

Exhibit C
University Terms & Conditions
UTC-518
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1. **Definitions**

Refer to [definitions](#) at end of document.

2. **Approval**

This [Agreement](#) is of no force or effect until signed by both [Parties](#) and approved by the Department of General Services, if required. University may not commence performance until such approval has been obtained.

3. **Amendment**

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the Parties and approved as required. No oral understanding or agreement not incorporated in the Agreement is binding on any of the Parties.

4. **Liability**

A. To the extent permitted by law, the [University](#) shall defend, indemnify and hold harmless the [State](#), its officers, employees and agents 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 University, its respective officers, agents or employees.

B. To the extent permitted by law, the State shall defend, indemnify and hold harmless the University, its officers, employees and agents 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, its respective officers, agents or employees.

C. If the University provides funds to any Subawardee, excluding any agency or department of the United States, to accomplish any of the work of this Agreement, the University shall first enter into a written agreement with each Subawardee by which the Subawardee agrees to indemnify and hold harmless the State of California, the State and its officers, agents, and employees from any and all liabilities, losses, claims, demands, damages, or costs, including without limitation litigation costs and attorney's fees, resulting from or arising out of the Subawardee's performance under its agreement with the University, 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 Subawardees, its respective officers, agents or employees. The foregoing does not limit any breach of contract action that the State may have against the University.

5. **Conflict of Interest**

A. Conflict of Interest

1) State intends to avoid any real or apparent conflict of interest on the part of the University, Subawardees, or employees, officers and directors of the University or Subawardee. Thus, State reserves the right to determine, in its reasonable discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the University to submit additional information or a plan for resolving the conflict, subject to State review and prior approval.

2) Conflicts of interest include, but are not limited to:

(a) An instance where the University or any of its Subawardees, or any employee, officer, or

director of the University or any Subawardee receiving information in connection with the performance of services hereunder has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing such services would result in private or personal benefit.

- (b) An instance where, in connection with the performance of services hereunder, the University's or any Subawardee's employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.

B. Disclosure of Current and Pending Support

The University will be required to submit a completed Current and Pending Support form (Exhibit A6) to the State with its Proposal. Upon request from the State, University will submit an updated Current and Pending Support form within thirty (30) calendar days of the request from the State.

C. Evaluation

If either Party becomes aware of a known or suspected conflict of interest pursuant to paragraphs A or B above, the knowledgeable Party shall inform the other Party, and the University will be given an opportunity to submit additional information or to resolve the conflict. Within twenty (20) calendar days from the date of notification of the conflict, the University will provide additional information sufficient to fully evaluate the nature and effects of the potential conflict. If a conflict of interest is determined to exist by the State in its reasonable discretion and cannot be resolved to the satisfaction of the State, the conflict will be grounds for terminating the Agreement for good cause pursuant to Section 7 of this Agreement. The State may, at its discretion upon receipt of a written request from the University, authorize an extension of the timeline indicated herein.

6. Dispute Resolution

- A. The State's Contract/Program Manager and the University's Principal Investigator shall attempt to informally resolve any disputes under this agreement.
- B. If either Party determines that the dispute cannot be informally resolved, either Party may submit to the other Party in writing a description of the dispute and the desired outcome.
- C. The State's Authorized Official, as designated in Exhibit A3, or designee and the University's Director of Contracts and Grants Administration or designee shall meet to review the issues. A written decision signed by the Party receiving the notice of dispute shall be returned to the other Party within thirty (30) working days of the receipt of the notice of dispute, or as otherwise agreed between the Parties, in writing.
- D. If both Parties cannot agree upon a resolution after following the processes described in this Agreement, both Parties retain the right to bring a lawsuit or seek any other legal or equitable remedy either Party may have.

Pending the final resolution of any dispute arising under this Agreement, University agrees to diligently proceed with the performance of this Agreement, including the delivery of goods or the provision of services or research in accordance with the terms of this Agreement, unless the dispute involves the University's continued performance under this Agreement. The University's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this Agreement. State agrees to continue payment for costs not under dispute.

- E. If payment for services performed by University is part of the dispute, to the extent it is legally able to

do so, the State will ensure that funds remain available for this purpose and do not revert prior to the conclusion of the dispute resolution process.

- F. This dispute resolution process does not preclude either Party from exercising its right to terminate this Agreement pursuant to Section 7.

7. Termination

- A. The State's Authorized Official may terminate this Agreement with or without cause upon thirty (30) calendar days written notice to the University. Upon receipt of the State's notice of termination, the University shall take reasonable efforts to limit or terminate all financial commitments and will not incur new obligations under this Agreement. In accordance with the Invoice Provision of this Agreement the State shall reimburse the University for costs incurred up to the effective date of termination and for costs incurred due to Non-cancellable Obligations, up to the undisbursed balance of funds authorized in this Agreement.
- B. The University's Authorized Official may terminate this Agreement for Good Cause and upon thirty (30) calendar days written notice to the State of the cause for termination. Upon submission of the University's notice of termination, the University shall take reasonable efforts to limit or terminate all financial commitments and will not incur new obligations under this Agreement. In accordance with the Invoice Provision of this Agreement the State shall reimburse the University for costs incurred up to the effective date of termination and for costs incurred due to Non-cancellable Obligations, up to the undisbursed balance of funds authorized in this Agreement.
- C. Good Cause is defined as impossibility of performance or frustration of purpose. Good cause does not include material breach or termination for convenience.
- D. In the case of early termination, the University will submit, within ninety (90) days of the termination date, an invoice and a report covering services up to the termination date. Any Deliverable as described in this Agreement, that is fully or partially completed up to the termination date (work product), will be provided to the State.
- E. Upon receipt of the invoice, progress report, data, and work product, a final payment will be made to the University. This payment shall be for all costs incurred in accordance with this Agreement, and shall include labor and materials purchased or utilized (including all Non-cancellable Obligations) up to the termination date, and pro rata share of indirect costs as specified in the budget (Exhibit B).
- F. If either Party notifies the other of a material breach, the breaching Party will have fifteen (15) calendar days to respond with a remedy to correct the breach. The receiving Party has fifteen (15) calendar days to accept or reject the proposed remedy or offer an alternative remedy. Upon approval of the proposed remedy, the breaching Party has thirty (30) calendar days to implement the cure. In the event the breaching Party does not cure the breach within the thirty-day period, the non-breaching Party may terminate for cause immediately upon written notice. All notifications, acceptances and or rejections must be submitted in writing.
- G. Pursuant to a Governor's Executive Order or equivalent directive, such as a court order or an order from a federal or state regulatory agency, the State may issue a Suspension Notice. The Notice must identify the specific Executive Order or directive and the Agreement number(s) subject to suspension. Work charged to the State must stop immediately upon receipt of the Notice. The University retains the right to reimbursement of costs incurred to date, including non-cancellable obligations, and reserves the right to seek reimbursement through administrative or legal action.

H. The University shall include in any agreement with any subawardee retained for work under this Agreement a provision that entitles the University to suspend or terminate the agreement with the subawardee for any reason on written notice and on the same terms and conditions specified in this section.

8. Confidential Information

A. Protection of Personally Identifiable Information

Except as otherwise provided by law, information or data that personally identifies an individual or individuals shall be protected in accordance with California Civil Code Sections 1798, et seq., and other relevant State or Federal statutes and regulations. The Parties shall comply with California Civil Code Sections 1798, et seq. and other relevant State or Federal statutes and regulations in safeguarding all such information or data which comes into their possession under this agreement in perpetuity, and shall not release or publish any such information or data except as permitted by law.

B. Confidentiality of Third Party Provided Information

Third Parties may provide Confidential Information to the State or directly to the University for use by the University in the performance of the Scope of Work. Any such information will be defined by the State in the Scope of Work as “Third-Party Confidential Information” and requirements for treatment of such information will be set forth in Exhibit A, Scope of Work. In addition, such third party may also request a separate Confidential Nondisclosure Agreement (CNDA). If applicable, a CNDA for this purpose will be provided as Exhibit A7.

C. Trade Secrets

Both Parties agree that they will not provide or make accessible to either Party any third-party Trade Secrets without first informing the receiving Party and obtaining prior written consent to accept and protect such information in perpetuity or until the information disclosed under this Agreement ceases to be a Trade Secret.

D. Other Confidential Information

Any other information considered confidential by the disclosing Party will be clearly marked by the disclosing Party in writing, as “Confidential Information”, and sent only to the designated representative of the receiving Party. Any confidential information conveyed orally to the receiving Party by the disclosing Party shall be followed by a written communication within fourteen (14) days that said information will be considered “Confidential Information.” Neither Party will disclose Other Confidential Information unless it is necessary to the Scope of Work or is otherwise required by law. Except as required by law and/or by court order, the receiving Party will not disclose Confidential Information for a period of five (5) years from the termination of this Agreement, or such time period mutually agreed upon by both Parties. At the end of said five year period or upon request from the State, University will return or destroy Confidential Information.

The receiving Party will take all appropriate measures to protect the confidentiality of such information while in its possession. In the event that University is required to disclose Confidential Information to a Consultant and/or Vendor in order to fulfill the Scope of Work, the University will require the Consultant and/or Vendor to comply with terms at least as stringent as University’s obligations hereunder and as required by law.

Notwithstanding any other provision in this Agreement, both Parties are subject to the California Public Records Act (“CPRA”), Government Code Section 6250 et seq. Education Code Section 72690 applies to CSU Auxiliaries. University will advise Subawardees of these facts.

- E. Special Conditions for Security of Confidential Information
University will comply with applicable State and Federal statutes and regulations and policies regarding information security. Additional legal and regulatory requirements regarding security of Confidential Information, and requirements regarding use and disposition thereof, may be provided by the State and are specified in Exhibit E.
- F. The confidentiality obligations herein do not apply to information that (i) was known to the receiving Party prior to its receipt from the disclosing Party, (ii) is independently developed by the receiving Party, or (iii) becomes available to the general public at any time through no fault of the receiving Party.

9. Key Personnel

Any change in the Key Personnel identified in Exhibit A2, Scope of Work, shall require prior approval of the State. The State shall not unreasonably delay its determination whether to provide such approval. The University will provide any documentation required to facilitate the State's determination of whether or not to approve the proposed change in Key Personnel.

10. Requirements Associated with Funding Sources

- A. This Agreement is subject to any additional requirements imposed on the State agency by applicable law (including, but not limited to, bond, proposition and federal funding). These additional requirements and applicable funding sources are set forth in the following Exhibits, which are attached and incorporated by this reference in Exhibit D.
- B. If the University is a subrecipient, as defined in 2 CFR § 200.93, and the External Funding Entity is the federal government, the awarding State agency will provide to the University the name of the federal agency, the prime award number (if available), and the Catalog of Federal Domestic Assistance (CFDA) program number (if available and applicable). The State acknowledges that in the case of federal funds, the University must comply with the applicable Federal regulations.
- C. Notwithstanding the foregoing, this Agreement shall be governed by the laws of the State of California as to interpretation and performance.

11. Subawards

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

This subsection 11.A. shall not apply to "Sub-Agreements" with the United States Department of

Energy National Laboratories.

- B. The University shall be responsible for establishing and maintaining written agreements with and making payments to Subawardees for work performed in accordance with the terms of this Agreement. Nothing contained in this Agreement, or any subsequent Amendment to this Agreement, shall create any contractual relationship between the State and any Subawardee, and no Subawardee shall relieve the University of its responsibilities and obligations hereunder. The University shall provide copies of Subaward documents upon request by the State.
- C. Any substitution or addition of Subawardees identified in this Agreement must be approved in writing by the State in advance of assigning work to substitute or new Subawardees. University acknowledges that, if applicable, the State must comply with State Contracting Manual (SCM Volume I) Section 3.06, which applies to all Subawards. The State will decide whether to seek authorization to allow the University to proceed with the proposed substitute or additional Subawardee, and the University will provide assistance to the State upon request in order to meet these requirements.
- D. This section applies to any Subawardee that provides assistance to the University under this Agreement regardless of time or dollars expended.
- E. Vendors are not considered to be a Subawardee and are subject to the normal terms and conditions of the University's procurement process.

12. Budget Contingency

- A. It is mutually understood between the Parties that this Agreement may have been written before ascertaining the availability of congressional or legislative appropriation of funds, for the mutual benefit of both Parties in order to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made.
- B. This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government or the California State Legislature for the purpose of this program. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or the State Legislature that may affect the provisions, terms, or funding of the Agreement.
- C. It is mutually agreed that if Congress or the California State Legislature does not appropriate sufficient funds for the program, the State has the option to terminate the Agreement in accordance with Section 7 or to amend this Agreement to reflect any reduction in funds.

13. Travel

- A. Travel and reimbursement for University employee travel costs shall be in accordance with the University's travel policy in effect as of the date the cost is incurred. The University's travel policy is found at: <http://policy.ucop.edu/doc/3420365/BFB-G-28> [UC] <http://www.calstate.edu/icsuam/documents/Section3000.pdf> [CSU]. The University will immediately inform the State in writing of any changes in its travel policy.

Lodging rates shall be reasonable.

- B. Reimbursement for travel by employees of a Subawardee of the University shall be reimbursed at actual cost not to exceed the Federal rates in effect as of the date the costs are incurred. Federal rates are available on the US General Services Administration website at <http://www.gsa.gov/portal/category/21287>.

- C. The Budget shall identify all travel and the costs of travel, including travel by subawardees, and shall itemize the rate, estimated cost and destination of the travel. The Budget Justification and/or Scope of Work shall identify the travelers and purpose of the travel. Travel identified in this manner is considered approved upon execution and approval of the Agreement. Travel not identified in the Budget and/or Scope of Work shall require prior written (including fax or email) authorization from the State [Contract Project Manager](#). The need for actual travel not identified in the proposed Budget and/or Scope of Work must be justified and all technological avenues of communication (e.g., teleconferencing, videoconferencing, or web conferencing) must be explored before travel will be approved.
- D. If State policy regarding out-of-state travel changes during the period of this Agreement, it is the responsibility of the State to inform the University, and the Parties will work together in good faith to amend this Agreement, as necessary.

14. [Payment & Invoicing](#)

A. Reimbursement

- 1) The total amount of funds disbursed under this Agreement shall not exceed the total amount in item 3 on STD 213. Subject to the Budget Contingency clause of this Agreement, the amounts payable for each fiscal year, if applicable, will be identified in Exhibit B.
- 2) Costs for this Agreement shall be computed in accordance with the Generally Accepted Accounting Principles (GAAP). The State will reimburse [direct](#) and [indirect costs](#) in accordance with Exhibit B.
- 3) State shall reimburse salaries and wages based upon the approved budget (Exhibit B) and the actual payments made with the following caveat: University must retain supporting documentation that shall substantiate actual costs and shall be available for review by the State upon request. Supporting documentation may include, but not be limited to, time reports and/or calendar entries.
- 4) Indirect Costs shall be calculated in accordance with the University budgeted indirect costs in Exhibit B, Budget. Subject to Exhibit D, the rate in effect for the first year of a multi-year project will be the rate used for the entire project. If additional funds (not previously appropriated or budgeted) are awarded, the proposed budget for these additional funds may include a different indirect cost rate as mutually agreed between the parties.
- 5) Nothing herein contained shall preclude a ten-percent payment withhold pursuant to Section 10346 of the Public Contracts Code.

B. Expense Allowability / Fiscal Documentation

University will maintain financial records and supporting documentation of all costs incurred in the performance of this Agreement. If the State agency or State Controller's Office requires clarification of any expenditure prior to payment of an invoice, University will provide documentation of such expenditure to support its allowability. If any expenditures are disputed by the State, pending resolution, State agrees to pay all other undisputed invoiced costs.

- 1) Equipment purchases shall comply with Department of General Services State Contracting Manual (SCM) Section 7.29 – Equipment Purchases, if applicable.

For the purposes of this Agreement, “damage” as used in paragraph B of SCM 7.29 – Equipment Purchases is defined as physical harm that is sustained by the equipment that prevents its functioning as designed or manufactured.

- 2) University will maintain financial documentation in accordance with Section 16, Audit.

C. Invoicing

- 1) For services satisfactorily rendered in accordance with the Scope of Work and Budget, and upon receipt and approval of invoices, State agrees to reimburse the University for actual allowable expenditures. Approval of invoices shall not be withheld based on scientific differences between University and State in the interpretation of the research data and final conclusions.
- 2) Invoices shall be submitted in arrears not more frequently than monthly and not less frequently than quarterly to the State [Financial Contact](#), identified in Exhibit A3. Invoices may be submitted electronically by email. If submitted electronically, invoice must include the following certification for State certification to the State Controller's Office, in compliance with SAM 8422.1:

This bill has been checked against our records and found to be the original one presented for payment and has not been paid. We have recorded this payment so as to prevent a later duplicate payment.

Signed: _____
State Agency Accounting Officer

- 3) Invoices shall:
 - a. Bear the University's name as shown on the Agreement
 - b. Include the Agreement number and University fund/reference number
 - c. Identify the billing and/or performance period covered by the invoice and provide a detailed transaction ledger, including payroll detail, for the same period
 - d. Provide University invoice contact, telephone number and/or email address
 - e. Be prepared in accordance with the approved cost categories identified in Exhibit B and the elements contained in Exhibit B3
 - f. Be certified in ink or by an electronically scanned copy of a signature by the University's [Authorized Financial Contact](#) (or designee) identified in Exhibit A3 as true, correct, and the sole bill for the charges invoiced.
- 4) A copy of the invoice/detailed transaction ledger shall be certified in ink or by an electronically scanned copy of a signature by the PI or designee (such designee shall be identified in Exhibit A3) for costs incurred, with the following statement: "I have reviewed the expenditure detail for this invoice to determine the allowability of the charges to this project and certify that the salaries and wages included on this invoice and ledger are an accurate representation of actual time worked." This certified document may be transmitted electronically to the State's Contract Project Manager (Technical) identified in Exhibit A3.
- 5) The University shall submit the final invoice to the State, no later than ninety (90) calendar days after the agreement completion date.

D. Program Income

- 1) The University shall account for [Program Income](#) related to projects funded by this Agreement on Exhibit B, Page 2.
- 2) At the discretion of the State, as identified in Exhibit B, Page 2, Program Income may be used to support total project costs, to further eligible project or research program objectives, or to finance the non-state funded portion of the project or program.

- 3) After the execution of this Agreement, if the University becomes aware of Program Income not identified in Exhibit B, University will notify the State promptly by submitting a revised Exhibit B, Page 2, Program Income, pursuant to Section 15. Prior Approval Requirements and Budget Flexibility.
- 4) Within sixty (60) days of the program event the University will provide the State with a preliminary accounting of program event revenues and expenditures. When the work under this Agreement is completed and if applicable the University will reduce the total amount of the final invoice to the State by any Program Income exceeding total project expenditures. Unless agreed to otherwise by the Parties, net revenue from this project shall be remitted by the University to the State with the final closeout or accounting of project expenditures in accordance with Section E.4.

15. Prior Approval Requirements and Budget Flexibility

A. Prior Approval Requirements

The following changes require prior approval of the State Contract Project Manager, whether or not the change has a budgetary impact.

- 1) Change in Scope of Work
- 2) Change in Key Personnel
- 3) Inclusion of restricted use data or copyrighted works in Deliverables
- 4) Travel not included in the approved Budget
- 5) Equipment not included in the approved Budget
- 6) Computer (or theft sensitive equipment) not included in the approved Budget
- 7) Substitution or addition of Subawardees

B. Budget Flexibility

Budget revisions between identified budget categories in cost reimbursement agreements that are within the total Agreement amount, comply with the Prior Approval Requirements, above and do not change the Scope of Work or substitute Key Personnel, as defined in this Agreement, are allowed as described below:

- 1) Up to 10% of each annual budget amount or \$10,000, whichever is less, is allowed with approval of the State's Contract Project Manager, or as otherwise agreed to by the Parties and documented on Exhibit B.
- 2) Exceeding 10% or \$10,000, whichever is less, of the last approved budget require the State's Contract Project Manager's prior approval and may require a formal amendment to this Agreement. The University will submit a revised budget to the State for approval.

Budget transfers that would cause any portion of the funds to be used for purposes other than those consistent with the original intent of this Agreement are not allowed.

- C. Revisions and/or changes pursuant to this Section 15 may require a formal amendment to this Agreement.

16. Audit

The University agrees that the awarding State agency, the Department of General Services, the California State Auditor, or their designated representative shall have the right to audit and/or review, and copy any records and supporting documentation pertaining to the performance of this Agreement if it exceeds \$10,000. The University agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated in Exhibit D. If any litigation, claim, or audit begins prior to the expiration of the retention period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

University agrees to refund to the State any amounts claimed for reimbursement and paid to University which are later disallowed by the State after audit or inspection of records.

17. Right to Publish

- A. Subject to any restrictions on the publication, disclosure, dissemination and use of Confidential Information or use of data set forth in this Agreement or under any applicable law, the University shall have the right to publish, disclose, disseminate and use, in whole and in part, any data and information received or developed under this Agreement.
- B. The University will provide publications, presentations and other public releases resulting from work performed under this Agreement to the State for review at least thirty (30) calendar days prior to publication and will identify the proposed recipient(s). During the first twenty (20) calendar days of such review period, the State may provide notice to the University that it intends to rebut some or all aspects of the presentation, publication or other media release. The State will then have thirty (30) calendar days from the date of notice to prepare and submit such rebuttal to the recipient(s) identified by the University. Within the review period, the State may provide feedback to the University; the University will give good faith consideration to such feedback, but has no obligation to make any changes in said material, other than the removal of any material whose disclosure is prohibited or restricted by this Agreement or by any applicable law. Any of the above referenced time periods may be modified upon agreement of both Parties. Neither Party may unreasonably deny such requests.
- C. At the State's sole discretion, the State will require the University to use one of the following disclaimers in any publication, presentation or other public release:
 - 1) "This project was funded by the <Agency>. The contents may not necessarily reflect the official views or policies of the State of California."
 - 2) "This project was funded by the <Agency>. The contents do not represent the official views or policies of the State of California."

18. Data Rights

- A. Preexisting Data of each Party that will be included as a Deliverable under this Agreement will be identified in Exhibit A4. Preexisting Data of the State may only be used by the University for purposes of the Scope of Work of this Agreement, unless such data is otherwise publicly available.
- B. At the State's expense for actual cost of duplication and delivery, University shall deliver additional Project Data that is specifically requested by the State.
- C. The State shall have the unrestricted right to use the Deliverable Data and delivered Project Data, subject to applicable use and disclosure restrictions identified in Exhibit A4 and other provisions in this Agreement, including but not limited to, Right to Publish, Confidential Information, Copyright, Patents and Use of Name and Publicity.
- D. The University shall have the unrestricted right to use Project Data, subject to applicable use and disclosure restrictions identified in Exhibit A4 and other provisions in this Agreement, including but not limited to, Right to Publish, Confidential Information, Copyrights, Patents and Use of Name and Publicity.

19. Copyrights

- A. All rights in copyrightable works first created by the University in the performance of the Scope of Work, Exhibit A, under this Agreement are the property of the University. Unless restricted under

Exhibit A4, the University shall grant the state a fully paid-up, royalty-free, nonexclusive, sublicensable, irrevocable license to use, reproduce, prepare derivative works, and distribute copies of the Deliverables identified in Exhibit A1, to fulfill the State's government purposes.

- B. Notwithstanding the above, if the purpose of the Scope of Work is specifically to create a copyrightable work for use by the State and that fact is indicated in Exhibit A1, which may be amended upon mutual agreement of the Parties, then all rights in such copyrightable work will be the property of the State, subject to a reserved right for the University to use the copyrightable work for educational and research purposes and to allow other educational and nonprofit institutions to do so for educational and research purposes.
- C. Upon written request and subsequent amendment, the State may request delivery of computer software that is not identified on Exhibit A1, but was first created in the performance of the Scope of Work. To the extent the University is legally able to do so, University shall grant a fully paid-up, royalty-free, nonexclusive, sublicensable, irrevocable license to use, reproduce, prepare derivative works, and distribute copies, to fulfill the State's government purposes, subject to restrictions, if any, identified in Exhibit A4.

20. Use of Name and Publicity

Neither Party will use the name of the other Party or its employees in any advertisement, press release, or publicity with reference to this agreement or any product or service resulting from this agreement, without prior written approval of the other Party.

21. Access to State Facilities or Computing Systems

If University access to State agency facilities or computing systems is required, a separate agreement between the individual accessing the facility or system and the State agency may be necessary, and is referenced in Exhibit F.

22. Notices

All notices permitted or required under this Agreement shall be in writing and shall be delivered in person or transmitted to the mailing address or email address of the Party as specified in Exhibit A3 of this Agreement.

23. Subject Headings

Headings within this Agreement are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer.

24. Force Majeure

Neither Party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by "Force Majeure." As used in this section, "Force Majeure" is defined as follows: Acts of war and acts of god such as earthquakes, floods, and other natural disasters such that performance is impossible.

25. Nondiscrimination

California Government Code section 12990(c) requires that every state contract and subcontract for public works or for goods or services contain a nondiscrimination clause prohibiting discrimination on the bases of legally protected classes. The Department of Fair Employment and Housing is the state agency charged with enforcing California's civil rights laws, and requires the following language be included in this UTC. With respect to this section, "contract" means this Agreement; "contractor" means University; and "subcontract" means Subaward.

During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.). The applicable regulations of the Fair Employment and Housing Council implementing Government Code section 12990, set forth in Subchapter 5 of Division 4.1 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

26. Governing Law

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

27. Severability

The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

28. Entire Agreement

This Agreement constitute(s) the entire agreement between the Parties with respect to its subject matter and constitutes and supersedes all prior agreements, representations and understandings of the Parties, written or oral.

29. Order of Precedence

Any inconsistency in the provisions under this Agreement shall be resolved by giving precedence in the following order:

1. Exhibit D – Additional Requirements Associated with Funding Sources, when applicable
2. Exhibit G – Negotiated Alternate UTC Terms, when applicable
3. Exhibit C – University Terms & Conditions (UTC)

30. AB20 Definitions

Administrative Contact (State): Individual responsible for the day-to-day administration of the Agreement.

Administrative Contact (University): Individual responsible for the day-to-day administration of the Agreement.

Agreement: Agreement means a contract or grant between the state and the University of California or the California State University for research, training, or service.

Authorized Financial Contact: University representative authorized to sign invoices to State agencies.

Authorized Official: An individual authorized to enter into an agreement and receive notices on behalf of the UC, CSU or State as stipulated in the Agreement. The University's Authorized Official is usually located in the campus' contract & grant or sponsored project office. The State's Authorized Official is usually located in the agency's contracting office.

Confidential Information: Information, the disclosure of which is restricted or prohibited by any provision of law. Some examples of "confidential information" include, but are not limited to, public social services client information described in California Welfare and Institutions Code Section 10850, and "personal information" about individuals that is non-disclosable under California Civil Code Section 1798.3 of the Information Practices Act (IPA), or any information identified as confidential by the parties, in accordance with Section 8 of this agreement.

Consultant: An independent consultant is an individual not employed by the University of proven professional or technical competence who provides primarily professional or technical advice to the University and the University does not control the manner, means or methods of performance.

Contract Project Manager: State agency representative responsible for oversight of the technical completion of the project, identified in Exhibit A3.

CSU Auxiliary Organization (*when applicable*): A CSU Auxiliary Organization authorized to receive and administer externally funded projects on behalf of the Trustees of the California State University, pursuant to CCR Title 5, Division 5, Chapter 1, Subchapter 6, Article 2, Section 42500 ([5 CCR § 42500](#)).

Data: Information, regardless of the form or medium including, but not limited to drawings, lists, findings, computations, notes, diagrams, data files, statistical records and other research data.

Preexisting Data

1. State: Data that is already possessed or owned by the State.
2. University: Data that is already possessed or owned by the University.
3. 3rd Party: Data that is provided by a third party to the State or the University for use under this Agreement.

Project Data: Data that is first produced in the performance of this Agreement by the Principal investigator or the University's project personnel. Project Data does not include a researcher's laboratory notebook, but does include Project Data contained therein.

Deliverable Data: Project Data that is identified in the Scope of Work, Exhibit A1, and required to be delivered to the State.

Deliverables: Items identified in the Scope of Work, Exhibit A1, and required to be delivered to the State.

Direct Costs: Direct costs are those costs that can be identified specifically with a particular sponsored project, an instructional activity, or any other institutional activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Direct costs may include, but are not limited to, salary, fringe benefits (including graduate student tuition and fees), equipment, subawards, travel, supplies, other expenses and rental charges. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs. Where an institution treats a particular type of cost as a direct cost of sponsored agreements, all costs incurred for the same purpose in like circumstances shall be treated as direct costs of all activities of the institution.

Financial Contact/Accounting (State): Individual responsible for processing invoices from University for payment.

Independent Contractor: An independent entity performing work for the University, where the University has the right to control only the result of the service, not the manner of performance.

Indirect Costs: Indirect costs (IDC) are valid expenses of conducting research, instruction, and other sponsored activities at University, but are incurred for common or joint objectives and, therefore, cannot be identified readily and specifically with a particular project or program. Building use, facilities operation & maintenance costs, equipment use & depreciation and general administrative expenses are examples of costs that are usually treated as IDC.

Institutional Base Salary: Institutional Base Salary is the annual compensation paid by the University for an employee's appointment, whether that individual's time is spent on research, teaching, or other activities.

Key Personnel: The PI and other individuals who contribute to the scientific development or execution of a project in a substantive, measurable way, whether or not they receive salaries or compensation under the agreement. The University identifies key personnel in each proposal.

Notices Contact: See Authorized Official.

Non-cancellable Obligations: Allowable costs that have been properly budgeted in Exhibit B incurred through the date of termination, but cannot be reversed at the point of termination.

Party(ies): Party or Parties shall mean the University campus or the State agency as the parties to this Agreement, and does not apply to any third party or other entity.

Principal Investigator: The Principal Investigator (PI) is defined as the individual(s) judged by the University to have the appropriate level of authority and responsibility and has been designated in the University's proposal to the State to direct the project or program supported by the Agreement.

Program Income: Gross income earned by the University that is directly generated by a supported activity and earned only as a result of the State funded project.

Scope of Work: The proposed and/or approved project and deliverables outlined by the University's PI to accomplish the State's funding goals.

State: An agency or department of the State of California that is funding the Scope of Work.

Subaward: Agreement issued to a Subawardee to perform a portion of Scope of Work.

Subawardee: An entity other than the University that performs a portion of the Scope of Work, as identified in this Agreement, and includes the following: Subrecipient, subcontractor, consultant and independent contractor.

Subcontractor: See Subrecipient.

Subrecipient: A collaborating entity of the University that is responsible for programmatic decision making and completing a portion of the Scope of Work.

Trade Secret: "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not

being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and, (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. (Civil Code Section 3426.1)

University: The California State University campus or auxiliary or the University of California system, as represented by the specific campus, identified as the "Contractor" on the Standard Agreement Form STD 213 to perform research, training, or service under this Agreement.

Vendor: A dealer, distributor, merchant or other seller providing goods or services necessary for the University's performance, but not an integral part of the Scope of Work. Vendors are not considered a Subawardee and are subject to the normal terms and conditions of the University's procurement process.