples of significant variances include inability to deliver products by key dates; unavailability of key personnel that will effect timely submittal of deliverables; and key technical issues that would require change in scope, redirection of the effort, or discontinuation of the project.
- F. Exhibit A identifies the key personnel and key subcontractors who have primary responsibility for producing or managing the substantive work in this Agreement. These individuals or entities cannot be replaced or substituted without prior written approval of the Commission Contract Manager, and such approval shall not be unreasonably withheld.

2. **SUBCONTRACTS**

- A. UC shall be responsible for establishing and maintaining written agreements with and making payments to subcontractors for work performed in accordance with the terms of this Agreement.
- B. In subcontracts to UC-managed DOE laboratories, UC shall use terms approved by DOE. Subcontracts to other DOE laboratories shall use the terms and conditions negotiated between DOE and the Energy Commission.

3. **PURCHASE OF EQUIPMENT**

Title to equipment acquired by UC and subcontractors shall vest in UC. UC shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Commission funds, and shall not encumber the property without Commission Contract Manager approval. When equipment is no longer needed for the original project or program, UC shall contact the Commission Contract Manager for disposition instructions. If disposition instructions are not provided within 120 days after completion of the Agreement, UC shall have no further obligation to the Commission regarding such equipment.

UC shall refer to applicable OMB circular A-21 for additional equipment requirements and allowable costs.

4. **ROYALTY PAYMENTS TO THE COMMISSION**

Royalty provisions apply under this Agreement. These terms apply to both UC and non-UC personnel. For DOE projects, royalty provisions are included in Exhibit G-2 (A, B and C). These royalty provisions only apply to intellectual property developed under this Agreement.

- A. In consideration of the Commission providing funding to the UC, UC agrees to pay the Commission a portion of either Net Revenues or Net Royalties under the terms and conditions hereinafter set forth.
- B. Net Royalties. If UC or its subcontractor licenses to a Licensee, the UC's obligation to make payments to the Commission shall commence from the date that the Net Royalties calculation is positive. Payments are payable in annual installments and are due the first day of March for Net Royalties calculation made for the UC's prior fiscal year. UC agrees to pay to Commission an amount equivalent to 10% of the total cumulative Net Royalties, less payments made by UC to Commission in previous years when Net Royalties were positive. Payments shall be made by check and made payable to the California Energy Commission, PIER Fund.
- C. Net Revenues. If the UC or its subcontractor is the Licensee, the UC's obligation to make payments to the Commission shall commence upon the first sale of the Licensed Product. Payments are payable in annual installments and are due the first day of March for the prior fiscal year of the UC. UC agrees to pay an amount equivalent to 1.5% of the Net Revenues by check made payable to the California Energy Commission, PIER Fund.
- D. UC agrees to and shall require each subcontractor to agree not to make any sale, license, lease, gift or other transfer of any Subject Invention, Copyrightable Work or Project-Related Product (PRP) with the intent of, or for the purpose of, depriving Commission of Net Royalties or Net Revenues hereunder. Generally, this means that the UC and its subcontractor will not make any sale, license, lease or other transfer of PRP for consideration other than fair market value except for research, educational, or other mutually agreed to purposes intended to serve the public benefit.
- E. UC and its subcontractor shall maintain separate accounts within their financial and other records for purposes of tracking royalties and revenues due to the Commission under this Agreement.
- F. Audits on Payments to Commission. Payments to the Commission are subject to the Audit clause.
- G. Defaults. In the event of default hereunder, the Commission shall be free to exercise all rights and remedies available to it herein, and under law and at equity. UC's failure to pay when due, any amount due and payable under the terms of this contract constitutes a default under this Agreement.

- H. UC acknowledges that a late payment of royalties/revenues owed to the Commission will cause the Commission to incur costs not contemplated by the parties. If a royalty/revenue payment is not paid when due, UC agrees to pay the Commission a late fee equal to two percent (2%) of the payment due. Additionally, UC agrees that royalty/revenue payments not paid within fifteen (15) days of the due date shall thereupon become debt obligations of UC to the Commission, due upon demand and bearing interest at the maximum interest rate allowed by law.
- I. The parties agree that UC does not guarantee compliance with payments under this clause in the event of default by a subcontractor. Amounts in default and not paid by a subcontractor will not be paid by UC under this clause, and the fees and obligations of this clause pursuant to such default and non-payment shall not be a responsibility of UC. However, UC has an affirmative duty to monitor subcontractors' compliance and take reasonable enforcement measures calculated to obtain subcontractors' performance of their payment obligations under this clause.
- J. UC and its subcontractor may exercise the Early Buyout. UC and its subcontractor has the option of paying its royalty obligations to Energy Commission without a pre-payment penalty, provided UC and or its subcontractor makes the royalty payment within two (2) years from the date at which royalties are first due to the Energy Commission. Royalty payment must be in a lump sum amount equal to two (2) times the amount of funds drawn down on the Agreement.

5. **INTELLECTUAL PROPERTY ITEMS DEVELOPED PRIOR TO THIS AGREEMENT**

The Commission makes no claim to intellectual property that existed prior to this agreement and was developed without Commission funding. Attachment 1 to this Exhibit identifies any applicable pre-existing intellectual property.

6. **RIGHTS OF THE PARTIES REGARDING INTELLECTUAL PROPERTY**

Exhibit G-1 shall be used by UC in contractual agreements executed for work under this Agreement with all subcontractors except DOE Laboratories. Exhibit G-2 (A, B, and C) shall be used with DOE Laboratories except those managed by UC.

7. **CONFIDENTIALITY**

Exhibit E, Attachment E-1 identifies the Confidential Deliverables that are known at the beginning of this Agreement. Any desire for future confidential deliverables shall be addressed in accordance with the following:

A. Determination

The Commission Executive Director makes the final determination of confidentiality. In the event there is a disagreement over the items to be delivered under the Agreement, the parties shall use the Disputes clause. Those items to be delivered as confidential shall be subject to the Commission Executive Director's determination of confidentiality. If UC wishes to appeal the Executive Director's determination, the appeal shall be made to the full Commission. If UC disagrees with this determination, the UC may seek judicial review as per Title 20 CCR 2501, et seq.

B. Public and Confidential Products

Only those products/items specifically listed in Exhibit E, Attachment E-1 or in a subsequent determination of confidentiality qualify as confidential products. All products including, but not limited to, progress reports, task products and the Final Report shall not contain confidential information except when the Commission Contract Manager and UC deem it necessary to include confidential information in a product. In such event, UC shall prepare the deliverable in two separate volumes, one for public distribution and one to be maintained in the Commission's confidential records.

C. Future Confidential Information

During this Agreement, it is possible that a UC or a subcontractor may develop additional data or information that UC considers being protectable as confidential information. In this event, the Commission Contract Manager shall provide a copy of the Commission Application for Confidential Designation to UC. UC must list all items and information along with justification for confidentiality and submit the application to the Commission Contract Manager. The Commission Executive Director makes the final determination of confidentiality. Such subsequent determinations will be added to Exhibit E, Attachment E-1.

D. Identifying and Submitting Confidential Information

Each document containing confidential information submitted by UC shall be marked "Confidential" and delivered in a sealed package to the Commission Contract Officer identified in Exhibit F. The Commission Contract Officer will notify the Commission Contract Manager that the confidential information has been received and is in the Contracts Office for review. The confidential information will only be available to those persons authorized by the Executive Director.

8. **INDEMNIFICATION**

- A. UC shall defend, indemnify and hold the State of California and its agencies, their respective officers, employees and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of UC, its officers, agents or employees.

- B. The Commission shall defend, indemnify and hold UC, its officers, employees and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the State of California, its officers, agents or employees.

EXHIBIT G-1

RIGHTS OF PARTIES REGARDING INTELLECTUAL PROPERTY

Note: This exhibit shall be used by UC in contractual Agreements executed for work under this Agreement with all Performing Institutions except DOE Laboratories. Exhibit G-2 (A, B, and C) shall be used with DOE Laboratories except those managed by UC.

A. Commission's Rights in Deliverables

Deliverables and reports specified for delivery to the Commission under this Agreement shall become the property of the Commission. The Commission may use, publish, and reproduce the deliverables and reports subject to the provisions of subparagraph C.

B. Rights in Technical, Generated, and Deliverable Data

1) UC's Rights

Data (Technical, Generated and Deliverable) produced under this Agreement shall be the property of the UC, limited by the license retained by the Commission in 2) below, and the rights the Commission has in deliverables specified above in A).

2) Commission's Rights

UC shall provide the Commission Contract Manager and any designated reviewer(s) with a copy of all Technical, Generated and Deliverable Data produced under the Agreement, when requested.

UC is not required to copy and submit data that the Commission Contract Manager has identified as being unusable to the Commission and the PIER program.

For instance, some data may not warrant routine copying and shipping because this raw data is too disaggregated or voluminous for practical application. Retention of such data at UC's or Performing Institution's facility for inspection, review and possible copying by the Commission Contract Manager is expected to be a more efficient use of Commission staff and UC's time and efforts.

However, upon request by the Commission Contract Manager, UC or the Performing Institution shall provide the Commission Contract Manager and any designated reviewer(s) access to review Technical and Generated Data produced in the course of this Agreement that is not requested to be delivered to the Commission

For all Data (Technical, Generated and Deliverable) produced under this Agreement, the Commission retains a no-cost, non-exclusive, non-transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, produce and to authorize others to produce, translate, publish and use the Data, subject to the provisions of subparagraph C.

C. Limitations on Commission Disclosure of Information UC Considers Confidential

- 1) Data provided to the Commission by UC, which Data the Commission has not already designated as confidential information and which UC seeks to have designated as confidential, or is the subject of a pending application of confidentiality, shall not be disclosed by the Commission except as provided in Title 20 CCR Sections 2505 and following (and amendments), unless disclosure is ordered by a Court of competent jurisdiction.
- 2) It is the Commission's intent to use and release project results such as deliverables and Data in a manner calculated to further PIER while protecting proprietary or patentable interests of the parties. Therefore, the Commission agrees not to disclose information that UC considers confidential without first providing a copy of the disclosure document for review and comment by UC. UC shall have no less than 10 working days for review and comment and, if appropriate, to make an application for confidential designation pursuant to Title 20 CCR Sections 2505 and following (and amendments) on some or all of the information. The Commission shall consider the comments of UC and use professional judgment in revising the disclosure document accordingly.

D. Exclusive Remedy

In the event the Commission intends to publish or has disclosed data the UC considers confidential, the UC's exclusive remedy is a civil court action for injunctive relief. Such court action shall be filed in Sacramento County, Sacramento, California.

E. Waiver of Consequential Damages

IN NO EVENT WILL THE ENERGY COMMISSION 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 CONFIDENTIAL INFORMATION OR INFORMATION THAT UC CONSIDERS CONFIDENTIAL, EVEN IF THE ENERGY COMMISSION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. DAMAGES THAT THE ENERGY COMMISSION WILL NOT BE RESPONSIBLE FOR INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFIT; LOSS OF SAVINGS OR REVENUE; LOSS OF GOODWILL; LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT; COST OF CAPITAL; COST OF ANY SUBSTITUTE EQUIPMENT, FACILITIES, OR SERVICES; DOWNTIME; THE CLAIMS OF THIRD PARTIES INCLUDING CUSTOMERS; AND INJURY TO PROPERTY.

F. Limitations on UC's Disclosure of Agreement Data, Information, Reports and Records

- 1) UC will not disclose the contents of the final or any preliminary deliverable or report without first providing a copy of the disclosure document for review and comment to the Commission Contract Manager. The UC shall consider the comments of the Commission Contract Manager and use professional judgment in revising the deliverable or report accordingly.
- 2) After any document submitted has become a part of the public records of the State, UC may, if it wishes to do so at its own expense, publish or utilize the same, but shall include the legal notice and copyright information as applicable.
- 3) Notwithstanding the foregoing, in the event any public statement is made by the Commission as to the role of UC or the content of any preliminary or Final Report of UC hereunder, UC may, if it believes such statement to be incorrect, state publicly what it believes is correct.
- 4) No record that is provided by the Commission to UC for UC's use in executing this Agreement and which has been designated as confidential, or is the subject of a pending Application for Confidential Designation, except as provided in Title 20, California Code of Regulations (CCR), section 2505 and following (and amendments), shall be disclosed, unless disclosure is ordered by a court of competent jurisdiction. At the election of the Commission Contract Manager, UC, UC's employees and any subcontractor shall execute a "Confidentiality Agreement," supplied by the Commission Contract Manager.

- 5) UC acknowledges that each of its officers, employees, and subcontractors who are involved in the performance of this Agreement will be informed about the restrictions contained herein and to abide by the above terms.

G. Proprietary Data

Proprietary Data owned by the Performing Institution shall remain with the Performing Institution throughout the term of this Agreement and thereafter. The extent of Commission access to the same and the testimony available regarding the same shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable hereunder or to establish a baseline for repayment purposes.

H. Preservation of Data

Any Data which is reserved to the Performing Institution by the express terms hereof, and pre-existing Proprietary Data and Trade Secrets which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, shall be preserved by the Performing Institution at the Performing Institution's own expense for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated.

I. Destruction of Data

Before the expiration of three years and before changing the form of or destroying any Data (including Technical, Generate, Deliverable, Proprietary Data and Trade Secrets), the UC shall notify Commission of any such contemplated action and Commission may, within thirty (30) days after said notification, determine whether it desires said data to be further preserved. If Commission so elects, the expense of further preserving said data shall be paid for by the Commission. UC agrees that Commission may at its own expense, have reasonable access to said Data throughout the time during which said data is preserved. UC agrees to use its best efforts to identify competent witnesses to testify in any court of law regarding said data or, at Commission's expense, to furnish such competent witnesses.

J. Patent Rights

- 1) Patent rights for any Subject Invention, whether actually patented or unpatented, will be the property of the Performing Institution whose employees or researchers are inventors of such invention pursuant to U.S. patent law, subject to the Commission obtaining a no-cost, nonexclusive, nontransferable, irrevocable, perpetual, royalty-free, worldwide license to use or have practiced such rights for or on behalf of the State of California for governmental purposes. Commission shall not purposefully enter into competition with a Licensee or take affirmative actions intended to effectively destroy the commercial market where a Licensee has introduced a Licensed Product. UC must obtain Agreements to effectuate this clause with all persons or entities (except for the U.S. Department of Energy (DOE), as other terms apply), obtaining ownership interest in such patent rights. Previously documented (whether patented or unpatented under the patent laws of the United States of America or any foreign country) inventions are exempt from this provision.
- 2) UC will disclose to Commission, on a confidential basis, all Subject Inventions from each Performing Institution. The Commission may provide any suggestions to the UC concerning commercialization strategies and/or potential licensees for such invention within sixty (60) days of receiving the disclosure from the UC. UC shall send, by March 1 of each year, a report to the Commission that provides non-proprietary information on the status of any patents and/or licensing Agreements executed or under negotiation for Subject Inventions and/or activities by the Performing Institution(s) and Licensee(s) related to the development and testing of Licensed Product.
- 3) March-in Rights. With respect to any Subject Invention in which the UC has acquired title, to the extent permissible under Federal laws and regulations, the Commission shall have the right to require the UC, an assignee or Licensee of such patent rights to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant, upon terms that are reasonable under the circumstances, and if the UC, assignee, or Licensee refuses such request, to grant such a license itself, if the Commission determines that such:
 - a) Action is necessary because the UC, Licensee, or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the patent rights in such field of use; or
 - b) Action is necessary to alleviate health or safety needs that are not reasonably satisfied by the UC, assignees, or their Licensees.

If the Parties are unable to reasonably resolve conflicts, final resolution will be settled in the courts of the State of California. The parties may refer to the Federal Government's procedures for handling march-in rights.

- 4) Future Reductions. The UC will submit in confidence within ninety (90) days after termination or expiration of the Agreement, a report listing inventions that are conceived, but not actually reduced to practice, in the performance of this Agreement. The Commission will identify in writing within sixty (60) days to the UC those conceptions that it desires to reserve rights to should the Performing Institution desire to actually reduce to practice those identified conceptions within forty-two (42) months after the termination or expiration of the Agreement. UC has an affirmative duty to report to the Commission those conceptions reduced to practice within the forty-two (42) month period.

K. Commission's Rights to Invention

UC, the Performing Institution and all persons and/or entities obtaining an ownership interest in Subject Invention(s) shall include within the specification of any United States patent application, and any patent issuing thereon covering a Subject Invention, the following statement:

"THIS INVENTION WAS MADE WITH STATE OF CALIFORNIA SUPPORT UNDER CALIFORNIA ENERGY COMMISSION CONTRACT NUMBER 500-xx-xxx. THE ENERGY COMMISSION HAS CERTAIN RIGHTS TO THIS INVENTION."

L. Commission's Interest in Inventions

Upon the perfecting of a patent application on any Subject Invention, UC will fill out and sign a Uniform Commercial Code (UCC.1) Financing Statement and submit it to the Commission Contract Officer for complete processing. The Commission Contract Officer will review the UCC.1 for complete information and file the completed UCC.1 with the Secretary of State's Office.

M. Copyrights

- 1) Copyrightable Work first produced under this Agreement shall be owned by the UC, limited by the license granted to the Commission in 2) below.
- 2) UC agrees to grant, the Commission a royalty-free, no-cost nonexclusive, irrevocable, nontransferable worldwide, perpetual license to produce, translate, publish, use and dispose of, and to authorize others to produce, translate, publish, use and dispose of all Copyrightable Work first produced or composed in the performance of this Agreement.

- 3) UC will apply copyright notices to all deliverables using the following form or such other form as may be reasonably specified by Commission.

“©[Year of first publication of deliverable], [copyright holder].
All Rights Reserved.”

- 4) Software

In the event software that is not a deliverable is developed under the Agreement, UC shall have the right to copyright and/or patent such software and grants the Commission a royalty-free, no-cost, non-exclusive, irrevocable, non-transferable, world-wide, perpetual license to produce and use for governmental purposes the software, and its derivatives and upgrades that may be developed by the authors within 42 months following the termination or expiration of the Agreement. The Commission shall not purposefully enter into competition with a Licensee or take affirmative actions intended to effectively destroy the commercial market where a Licensee has introduced a licensed product.

N. Intellectual Property Indemnity

UC will defend and indemnify Commission from and against any claim, lawsuit or other proceeding, loss, cost, liability or expense (including court costs and reasonable fees of attorneys and other professionals) to the extent arising out of any third party claim solely arising out of the negligent or other tortious act(s) or omission(s) by the UC, its employees, or agents, in connection with intellectual property claims against either deliverables or the UC's performance thereof under this Agreement.

EXHIBIT G-2-A

RIGHTS OF PARTIES REGARDING INTELLECTUAL PROPERTY FOR DOE

General IP Terms¹

Note: This exhibit shall be used by UC in contractual agreements executed for work under this Agreement with all DOE Laboratories except those managed by UC.

I. The Parties, the Facility Operator, and Performance of the Agreement

- A. The Parties to this Agreement are the California Energy Resources Conservation and Development Commission (California Energy Commission or Sponsor), and the U.S. Department of Energy.
- B. The U.S. Department of Energy has directed the Management and Operating <(M&O) Contractor of National Laboratory> hereinafter referred to as the "Facility Operator," to perform the work set forth in the Statement of Work for the Sponsor.

Paragraph A. of the following Article II is to be deleted if the Sponsor will not be involved, in any manner, in the licensing of products or technologies arising from the work performed under this Agreement. For purposes of this determination, "involved" in the foregoing sentence includes actively marketing the use of products or technologies arising from the work performed under this Agreement. The determination to delete paragraph A may be supported by the Sponsor certifying that Sponsor will not be involved, in any manner (including the active marketing for the use of products), in the licensing of products or technologies arising from the work performed under this Agreement.

- C. It is understood by the Parties that the Facility Operator is obligated to comply with the terms and conditions of its M&O Contract No. _____ with the United States Government (hereinafter called the "Government") represented by the U.S. Department of Energy (hereinafter called the "Department" or "DOE") when providing goods, services, products, processes, materials, or information to the Sponsor under this Agreement. The obligations of the Facility Operator shall apply to any successor to the Facility Operator continuing the operation of the DOE facility involved in this Agreement.

¹ The provisions in this Exhibit G-2-A are taken directly from the modified Terms and Conditions for the California Energy Commission from the DOE Funds – In Agreement for Research and Development. Only minor clarifying changes have been made for the purpose of the Agreement between the California Energy Commission and UC. The provisions in Exhibit G-2-A are the same as the following articles in the Modified Terms and Conditions from the Funds – In Agreement for Research and Development: IA-C; XI; XII; XIII; and XX-B.

II. Product Liability Indemnity

- A. To the extent permitted by California state law and except for any liability resulting from any negligent acts or omissions of the Government or the Facility Operator, the Sponsor agrees to indemnify the Government and the Facility Operator for all damages, costs, and expenses, including attorney's fees, arising from personal injury or property damage occurring as a result of the making, using, or selling of a product, process, or service by or on behalf of the Sponsor, its assignees, or licensees, which was derived from the work performed under this Work for Others Agreement. In respect to this Article, neither the Government nor the Facility Operator shall be considered assignees or licensees of the Sponsor, as a result of reserved Government and Facility Operator rights. The indemnity set forth in the paragraph shall apply only if the Sponsor shall have been informed as soon as completely as practical by the Facility Operator and/or the Government of the action alleging such claim and shall have been given an opportunity, to the maximum extent afforded by applicable laws, rules, or regulations, to participate in and control its defense, and the Facility Operator and/or Government shall have provided all reasonably available information and reasonable assistance requested by the Sponsor. No settlement for which the Sponsor would be responsible shall be made without the Sponsor's consent unless required by final decree of a court of competent jurisdiction. Nothing herein shall preclude the Facility Operator from entering into agreements to indemnify the Sponsor and the Government from the liability, costs and expenses addressed in this clause provided that any such agreement shall not result in costs allocable or liabilities chargeable to the Government.
- B. The Department of Energy shall require that Facility Operators of each National Laboratory conducting projects under this Agreement include in negotiated contracts with all of its licensees or transferees, if any, product liability indemnity for the Facility Operator, the Government, and the Sponsor. Additionally, the Sponsor shall include in negotiated agreements with all of its licensees or transferees, if any, product liability indemnity for the Government and the Facility Operator. When required, appropriate text for such provisions may be obtained from the DOE Patent Counsel.

III. Intellectual Property – Limited

To the extent permitted by California State law, the Sponsor shall indemnify the Government and the Facility Operator and their officers, agents, and employees against liability, including costs, for infringement of any United States patent, copyright, or other intellectual property arising out of any acts required or directed by the Sponsor to be performed under this Agreement to the extent such acts are not already performed at the facility. Such indemnity shall not apply to a claimed infringement that is settled without the consent of the Sponsor unless required by a court of competent jurisdiction. Nothing herein shall preclude the Facility Operator from entering into agreements to indemnify the Sponsor and the Government from the liability, costs and expenses addressed in this clause provided that any such agreement shall not result in costs allocable or liabilities chargeable to the Government.

IV. Notice and Assistance Regarding Patent and Copyright Infringement

- A. The Sponsor shall report to the Department and the Facility Operator, promptly and in reasonable written detail, each claim of patent or copyright infringement based on the performance of this Agreement of which the Sponsor has knowledge. The Sponsor shall furnish to the Department and the Facility Operator, when requested by the Department or the Facility Operator, all evidence and information in the possession of the Sponsor pertaining to such claim.
- B. The Facility Operator will not, in its supplying of the work under this Agreement's work statement, knowingly infringe or misappropriate any copyrighted material of a third party.

V. Termination

It is agreed that any obligations of the Parties and the Facility Operator regarding Proprietary Information or other intellectual property and payment of royalties will remain in effect, despite early termination of the Agreement.²

² This paragraph is the last sentence from Article XX.B of the Funds – In Agreement for Research and Development, Modified Terms and Conditions for the California Energy Commission.

EXHIBIT G-2-B
RIGHTS OF PARTIES REGARDING INTELLECTUAL PROPERTY
FOR DOE

Patent Rights—Use of Facilities¹

Note: This exhibit shall be used by UC in contractual agreements executed for work under this Agreement with all DOE Laboratories except those managed by UC.

A. Definitions

1. “Subject Invention” means any invention or discovery of the DOE or Facility Operator which is conceived in the course of or under this Agreement or, to the extent the Sponsor is performing any work under this Agreement, of the Sponsor, conceived or first actually reduced to practice in the course of or under this Agreement. “Subject Invention” includes any art, method, process, machine, manufacture, design or composition of matter, or any new and useful improvement thereof, or any variety of plant, whether patented under the Patent Laws of the United States of America or any foreign country, or unpatented.
2. “Patent Counsel” means the DOE Patent Counsel assisting the procuring activity who has the administrative responsibility for the facility where the work under this Agreement is to be performed.
3. “Background Intellectual Property” means the separately developed intellectual property items identified by the Facility Operator in Paragraph I of this Article, which were conceived or in existence prior to or first produced outside of this Agreement.

B. Rights of the Sponsor – Election to Retain Rights

1. Subject to the provisions of paragraph F, with respect to any Subject Invention reported and elected in accordance with paragraph G (1) of this Article, the Sponsor may elect to obtain the entire right, title and interest throughout the world to each Subject Invention made by the Sponsor's employees and any patent application filed in any country on that Subject Invention and in any resulting patent secured by the Sponsor. Where appropriate, the filing of patent applications by the Sponsor is subject to DOE and other U.S. Government security regulations and requirements.

¹ The provisions of this Exhibit G-2-B are taken directly from Appendix B (California Energy Commission – Patent Rights – Use of Facilities) from the DOE Funds-In Agreement for Research and Development.

2. With respect to any Subject Invention in which the Facility Operator or the Government obtains title, the Facility Operator or the Government grants to the Sponsor a non-exclusive, non-transferable, irrevocable, paid-up, license to practice or have practiced by or on behalf of the State of California, for State governmental purposes, the Subject Invention throughout the world. The Facility Operator and/or Government will obtain agreements to effectuate this clause with all persons or entities obtaining ownership interest in patented Subject Inventions.

C. Rights of the Facility Operator – Election to Retain Rights

With respect to any Subject Invention reported in accordance with paragraph G(2) of this Article, the Facility Operator may elect to obtain title to each Subject Invention made by the Facility Operator's employees subject to the terms of its M&O Contract with the U.S. Department of Energy. Once title has been elected by the Facility Operator, a Facility Operator's Subject Invention may subsequently be assigned to the Sponsor, subject to the provisions of paragraphs D and F hereunder, for continuation of patent prosecution, the payment of maintenance fees, or other good cause as mutually agreed to by the DOE, Facility Operator and the Sponsor. In the case of a nonprofit management and operations Facility Operator, the above arrangement has been approved by the Department under 35 USC 202 (c) (7).

D. Rights of Facility Operator and Government

Assignment to the Facility Operator or the Government

The Sponsor agrees to assign to either the Facility Operator or the Government, as requested by the DOE, the entire right, title, and interest in any country to each Subject Invention of the Sponsor, where the Sponsor:

1. Does not elect pursuant to this Article to retain such rights;
2. Elects or is assigned title to a Subject Invention pursuant to paragraph B or C, but fails to have a patent application filed in that country on the Subject Invention or decides not to continue prosecution or decides not to pay any maintenance fees covering such Subject Invention; or
3. Elects to retain title but, at any time, no longer desires to retain title.

E. Unelected Interested

Placement in the Public Domain

The Parties and the Facility Operator each agree that either may place any Subject Invention disclosures in the public domain (by inclusion in the final report of this project) which:

1. Are not elected by either Party or the Facility Operator pursuant to this Article;
2. Each Party and the Facility Operator fails to have a patent application filed in that country on a Subject Invention or decides not to pay any maintenance fees covering such Subject Invention; or
3. Title, at any time, neither Party nor the Facility Operator desires to retain.

F. Terms and Conditions of Waived Rights

1. To preserve the Facility Operator's and the Government's residual rights to Sponsor's Subject Inventions, and in patent applications and patents on Sponsor's Subject Inventions, the Sponsor will take all actions in reporting, electing, filing on, prosecuting, and maintaining invention rights promptly, but in any event, in sufficient time to satisfy domestic and foreign statutory and regulatory time requirements; or, if the Sponsor decides not to take appropriate steps to protect the invention rights, it will notify the Facility Operator or DOE Patent Counsel in sufficient time to permit either the Facility Operator or the Government to file, prosecute, and maintain patent applications and any resulting patents prior to the end of such domestic or foreign statutory or regulatory time requirements.
2. The Sponsor will convey or ensure the conveyance of any executed instruments necessary to vest in either the Facility Operator or the Government the rights set forth in this Article.
3. With respect to any Subject Invention in which the Sponsor obtains title, the Sponsor hereby grants to the Government a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced by or on behalf of the United States Government the Subject Invention throughout the world.
4. The Sponsor will provide the Government a copy of any patent application which it files on a Subject Invention within six (6) months after such application is filed, including its serial number and filing date.

5. The Sponsor agrees to include, within the specification of any U.S. patent application and any patent issuing thereon covering a Subject Invention in which the Sponsor obtains title, the following statement: "The Government has rights in this invention pursuant to (specify this underlying Agreement)."
6. Preference for U.S. Industry. Notwithstanding any other provision of this Article, the Sponsor agrees that neither it nor any assignee, will grant to any person the exclusive right to use or sell any Subject Invention in the U.S. unless such person agrees that any products embodying the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the U.S. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Sponsor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the U.S. or that under the circumstances domestic manufacture is not commercially feasible.
7. March-In-Rights. The Sponsor agrees that with respect to any Subject Invention in which it has acquired title, the DOE will retain the right to require the Sponsor to grant a responsible applicant a non-exclusive, partially exclusive, or exclusive license to use the Subject Invention in any field of use, on terms that are reasonable under the circumstances, or if the Sponsor fails to grant such a license, to grant the license itself. DOE may exercise this right only in exceptional circumstances and only if DOE determines that:
 - a. The action is necessary to meet health or safety needs that are not reasonably satisfied by the Sponsor; or
 - b. The action is necessary to meet the requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Sponsor; or
 - c. Such action is necessary because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of the agreement required by paragraph F (6).
8. The Sponsor agrees to refund any amounts received as royalty charges on any Subject Invention to which the Sponsor obtains title in procurement by or on behalf of the Government and to provide for that refund in any instrument transferring rights to any party in the Subject Invention.

G. Invention Identification, Disclosures and Reports

1. The Sponsor will furnish the DOE Patent Counsel a written report containing full and complete technical information concerning each Subject Invention it makes within six (6) months after conception or first actual reduction to practice, whichever occurs first, in the course of or under this Agreement, but in any event prior to any on sale, public use, or public disclosure of such invention known to the Sponsor. The report will identify the contract and inventor(s) and will be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding to the extent known at the time of disclosure, of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention. The report should also include any election of invention rights under this Article. When a Subject Invention is reported under this paragraph G(1), it will be presumed to have been made in the manner specified in Section (a)(1) and (2) of 42 U.S.C. 5908.
2. The Facility Operator shall report Subject Inventions it makes in accordance with the terms and conditions set forth in its M&O Contract with the U.S. Department of Energy. In addition, the Facility Operator shall disclose to the Sponsor at the same time as disclosure to the Department any Subject Inventions made by the Facility Operator under this Agreement.

The Facility Operator agrees to include, within the specification of any U.S. patent application and any patent issuing thereon covering a Subject Invention in which the Facility Operator obtains title, the following statement:

“This invention was made with support from the US Dept of Energy under Contract No. <Enter DOE Contract Number> and the State of California under California Energy Commission Contract No. 500-xx-xxx. Both the U.S. Government and the California Energy Commission have certain rights in this invention.”

3. Requests for extension of time for election under paragraphs 1. and 2. above may be granted by DOE Patent Counsel for good cause shown in writing.

H. Facilities License

In addition to the rights of the Parties and the Facility Operator with respect to Subject Inventions, the Sponsor hereby grants to the Government an irrevocable, non-exclusive, paid-up license to (1) practice or to have practiced by or for the Government at the facility, and (2) transfer such license with the transfer of the facility any inventions or discoveries regardless of when conceived or first actually reduced to practice or acquired by the Sponsor, which at any time, through completion of this Agreement, are owned or controlled by the Sponsor and are incorporated in the facility as a result of this Agreement to such an extent that the facility is not restored to the condition existing prior to the Agreement. The acceptance or exercise by the Government of the aforesaid rights and license will not prevent the Government at any time from contesting the enforceability, validity, scope of, or title to, any rights or patents herein licensed.

I. Background Intellectual Property

1. The Facility Operator will not knowingly use Background Intellectual Property in performing work under this Agreement unless such Background Intellectual Property, if any, is identified herein below. The Sponsor is not granted any license rights, either express or implied, to this Background Intellectual Property under this Agreement. Facility Operator provides this information to comply with its M&O Contract and to notify the Sponsor that licenses to Background Intellectual Property may be necessary to practice Subject Inventions made under this Agreement. Neither the Government nor the Facility Operator shall be liable for failing to bring Background Intellectual Property to the Sponsor's attention or for infringement of others' rights or damages incurred through the use of such intellectual property.

<Select ONE of the following>

2. No Background Intellectual Property will be used in performing work under this Agreement.
3. The Background Intellectual Property (BIP) listed below will be used in performing work under this Agreement. (Where possible, designate any BIP by disclosure or docket number.)
 - a.
 - b.
 - c.

J. Limitation of Rights

Nothing contained in this patent rights Article shall be deemed to give the Government any rights with respect to any invention other than a Subject Invention except as set forth in Facilities License of paragraph H.

K. Early Termination of Agreement

If the Agreement is terminated before completion of the Statement of Work, then the terms and conditions of this Article will survive the Agreement.

EXHIBIT G-2-C RIGHTS OF PARTIES REGARDING INTELLECTUAL PROPERTY FOR DOE

Rights in Technical Data-Use of Facility¹

Note: This exhibit shall be used by UC in contractual agreements executed for work under this Agreement with all DOE Laboratories except those managed by UC

A. The following definitions shall be used:

1. “Technical Data” as used throughout this Agreement means recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research; document experimental, developmental, demonstrations, or engineering work; or be usable or used to define a design or process; or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, test specifications or related performance or design type documents or computer software (including computer programs, computer software data bases, and computer software documentation).
2. “Generated Information” means information first produced in the performance of this Agreement.
3. “Proprietary Information” means information which is developed outside of this Agreement at private expense, is marked as Proprietary Information, and embodies (1) trade secrets or (2) commercial or financial information which is privileged or confidential under the Freedom of Information Act (5 U.S.C. 552 (b)(4)).
 - a. A trade secret is any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented and which is generally known only to certain individuals with a commercial concern and are using it to fabricate, produce or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

¹ The Provisions of this Exhibit G-2-C are taken directly from Appendix C (California Energy Commission – Rights in Technical Data – Use of Facility) from the DOE Funds-In Agreement for Research and Development

- b. Commercial or financial information is information about the operation of a specific business. It includes information concerning the cost and pricing of goods, supply sources, cost analyses, characteristics of customers, books and records of the business, sales information including mailing lists, business opportunities, information regarding the effectiveness and performance of personnel, and information incidental to Agreement administration.
 - 4. “Unlimited Rights” means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.
 - 5. “Deliverable” data is that which, under the terms of this Agreement, is required to be delivered to the Sponsor.
 - 6. “Copyrighted Project Work” means any copyrightable work as defined under U.S. copyright law that is first created by the DOE and Facility Operator in the performance of this Agreement, is not a scholarly work, and to which the Facility Operator has acquired the rights to assert copyright in accordance with its M&O Contract with the U.S. Department of Energy.
- B. The Sponsor agrees to furnish to the DOE and Facility Operator or leave at the facility that information, if any, which is (1) essential to the performance of work by the Facility Operator personnel or (2) necessary for the health and safety of such personnel in the performance of the work. Any information furnished to the DOE and Facility Operator shall be deemed to have been delivered with Unlimited Rights unless marked as Proprietary Information. The Sponsor agrees that it has the sole responsibility for appropriately identifying and marking all documents containing Proprietary Information, whether such documents are furnished by the Sponsor or are incorporated within report(s) generated under this Agreement and made available to the Sponsor for review.
- If Proprietary Information is disclosed orally, electronically, visually, or in any other intangible form, it shall be identified as such, at the time of disclosure and confirmed in writing within ten (10) days as being Proprietary Information.
- C. The Sponsor, Facility Operator, and the Government shall have Unlimited Rights in all Generated Information, except for information which is disclosed in a Subject Invention disclosure being considered for patent protection or information which is marked as either Proprietary Information or copyrighted in accordance with the provisions set forth herein below. Subject Invention information which may be disclosed to the Sponsor prior to issuance of a patent shall be treated as confidential in accordance with 35 U.S.C. 205 and shall not be further disclosed by the Sponsor during pendency of the patent application.

- D. The Government and Facility Operator agree not to disclose properly marked Proprietary Information of the Sponsor without written approval, except to Government employees who are subject to the statutory provisions against disclosure of confidential information set forth in the Trade Secrets Act (18 U.S.C. 1905).
- E. The Sponsor is solely responsible for the removal of all of its Proprietary Information from the facility by or before termination of this Agreement. The Government and Facility Operator shall have Unlimited Rights in any Proprietary Information which is incorporated into the facility or equipment under this Agreement to such an extent that the facility or equipment is not restored to the condition existing prior to such incorporation. The Government and Facility Operator shall have Unlimited Rights in any information which is not removed from the facility by termination of this Agreement.
- F. The Sponsor has the right to obtain from the DOE through its Facility Operator as a deliverable, a copy of all Technical Data first produced in performance of this Agreement which the Sponsor has not excluded as being unusable to the PIER Program. The Sponsor agrees that the Facility Operator will also provide the Department of Energy with a nonproprietary description of the work performed under this Agreement.
- G. Copyrights. The Sponsor may assert copyright in any of its Generated Information. Except for software which is separately treated hereinbelow and to the extent the Facility Operator is given permission to assert copyright in accordance with its M&O Contract with the U.S. Department of Energy, the Sponsor is hereby granted a royalty-free, non-exclusive, irrevocable, non-transferable, worldwide license to produce, translate, publish, distribute, duplicate, exhibit, prepare derivative works, perform, use and dispose of, and to authorize others to produce, translate, publish, use, distribute, duplicate, exhibit, prepare derivative works, perform and dispose of all Generated Information copyrighted by the Facility Operator for State governmental purposes. Subject to the other provisions of this article, and to the extent that copyright is asserted, the U.S. Government reserves for itself a royalty-free, world-wide, irrevocable, non-exclusive license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, prepare derivative works, and perform any such Generated Information copyrighted by the Facility Operator or the Sponsor.
1. In the event software is first produced in performance of this Agreement, Facility Operator shall have the right to copyright and/or patent such software in accordance with its M&O Contract with the U.S. Department of Energy and hereby grants the Sponsor a royalty-free, no-cost, non-exclusive, irrevocable, non-transferable, worldwide, license to produce and use the software, and to prepare derivative works for State governmental purposes.

2. For all Facility Operator Generated Information, which becomes a Copyrighted Project Work, the Facility Operator will apply a notice in accordance with 17 U.S.C. 401 et seq.
- H. The terms and conditions of this article shall survive the Agreement, in the event that the Agreement is terminated in whole or in part before completion of the Statement of Work.

EXHIBIT H-1 DEFINITIONS

Note: These definitions shall be used by UC in contractual agreements executed for work under this Agreement with all Performing Institutions except DOE Laboratories. Exhibit H-2 shall be used with DOE Laboratories except those managed by UC.

1. DEFINITIONS

- A. **Agreement Period** is the length of the Agreement between the Energy Commission and the UC.
- B. **Agreement Start Date** is the date Commission reimbursable expenses can begin after the Department of General Services signs the Agreement.
- C. **Agreement End Date** is the last date Commission reimbursable expenses can be incurred and is the expiration date of the Agreement.
- D. **Copyrightable Work** means any copyrighted work as defined under U.S. copyright law to which the Performing Institution has acquired title, that is first created by UC or by a Performing Institution in the performance of this Agreement and is not a scholarly work.
- E. **Date** means calendar date.
- F. **Equipment** means any products, objects, machinery, apparatus, implements or tools purchased, used or constructed within the project, including those products, objects, machinery, apparatus, implements or tools from which over thirty percent (30%) of the equipment is composed of materials purchased for the project.

For purposes of determining depreciated value of equipment in the Agreement, the project shall terminate at the end of the normal useful life of the equipment purchased, funded and/or developed with Commission funds. The Commission may determine the normal useful life of such equipment.

- G. **Key Personnel** are employees or consultants of UC or a Performing Institution who are critical to the outcome of the project. For example, they may have expertise in the particular field, or have experience that is not available from another source. Replacing these individuals may affect the outcome of the project.

- H. **Key Subcontractors** are contractors, subcontractors or vendors to UC or to a Performing Institution and who are critical to the outcome of the project. As with Key Personnel, Key Subcontractors may have expertise in the particular field, or have experience that is not available from another source and replacement may significantly affect the project. An employee of UC's or the Performing Institution's subcontractor or vendor may also qualify as "key".
- I. **Licensed Product** means any product commercialized by a Licensee that embodies or utilizes a Subject Invention, Copyrightable Work or Project Related Products.
- J. **Licensee** means the organization (or its affiliates, joint venture or sublicensee) that develops any Subject Invention, Copyrightable Work or Project Related Products into a commercial product that is made available to the public in the marketplace. Licensee may be the UC, a Performing Institution or a company to whom the UC or the Performing Institution licenses commercial rights.
- K. **Materials** means the substances used in constructing a finished object, commodity, device, article or product.
- L. **Net Revenues** means the total of the gross invoice prices of Licensed Product sold, less the sum of the following actual and customary deductions where applicable: cash; quantity discounts; sales, use, tariff, import/export duties or other excise taxes imposed upon particular sales; transportation charges; and allowance or credits to customers because of rejections or returns.
- M. **Net Royalties** means gross royalties and fees received by UC or a Performing Institution from a Licensee as consideration for commercially licensing any Subject Invention, Copyrightable Work or Project-Related Product, less the following:
1. Legal and other direct expenses (that are not otherwise reimbursed under an option or license agreement from a third party) of patenting, protecting and preserving patent, copyright and related property rights, maintaining patents and other such costs, taxes, or reimbursements as may be necessary or required by law, except patent infringement expenses, and
 2. Inventor or author shares in accordance with UC's, or as appropriate, the Performing Institution's patent or copyright policy

Direct expenses include operating expenses of UC and Performing Institutions. Net Royalties do not include any payments to joint holders nor research funding accepted by a Performing Institution in association with an option or licensing agreement. Net Royalties shall be aggregated cumulatively, over time, by UC for each Performing Institution and for all of each Performing Institution's disclosed Subject Inventions, Copyrightable Works and Project-Related Products.

- N. **Otherwise Disposing Of** means (1) Project-Related Products and rights not sold but delivered by the UC or a Performing Institution to others regardless of the basis for compensation, if any, and (2) Project-Related Products and rights put into use by UC or any third party for any purpose other than testing or evaluation of the Project-Related Products.
- O. **Performing Institution** means (i) any non-UC not-for-profit organization, for-profit organization, or Federal laboratory, or (ii) any part of University of California, such as a campus or UC-managed Department of Energy Laboratory performing research under this Agreement.
- P. **Project** refers to the entire effort undertaken and planned by the UC and consisting of the work co-funded by the Commission. The project may coincide with or extend beyond the Agreement Period.
- Q. **Project-Related Products ("PRP")** means all tangible research products first made by UC or a Performing Institution in the performance of this agreement, but not a Subject Invention nor a Copyrightable Work.
- R. **Sale** is the sale, license, lease, option, gift or other transfer of a Subject Invention, Copyrightable Work or Project Related Product.
- S. **Sales Price** means gross revenue, excluding normal returns and allowances such as sales tax, freight and insurance, if applicable, derived from a sale.
- T. **Subject Invention** means any patentable invention or discovery that is either:
1. Conceived and first actually reduced to practice in the performance of this Agreement;
 2. Conceived in the performance of this Agreement elected by the Commission pursuant and reduced to practice within 42 months following the termination or expiration of the Agreement; or
 3. Conceived prior to and reduced to practice in the performance of this Agreement, provided that such conception was incorporated into the Project and the parties mutually agree in writing to include such conception.

U. **Technology** refers to the general subject area where the product or innovation will be used. For example, solar thermal electric generation is a technology area; direct steam generation is an innovation in this technology area. *Technology Developed* means subject invention and/or project-related products and rights.

V. Terms Relating to Data

1. **Technical Data** or **Data** as used throughout this Agreement means recorded information regardless of form or characteristic, of a scientific or technical nature and used in the performance of this Agreement. It may, for example, document research; document experimental, developmental, demonstration, or engineering work; or be usable or used to define a design or process; or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, test specifications or related performance or design type documents or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of technical data include manufacturing techniques and methods, machinery, devices such as tools, products, or components, research and engineering data, engineering drawings and associated lists, specifications, engineering calculations, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used herein does not include financial reports, cost analyses and other information incidental to contract administration.
2. **Public Information** is information previously published, generally available from more than one source, or information in the public domain. All air monitoring and emission data included in a proposal or requested through a contract are public information. Government Code Section 6254.7 states that all information, analyses, plans or specifications that disclose the nature, extent, quantity, or degree of air contaminants or other pollution which any article, machine, equipment, or other contrivance will produce, which any state or local agency requires applicant to provide before the applicant builds, erects, alters, replaces, operates, sells, rents, or uses such article, etc., are public records.
3. **Confidential Information** is information submitted to the Commission, that UC has satisfactorily identified and which the Commission has agreed to designate as confidential pursuant to Title 20 CCR Sections 2501 and following (and amendments).

4. **Proprietary Data** is such data as UC has identified in a satisfactory manner as being under the Performing Institution's control prior to commencement of performance of this a WA or produced by the Performing Institution outside of this Agreement at its own expense, and which UC has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of the Agreement is commenced.
5. A **Trade Secret** is any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented and which is generally known only to certain individuals with a commercial concern and are using it to fabricate, produce or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.
6. **Generated Data** is that data that UC collects, collates, records, deduces, reads out or postulates for use in the performance of this Agreement. In addition, any electronic data processing program, model or software system developed or substantially modified by the UC in the performance of this Agreement at Commission expense, together with complete documentation thereof, shall be treated as Generated Data.
7. **Deliverable Data** is that data which, under the terms of this Agreement, is required to be delivered to the Commission.

EXHIBIT H-2 DEFINITIONS AND ADDITIONAL CONTRACT TERMS FOR DOE

Definitions and Additional Agreement Terms¹

Note: These definitions shall be used by UC in contractual agreements executed for work under this Agreement with all DOE Laboratories except those managed by UC.

Clause 1. Purpose and Precedence.

- A. This contract is entered into between University of California (UC) and United States Department of Energy (DOE). This Contract is funded by the California Energy Commission. UC is subcontracting with DOE for the research described in the work statement. The Parties agree that this Exhibit is intended as an addendum to the contract between UC and DOE, to fulfill the legal and regulatory obligations and commitments that the California Energy Commission has to the State of California.
- B. In the event of any conflict between Federal law applicable to contract and State law, Federal law shall take precedence.

Clause 2. Definitions.

- A. **Agreement Budget** refers to reimbursable resources for that portion of the Project covered by the Agreement.
- B. **Agreement Period** is the length of the Agreement between the UC and the DOE. The Agreement Period coincides with that portion of the Project covered by the Agreement Budget.
- C. **Date** means calendar date.
 - 1. **Agreement Start Date** is the date reimbursable expenses can begin after the Agreement document is signed by the parties.
 - 2. **Termination Date** is the expiration date of the Agreement and is the last date reimbursable expenses can be incurred.

¹ The Provisions of this Exhibit H-2 are taken directly from Appendix E (California Energy Commission – Definitions and Additional Agreement Terms) from the Fund-In Agreement for Research and Development. Only minor, clarifying changes were made for the purposes of the DOE Agreement between UC and the California Energy Commission.

- D. **Equipment** means any products, objects, machinery, apparatus, implements or tools, in excess of \$5000.00, purchased or constructed under this Agreement, including those products, objects, machinery, apparatus, implements or tools, in excess of \$15,000.00, from which over thirty percent (30%) of the equipment is composed of materials purchased for the project.

For the purposes of determining residual value, the UC will use straight line depreciation over the equipment's useful life as determined by the UC's standard accounting practices. The residual value will be calculated as of the date of the completion or termination of this Agreement.

- E. **Materials** means the substances used in constructing a finished object, commodity, device, article or product.
- F. **Participant's value contribution** means the assessed value of Federal Administrative Charges not charged to this project and assessed value of synergistic projects. The assessed value of such synergistic projects does not constitute a funding contribution or obligation (either cash or in-kind) on the part of the DOE or the Facility Operator.
- G. **Project** refers to the entire effort undertaken and planned by the Facility Operator under Appendix A, Statement of Work and includes the work funded by this contract. The Facility Operator's Project coincides with that portion of the Project covered by the Agreement Budget and the Agreement Period.
- H. **Sale** is sale, license, lease, gift or other transfer of a project-related product or right.

Clause 3. Standard of Performance.

- A. Facility Operator, its subcontractors and their employees in the performance of work under this Agreement shall be responsible for using their best efforts to exercise the degree of skill and care required by customarily accepted good professional practices and procedures used in scientific and engineering research fields.

- B. In the event that the UC believes the Facility Operator/subcontractor has failed or is failing to perform in accordance with the standard of performance in paragraph 3A, the California Energy Commission and the Facility Operator shall negotiate in good faith an equitable resolution satisfactory to both parties. If such resolution cannot be reached, the Parties shall work through the Alternate Dispute Resolution process described in the contract between UC & DOE. In the event negotiation and resort to the Alternate Dispute Resolution do not provide a satisfactory resolution, Sponsor's sole remedy in the event of the Facility Operator's failure to perform in accordance with the standard of performance in this paragraph is termination of the Agreement. Nothing herein shall preclude the Facility Operator from entering into agreements of other or additional remediation with the UC provided that any such agreement shall not result in costs allocable or liabilities chargeable to the Department of Energy.
- C. Nothing contained in this Clause 3 is intended to limit any of the rights or remedies that the Parties may have under law, or to limit exercise of any other provision of this agreement.

Clause 4. Subcontractors and Subcontractor Agreements.

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

Clause 5. Public Hearings.

If public hearings on the subject matter dealt with in this Agreement are held during the period of the Agreement, the DOE shall ensure that the Facility Operator makes available to testify the personnel assigned to this Agreement if requested by UC. UC will reimburse, by advance payment, the labor and travel costs of testifying personnel assigned to this Agreement at the Facility Operator's rates for such work.

Clause 6. Site Access for Project Review.

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

Clause 7. Notice to Parties and Facility Operator.

Notice to the Parties may be given by certified mail properly addressed, postage fully prepaid, to the address listed in the Contract, and Block 14 (DOE) in the Standard Agreement for each respective party. Notice to the Facility Operator may be given by certified mail properly addressed, postage fully prepaid to the address listed in Block 12 (M&O Contractor of the National Laboratory). Notice may be given to such other address as either Party or the Facility Operator shall provide to the other in accordance with this section. Such notice shall be effective when received, as indicated by post office records, or if deemed undeliverable by post office, such notice shall be effective nevertheless fifteen (15) days after mailing.

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

Clause 8. Business Activity Reporting.

- A. The DOE shall give UC prior written notice of any change of address or name change.

- B. Facility Operator shall not change or reorganize the type of business entity under which it does business except upon prior written notification to the UC, except that the Department of Energy can change the successor to the Facility Operator to continue the operation of the DOE facility without prior written notification to UC. In the event the UC is not satisfied that the new entity can perform as the original Facility Operator, the California Energy Commission may terminate this Agreement as provided in the Termination paragraph.
- C. Facility Operator shall promptly notify UC of the occurrence of each of the following:
 - 1. The existence of any litigation or other legal proceeding affecting the Project;
 - 2. The occurrence of any casualty or other loss to project personnel, equipment, in excess of \$5,000.00, or third parties of a type commonly covered by insurance; and
 - 3. Facility Operator's receipt of notice of any claim or potential claim against Facility Operator for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the UC's rights.

Clause 9. Travel and Per Diem.

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

Clause 10. Accounting, Cost Allowability, and Audit Provisions

- A. Accounting Procedures. The Facility Operator's costs shall be determined on the basis of the Facility Operator's accounting system procedures and practices employed as of the effective date of this Agreement, and as may be revised from time to time, provided that generally accepted accounting principles and cost reimbursement practices are used. The Facility Operator's cost accounting practices used in accumulating and reporting costs during the performance of this Agreement shall be consistent with the practices used in estimating costs for any proposal to which this Agreement relates; provided that such practices are consistent with the other terms of this Agreement and provided, further, that such costs may be accumulated and reported in greater detail during performance of this Agreement. The Facility Operator's accounting system shall distinguish between direct costs and indirect costs. All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to costs incurred under this Agreement.
- B. Allowability and Unallowability of Costs. The costs that shall be reimbursed by Sponsor include all costs, direct and indirect, incurred in the performance of work under this Agreement. Allowability or unallowability of costs shall be determined in accordance with the Allowability Costs provision of the Department of Energy Acquisition Regulation (DEAR) incorporated in the Facility Operator's M&O Contract with the DOE Appendix F of this Agreement incorporates the current DEAR Allowable Cost provision of the Facility Operator's M&O Contract in effect as of the effective date of this Agreement and shall be determinative of the costs allowed under this Agreement.
- C. Audit. Upon the request of UC; the California Energy Commission; or the California Bureau of State Audits; and at the expense of the requesting party; the DOE or its designee, shall audit the Facility Operator's records related to this Agreement. The Facility Operator shall furnish detailed itemization of, and retain all records relating to, direct expenses reimbursed to Facility Operator, and to hours of employment on this Agreement by an employee of Facility Operator for which UC is billed. Such records shall be maintained for a period of three years after final payment under this Agreement, or until audited by the DOE or its designee pursuant to the request for audit specified above, whichever occurs first. Once notified of a request for audit, the Facility Operator shall maintain such records until the audit is completed. Said audit shall be conducted in accordance with Government Auditing Standards, and shall be performed in a time frame and shall contain a scope of work mutually agreed to by the Department of Energy and the auditor. The auditor shall be provided a copy of the audit report and, upon request, shall have access to review the audit work papers.

Clause 11. Survival.

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

- “Advance Funding, Invoicing and Payment”
- “Property”
- “Termination”
- “Alternate Dispute Resolution”
- “Indemnifications”
- “Patent Rights”
- “Rights in Technical Data”
- “Payments to Sponsor”
- “Site Access for Project Review”
- “Business Activity Reporting
- Accounting, Cost Allowability and Audit Provisions”

Clause 12. Stop Work.

UC Contracts Officer may, at any time, by five-days written notice to the DOE, require the Facility Operator to stop all or any part of the Agreement’s work tasks.

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