

**RFP Attachment G**  
**SOLAR LICENSE AGREEMENT**

## SOLAR LICENSE AGREEMENT

Also - EXHIBIT 6 to Solar Power Purchase Agreement

THIS SOLAR LICENSE AGREEMENT ("SLA"), dated (Must be the same date as the SPPA) \_\_\_\_\_, 200\_ (the "Effective Date") is by and between The Regents of the UNIVERSITY of California ("UNIVERSITY"), a California corporation, and {INSERT NAME}, ("LICENSEE"), collectively referred to as "the Parties."

WHEREAS, UNIVERSITY is the owner of certain real property comprising the campus of the UNIVERSITY of California, Merced, a portion of which includes the real property improved with a parking lot commonly known as Lake Lot (the "Facility") as depicted on Exhibit "A" attached hereto; and

WHEREAS, LICENSEE desires to obtain, and UNIVERSITY desires to provide, a non-exclusive license for the use of a portion of the Facility (the "Licensed Area") for the installation, maintenance and operation of a solar photovoltaic system (the "System"), subject to the terms and conditions of this SLA, (as more particularly defined in Exhibit "B").

WHEREAS, LICENSEE desires to sell, and UNIVERSITY desires to purchase, electricity from the System, as set forth in that certain Solar Power Purchase Agreement between the parties hereto and of even date herewith (the "SPPA"); and

WHEREAS, this License is granted for the sole purpose of effectuating performances under the SPPA; and

WHEREAS, capitalized terms not defined herein shall have the meaning ascribed to them in the SPPA.

NOW, THEREFORE, in consideration of the above recitals and mutual promises set forth below, the Parties hereby agree as follows:

### 1. GRANT OF LICENSE

1.1 Grant. UNIVERSITY hereby grants to LICENSEE and its agents and contractors a non-exclusive, revocable License to enter upon and use the Licensed Area together with the right of ingress and egress to and from the Licensed Area, subject to the terms and conditions herein, for the purposes of installation, maintenance and operation of the System.

### 2. TERM.

2.1 Duration. The term of the License ("Term") shall commence on the Effective Date and end at 11:59P.M. of the day preceding the xxth anniversary thereof unless and until it is sooner terminated pursuant to sections 2.2, 9.4 or 10.2.2, or pursuant to termination of the SPPA. [15-year or 20-year term] The date on which this Agreement terminates shall be referred to herein as the "Termination Date."

2.2 Term Coterminous with SPPA. Notwithstanding any other provision of this SLA, the term of this SLA shall be contingent upon, and, at UNIVERSITY's election, coterminous with,

the term of the SPPA. Termination of the SPPA for any reason shall, at UNIVERSITY's election, terminate this Agreement.

### 3. USE

3.1 Permitted Use: UNIVERSITY does hereby grant to LICENSEE a non-exclusive license to use the Licensed Area for the construction, maintenance and operation of the System and for no other use or purpose (the "Permitted Use").

3.2 No UNIVERSITY Warranties: LICENSEE acknowledges that UNIVERSITY has not made any representations or warranties regarding the Facility and LICENSEE is not relying upon any UNIVERSITY representation or warranty by UNIVERSITY or any third party regarding the Facility, the fitness of the Facility for any particular use of LICENSEE or any other matter. LICENSEE has had an opportunity to inspect the Facility and every aspect thereof and represents to UNIVERSITY that the Facility is in acceptable condition for the Permitted Use. UNIVERSITY hereby expressly disclaims and LICENSEE hereby waives all implied warranties including, without limitation, any warranty of merchantability or warranty of fitness for a particular use or purpose.

3.3 Limitation on Use: LICENSEE shall not permit or suffer any use of the Licensed Area or any part thereof, or provide the System for the use of others without first obtaining UNIVERSITY's written consent. LICENSEE shall use the Licensed Area only for the Permitted Use, and shall not change or alter the electrical output of the photovoltaic System, except for expected degradation and weather fluctuations, without the prior written approval of UNIVERSITY.

3.4 Non-Transferable Without UNIVERSITY Consent: This SLA may not be assigned by LICENSEE to any other person or entity without the express written consent of the UNIVERSITY as provided in Section 12.10.

3.5 Prohibited Uses: LICENSEE shall not use or allow the Facility to be used for any improper, immoral, or unlawful purposes, nor shall LICENSEE cause, maintain or permit any nuisance in, on or about the Facility. LICENSEE shall not do or permit anything to be done in or about the Licensed Area or UNIVERSITY's Campus which will in any way obstruct or interfere with the rights of students or other occupants of Facilities or UNIVERSITY's Campus, or injure or annoy them, or use or allow the Licensed Area or UNIVERSITY's Campus to be used for any improper, immoral, or unlawful purpose, nor shall LICENSEE cause, maintain or permit any nuisance in, on or about the Licensed Area or UNIVERSITY's Campus. LICENSEE acknowledges and understands that this Agreement and all rights of LICENSEE hereunder are subject and subordinate to all existing declarations, restrictions, or other matters of record and all existing agreements of UNIVERSITY with respect to the Facility. LICENSEE will comply with all rules and regulations adopted by UNIVERSITY for the Facility. Such rules shall include, but not be limited to, the prohibition against the possession or use of firearms, liquor or illegal drugs. Any willful violation of said rules and regulations may be grounds in UNIVERSITY's sole discretion for immediate termination of the License and SPPA; however, LICENSEE shall have the right to remove its System pursuant to Section 10.5.3 of the SPPA. Upon such removal of the System, the SPPA and this Agreement shall terminate, and the UNIVERSITY shall have no obligation to pay LICENSEE a Termination Fee pursuant to Exhibit 5 of the SPPA.

3.6 No Interference with UNIVERSITY Uses: LICENSEE shall operate, maintain and repair the System in a manner that will not obstruct or interfere with UNIVERSITY's use of the Facility or the rights of any other occupants of the Facility and LICENSEE will not injure or annoy any occupants of the Facility. In the event such interference occurs, LICENSEE agrees to take all reasonable steps necessary to eliminate such interference promptly, but no later than 5 days from

notification by the UNIVERSITY. LICENSEE will use its best efforts to maintain its System in a manner that does not interfere with the Facility or improvements to the Facility. UNIVERSITY may construct, reconstruct, modify or make alterations to the Facility so long as such activities do not cause interference (including shading) with the operation of the System.

3.7 Subordination: This License and all rights of LICENSEE hereunder are subject and subordinate to all existing leases, easements, rights of way, declarations, restrictions or other matters of record and all existing agreements of the UNIVERSITY with respect to the Facility. UNIVERSITY reserves the right to grant additional licenses, easements, leases or rights of way, whether recorded or unrecorded, as may be necessary, which do not unreasonably interfere (including shading) with LICENSEE's use of the Facility and the System.

3.8 Applicable Laws, Regulations, Permits and Approvals: LICENSEE's activities pursuant to this License shall comply with all applicable Federal, State and local laws, ordinances, rules and regulations, and all issued permits and licenses, including the Rule 21 Interconnection Agreement between UNIVERSITY and any public utility (collectively "Applicable Laws and Requirements"). LICENSEE shall not use or occupy the Licensed Area in violation of Applicable Laws and Requirements or any restriction affecting the UNIVERSITY's Campus, and shall, upon notice from UNIVERSITY, immediately discontinue any use of the Licensed Area which is declared by any governmental authority having jurisdiction to be a violation of Applicable Laws and Requirements. LICENSEE, at LICENSEE's own cost and expense, shall comply with all Applicable Laws and Requirements, which shall, by reason of the nature of LICENSEE's use or occupancy of the Licensed Area, impose any duty upon LICENSEE or UNIVERSITY with respect to the Licensed Area or its use or occupation. LICENSEE shall provide UNIVERSITY with two (2) copies of all permits, approvals and conditions issued by applicable Federal, State and local governmental entities, including the applicable local utility service company. LICENSEE shall immediately suspend any use of the System upon notice by any governmental authority having jurisdiction that any of LICENSEE's activities under the License constitutes a violation of any of the Applicable Laws and Requirements until the violation, if any, is corrected and the applicable governmental authority concurs that the violation is corrected. LICENSEE shall immediately notify the UNIVERSITY regarding any alleged violation. Failure of LICENSEE to immediately suspend use of the System and/or to notify UNIVERSITY in accordance with this provision after receiving a notice of any violation which may pose a risk to public health or safety shall be grounds for termination by UNIVERSITY of this License with no obligation to pay a Termination Fee to LICENSEE under the SPPA or this SLA; however, LICENSEE shall have the right to remove its System pursuant to Section 10.5.3 of the SPPA. Upon such removal of the System, the SPPA and this Agreement shall terminate, and UNIVERSITY shall not have any obligation to pay LICENSEE a Termination Fee.

3.9 Determination of Violation: A judgment of any court of competent jurisdiction of any action or proceeding against LICENSEE that LICENSEE has violated any such Applicable Laws and Requirements in the use of the Licensed Area shall be deemed to be a conclusive determination of that fact as between UNIVERSITY and LICENSEE. LICENSEE shall not do or permit to be done anything which will invalidate or increase the cost of the UNIVERSITY's self-insurance program or insurance policy covering or UNIVERSITY's Campus and/or property located thereon or therein, and shall comply with all rules, orders, regulations, requirements and recommendations of UNIVERSITY or any department, office or division thereof, including without limitation any risk management department or office or any other department or office performing a similar function, provided that such rules, orders, regulations, requirements and recommendations are consistent with the provisions of this Agreement. LICENSEE shall promptly upon demand reimburse UNIVERSITY for any additional premium charged for such policy or other cost incurred by UNIVERSITY by reason of LICENSEE's failure to comply with this provision.

3.10 No Infringement: LICENSEE's installation and operation of the System shall not infringe upon UNIVERSITY's or any third party's intellectual property or other proprietary rights and LICENSEE shall defend and hold the UNIVERSITY harmless from any third party claim of intellectual property right infringement related to installation and operation of the System.

#### 4. CONDITION OF LICENSED AREA.

4.1 Access and Inspection. LICENSEE acknowledges that, prior to the Effective Date, LICENSEE was provided access to the Facility in order to conduct feasibility and configuration assessments, environmental assessments, and other inspections of the Facility, as LICENSEE deemed necessary. LICENSEE has inspected the Licensed Area and every aspect thereof and represents to UNIVERSITY that the Licensed Area is in acceptable condition for LICENSEE's anticipated use of the Licensed Area as provided in this Agreement.

4.2 As-Is Condition. The Licensed Area is delivered by UNIVERSITY in an "as-is" condition, and LICENSEE hereby accepts the Licensed Area in its "as-is" condition and acknowledges that UNIVERSITY has not made any statements or representations or warranties regarding the Licensed Area and LICENSEE is not relying upon any statement or representation or warranty by UNIVERSITY or any third party regarding the Licensed Area, the fitness of the Licensed Area for any particular use of LICENSEE or any other matter. UNIVERSITY hereby expressly disclaims and LICENSEE hereby waives all implied warranties including, without limitation, any warranty of merchantability or warranty of fitness for a particular use or purpose.

#### 5. Ownership of the System and Possessory Interest Taxes:

5.1 Title to the System: Subject to the rights provided to UNIVERSITY pursuant to the terms hereof, the System and all alterations, additions, improvements or installations made thereto by LICENSEE and all LICENSEE property used in connection with the installation, operation and maintenance of the System is, and shall remain, the personal property of LICENSEE ("LICENSEE Property"). In no event shall any LICENSEE Property be deemed a fixture, nor shall UNIVERSITY, nor anyone claiming by, through or under UNIVERSITY (including but not limited to any present or future mortgagee of the Facility ) have any rights in or to the LICENSEE Property at any time except as otherwise provided herein.

5.2 Security Interests in System: Subject to Sections 17.3 to the SPPA, UNIVERSITY acknowledges and agrees that LICENSEE may grant or cause to be granted to a Lender a security interest in the System and in LICENSEE's rights to payment under the SPPA, and UNIVERSITY expressly disclaims and waives any rights in the System at law or in equity pursuant to this License. Any security interest or mortgage shall be subordinate to the interest of the UNIVERSITY in the Facility and subject to the terms and conditions of this License.

5.3 Copyright and Patent Obligations: LICENSEE shall pay all royalties and license fees which may be required for the methodology, techniques, and for other intellectual property, in connection with operating the System.

5.4 Possessory Interest Taxes: LICENSEE acknowledges and understands that there may be a possessory interest tax imposed with respect to its use of the Licensed Area, and that the possessory interest tax shall be LICENSEE's obligation and shall be paid as and when required by the taxing authority. LICENSEE shall be responsible for and pay directly to the taxing authority, (or if any such amounts are for any reason billed to and required to be paid by UNIVERSITY, reimburse UNIVERSITY upon demand for) any and all taxes (other than UNIVERSITY's net income taxes) whether or not now customary or within the contemplation of the parties, where such taxes are measured by or reasonably attributable to (i) the costs or value of LICENSEE's equipment, furniture, fixtures and other personal property located in the Licensed

Area (including without limitation the System), or the cost or value of any improvements made in or to the Licensed Area by or for LICENSEE; (ii) the possession, operation, repair, use or occupancy by LICENSEE of the Licensed Area or any portion thereof; or (iii) the transactions contemplated or effectuated under this Agreement. If it becomes unlawful for LICENSEE to reimburse UNIVERSITY for any costs as required under this License, this Agreement shall be revised to put UNIVERSITY the same in the same financial position after imposition of any tax or other charge upon UNIVERSITY as it would have been but for the reimbursement being unlawful. LICENSEE may contest, at its sole cost and expense, any assessment imposed on the Licensed Area or LICENSEE's activities.

## 6. DESIGN, INSTALLATION AND OPERATION OF THE SYSTEM

6.1 In general. Excepting minor field changes, the construction and installation of the System and all related matters are subject to, and shall be completed in accordance with the terms and conditions of the SPPA and SLA Exhibits "C" and "E". These Exhibits are incorporated by reference and made a part of this Agreement. For purposes of this Agreement, a "minor field change" is defined as a change or deviation from the approved System plans, System drawings, construction and installation plans, or bill of materials that does not significantly affect the construction, installation or operation of the System or materially deviate from the design, construction, installation, quality of materials, generating capacity, or operational intent or understanding of the System, as originally approved, or impact the University's use of the site or any change required as necessary to mitigate unforeseen or undetected site circumstances after design is completed. All minor field changes shall be subject to the approval of UNIVERSITY, which shall not be unreasonably withheld. To the extent the specifications in Exhibit "C" and Exhibit "E" conflict with any other provision of this Agreement, including any other Exhibit, the provision of this Agreement shall prevail. Pursuant to Exhibit "E", upon issuance by the UNIVERSITY of a notice authorizing LICENSEE to proceed, LICENSEE shall commence design, procurement and construction of the System and shall proceed with reasonable diligence and continuity to construct System for the Facility and shall achieve the Commercial Operation Date within the development time specified. Parties acknowledge that LICENSEE may be required to complete some of the documents necessary for compliance with, and completion of, the above-referenced Exhibits after the Effective Date of this SLA.

6.2 UNIVERSITY Approval; Limitations. No procurement, construction, or installation by LICENSEE shall be permitted to begin until the UNIVERSITY has approved the completed plans and specifications for the System pursuant to the conditions set forth in Exhibit E and has issued a notice authorizing LICENSEE to proceed. UNIVERSITY's approval of the completed plans and specifications shall not be unreasonably withheld or delayed. Notwithstanding UNIVERSITY approval of the System in accordance with these Exhibits, in no event shall such approval be interpreted as making the UNIVERSITY responsible for, and LICENSEE acknowledges that the UNIVERSITY is not responsible for, the design, construction or operation of the System. LICENSEE shall at its sole cost and expense design, build, own, maintain and operate the System in compliance with this SLA and the SPPA.

6.3 Commercial Operation Date. The Commercial Operation Date shall be the date on which UNIVERSITY issues a Certificate of Completion for the construction and installation of the System pursuant to Exhibit "E". LICENSEE shall achieve Commercial Operation within the allowed development schedule set forth in Exhibit "E".

6.4 Facility Mechanic's Lien – Removal of Liens. UNIVERSITY shall not own the System and shall not be responsible for any mechanics lien or stop notice placed or attempted to be placed on the System by labor or material providers. LICENSEE shall not cause or permit any liens or stop notices to attach or to be placed upon or encumber the Facility arising from or

resulting out of any improvements, alterations or other work performed by LICENSEE. If any such lien attaches, LICENSEE agrees to cause the lien to be removed within ten (10) days of notification thereof by posting a bond, payment of the lien or otherwise. If LICENSEE fails to remove the lien within such time period, in addition to its other remedies under this Agreement, UNIVERSITY may undertake to cause such lien to be removed and charge to LICENSEE any costs and expenses incurred in connection with the removal of said lien. LICENSEE agrees to defend and indemnify UNIVERSITY against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing any such lien.

6.5 Performance Bond. Before starting any installation, LICENSEE shall furnish a performance bond in an amount adequate to restore the Facility(ies) to its (their) pre-installation condition in the event LICENSEE fails to complete the installation as specified by this Agreement. In the alternative, with the approval of the UNIVERSITY, LICENSEE may provide a performance guarantee from an entity acceptable to the UNIVERSITY, to guarantee restoration of the Facility to a condition substantially similar to that prior to the initiation of installation of the System in the event LICENSEE fails to complete the installation of the System.

6.6 Employment of Undocumented Aliens. LICENSEE verifies and warrants that, in entering into this License Agreement with UNIVERSITY, LICENSEE has not, in the preceding five years, been convicted of violating a state or federal law regarding the employment of undocumented aliens. LICENSEE shall not employ or contract with undocumented labor during the Term of this License.

6.7 LICENSEE's Access. LICENSEE's access to the Facility shall be subject to all procedures reasonably adopted from time to time by UNIVERSITY including, but not limited to, the procedures addressed in this Section and Exhibit "D" (Access Procedures for Facility) attached hereto and incorporated by reference. Only LICENSEE's employees, agents and/or contractors retained by LICENSEE and approved in writing by the UNIVERSITY shall be permitted access to the Facility. Said representatives shall be required to show appropriate identification prior to the requested access. LICENSEE shall be permitted to access the Facility twenty-four (24) hours per day, seven (7) days a week for emergency purposes as reasonably agreed to and defined by LICENSEE and UNIVERSITY and further described in Exhibit "D". LICENSEE shall use the provided or authorized access at LICENSEE's sole risk. Access to the Facility by construction workers, material providers and agents of LICENSEE during construction shall be conducted so as to minimize interference with the operations of UNIVERSITY, in accordance with and as further described in Exhibits "D" and "E". UNIVERSITY reserves the right to revoke access privileges to any person employed or contracted by the LICENSEE that the UNIVERSITY determines to be disruptive, intemperate, unsafe, or who violates any law or unreasonably disobeys any UNIVERSITY directive.

6.8 Modifications/Alterations. Upon approval by UNIVERSITY of the plans and specifications of the System, LICENSEE shall have no right to make any material change to the approved design without receiving prior written approval of the UNIVERSITY. As a condition to consenting to the Alterations, UNIVERSITY may impose reasonable requirements. Upon approval of the UNIVERSITY of the construction and installation of the System in accordance with Exhibit "E" (Project Requirements for Design, Construction and Procurement, and Operation and Maintenance). LICENSEE shall have no right to change, replace or alter the System, nor attach fixtures or erect additions, structures or signs in or upon the Facility (collectively "Alterations") without receiving prior written approval of UNIVERSITY, except for minor field changes as defined in Section 6.1., above. Prior to undertaking any such Alterations, LICENSEE shall submit to the UNIVERSITY detailed and complete plans and specifications for the proposed Alterations. In its sole discretion, UNIVERSITY may waive the requirement for detailed plans upon LICENSEE's demonstration that the proposed Alteration consists solely of modification or

replacement of like-kind equipment. UNIVERSITY shall not unreasonably delay or withhold written approval of LICENSEE's proposed Alteration. Any such Alterations performed by LICENSEE shall be performed in accordance with all Applicable Laws and Requirements, including any and all necessary permits and approvals obtained and a copy thereof provided to UNIVERSITY. LICENSEE agrees to provide UNIVERSITY with sufficient advance notice of any proposed Alterations to allow the coordination and approval by UNIVERSITY of the construction schedule for such Alterations. LICENSEE shall also coordinate any construction with UNIVERSITY, with UNIVERSITY approving any proposed construction schedule.

6.9 Security. At all times during the construction and operations on the Facility and any other authorized use areas, LICENSEE shall keep any and all areas of construction and operation adequately secured for safety and security purposes. LICENSEE shall coordinate with the Facility's manager and comply with all security requirements for the Facility when accessing the Facility. LICENSEE hereby acknowledges that UNIVERSITY shall have no obligation whatsoever to provide guard services or other security measures for the benefit of LICENSEE (or its Lender) or its Systems. LICENSEE assumes all responsibility for the protection of LICENSEE, its agents and invitees and the property of the LICENSEE and of LICENSEE's lenders, subcontractors, agents and invitees from acts of third parties or natural events.

6.10 UNIVERSITY Inspection of the System. UNIVERSITY shall be permitted non-emergency access to inspect the System upon seventy-two (72) hours prior written notice to LICENSEE. UNIVERSITY personnel must be accompanied by personnel of LICENSEE during any non-emergency inspection of the System, unless LICENSEE agrees in writing to waive its right to accompany UNIVERSITY personnel on all non-emergency inspections. This requirement in no way prohibits UNIVERSITY from inspecting any and all portions of the Facility other than the System. In the event of emergency, the UNIVERSITY may inspect the System unaccompanied and must notify LICENSEE within twenty-four (24) hours after such inspection. Inspections of the System during construction shall be allowed, and in accordance with the construction schedule approved by UNIVERSITY. LICENSEE understands that the UNIVERSITY's inspection of the construction of the System is required to ensure compliance with the approved System's design and plans, and is a necessary condition precedent to the issuance of a Certificate of Completion.

## 7. OPERATIONS AND MAINTENANCE

### 7.1 LICENSEE's Obligations

7.2 In General: LICENSEE shall, at LICENSEE's sole expense, operate the System in a commercially reasonable manner throughout the Term, and maintain the System (including electrical wiring, switches and special items and equipment installed by or at the expense of LICENSEE) in good order, condition and repair, including the cost of capital repairs and replacements. LICENSEE warrants that all of its operating and maintenance personnel will be adequately qualified and trained throughout the Term. LICENSEE shall also be responsible for the cost of any maintenance and repairs to the Facility if such maintenance and repairs are necessary as a result of the actions of LICENSEE and/or the Permitted Use. In particular, if the System is located on the roof of the Facility, LICENSEE shall, at its sole cost and expense, examine and repair, and shall research and coordinate roof warranty issues, to the reasonable satisfaction of UNIVERSITY to ensure that the warranty for the Facility roof is not invalidated and to ensure that the roof remains watertight. LICENSEE shall notify UNIVERSITY in writing fifteen (15) days prior to any planned downtime for maintenance and repair.

7.3 Maintenance of Licensed Area and Facility. LICENSEE shall be responsible for all repairs and Alterations in and to the Licensed Area and the Facility, the need for which arises out of (i) LICENSEE's use or occupancy of the Licensed Area, (ii) the installation, removal, use or operation of the System, (iii) the moving of Equipment into or out of the Licensed Area, or



(iv) the act, omission, misuse or negligence of LICENSEE, its agents, contractors, employees or invites.

7.4 LICENSEE's Failure to Maintain: If LICENSEE fails to comply with its maintenance and repair obligations pursuant to this SLA, UNIVERSITY shall give LICENSEE notice in writing to do such maintenance and repair activities as are reasonably required under this Agreement. If within thirty (30) days thereafter, LICENSEE fails to commence and diligently attempt to complete the requested activities, then, in addition to its other remedies under the SLA, UNIVERSITY shall have the right to have such work performed and expend such funds at the expense of LICENSEE as are reasonably required to perform such work. Any amount so expended by UNIVERSITY shall be paid promptly by LICENSEE upon UNIVERSITY's submittal of the work invoices to LICENSEE. If UNIVERSITY has not received such reimbursement within thirty (30) days of the date of sending such invoices to LICENSEE, then UNIVERSITY may deduct the cost thereof against any future payment due LICENSEE.

7.5 Re-Roofing. If UNIVERSITY reasonably determines that it is necessary to re-roof the Facility during the Term, then LICENSEE shall bear the cost of moving the System, if necessary, once during the Term to allow UNIVERSITY to re-roof the Facility. This will include removing the System from the roof, storing the System components at LICENSEE's expense or as arrangements allow for storage at the Facility, and re-installing the System in a manner consistent with the approved design and plans, as reasonably modified by UNIVERSITY or required by any change to the Facility resulting from the new roof. LICENSEE will defend, indemnify and hold harmless the UNIVERSITY for the cost of any damages incurred as a result of LICENSEE's removal, storage, and re-installation of the System. LICENSEE will reinstall the System in a manner that will not jeopardize the warranty of the new roof as installed. If this Agreement encompasses more than one (1) System on more than one (1) Facility, then this Section 7.1.4 shall apply separately to each such System on each such Facility.

7.6 Protection of Facility. LICENSEE shall not do or permit to be done anything which will invalidate any fire, extended coverage or other insurance policy covering the Facility, or increase the risk of UNIVERSITY's self-insurance program, or that will impair UNIVERSITY's interest in the property located thereon and therein, or that will violate any warranty for the Facility's roof.

7.7 Health and Safety: LICENSEE shall comply with all Applicable Laws pertaining to the safety of persons and real and personal property and shall take all necessary and reasonable safety precautions in constructing, operating and maintaining the System and providing Electricity. LICENSEE shall immediately report to UNIVERSITY any death, loss time, injury, or damage to UNIVERSITY's property that occurs within the Licensed Area at the Facility.

7.8 Losses/Damages. UNIVERSITY will not be responsible for losses or damage to personal property, equipment or materials of LICENSEE at the Facility. All losses by LICENSEE at the Facility shall be reported immediately to UNIVERSITY upon discovery by LICENSEE. If the Facility, or the Licensed Area is damaged by casualty to any substantial extent and LICENSEE is unable to operate the System due to such damage or destruction and UNIVERSITY is unable to provide LICENSEE with a temporary location from which LICENSEE can operate its System within ninety (90) days after the damage or destruction, LICENSEE may notify UNIVERSITY that it is terminating this Agreement within the ensuing twenty (20) days after the expiration of such ninety (90) day period. (In the event UNIVERSITY is able to provide LICENSEE with a temporary location within the aforementioned ninety (90) day period, LICENSEE shall be responsible for all relocation expenses.) If neither party has terminated the Agreement pursuant to Section 3.2 of the SPPA or sections 2.2, 9.4 or 10.1 of this Agreement, UNIVERSITY shall deliver written notice to LICENSEE within forty-five (45) days after the damage or destruction indicating whether or not UNIVERSITY intends to repair the Facility, and

whether or not UNIVERSITY deems it necessary to terminate this Agreement in connection with such repair or restoration. If UNIVERSITY elects to terminate as provided herein, this Agreement shall terminate upon LICENSEE's receipt of such written notice from UNIVERSITY.

7.9 Hazardous Substances. If LICENSEE's Permitted Uses require use, storage, generation or disposal of any Hazardous Substance (as defined in this Section), the parties acknowledge that LICENSEE has, prior to the execution of this Agreement, provided a list of such Hazardous Substances for review and approval by UNIVERSITY's Campus's Environmental Health & Safety Department attached hereto as Exhibit "I." Any Hazardous Substance not listed on Exhibit "I." must be approved by UNIVERSITY prior to LICENSEE's use of such Hazardous Substance at the Licensed Area or the Facility. If Hazardous Substances are used, stored, generated, or disposed of on or in the Licensed Area, Facility, or UNIVERSITY's Campus or if the Licensed Area, Facility, or UNIVERSITY's Campus become contaminated in any manner for which LICENSEE is legally liable, LICENSEE shall indemnify, defend and hold harmless the UNIVERSITY from any and all liabilities and costs (including without limitation, a decrease in value of the Licensed Area, Facility, or UNIVERSITY's Campus, and any and all sums paid for settlement of claims, litigation expenses, attorneys' fees, consultant, and expert fees) of whatever kind or nature, known or unknown, contingent or otherwise, arising during or after the Term. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if LICENSEE causes or permits the presence of any Hazardous Substance on the Licensed Area, Facility, or UNIVERSITY's Campus that results in contamination, LICENSEE shall promptly, at its sole expense, take any and all necessary actions to return the Licensed Area, Facility, or UNIVERSITY's Campus to the condition existing prior to the presence of any such Hazardous Substance in the Licensed Area, Facility, or UNIVERSITY's Campus. LICENSEE shall first obtain UNIVERSITY's written approval for any such remedial action. If Hazardous Substances are used, stored, generated, or disposed of on or in the Licensed Area, Facility, or UNIVERSITY's Campus or if the Licensed Area, Facility, or UNIVERSITY's Campus become contaminated in any manner for which the UNIVERSITY is legally liable, unless such contamination was the result of the acts or omissions of LICENSEE, its agents or employees, the UNIVERSITY shall indemnify, defend and hold harmless LICENSEE from any and all liabilities and costs (including without limitation, any and all sums paid for settlement of claims, litigation expenses, attorneys' fees, consultant, and expert fees) of whatever kind or nature, known or unknown, contingent or otherwise, arising during or after the Term. The provisions of this Section shall be in addition to any other obligations and liabilities LICENSEE may have to UNIVERSITY at law or equity and shall survive the transactions contemplated herein and shall survive the termination of this Agreement.

7.10 Definition of Hazardous Substance. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive, or corrosive, and that is now or hereafter regulated by any local government, the State of California, or the United States Government. "Hazardous Substance" includes any and all material or substances that are defined as "hazardous waste," "extremely hazardous waste," or a "hazardous substance" pursuant to state, federal, or local governmental law. "Hazardous Substance" includes, but is not restricted to, asbestos, polychlorobiphenyls ("PCBs"), and petroleum.

7.11 Malfunctions and Emergencies. UNIVERSITY and LICENSEE each shall notify the other within twenty-four (24) hours following their discovery of any material malfunction or emergency condition in the operation of the System or of an interruption in the supply of Electricity from the System. LICENSEE and UNIVERSITY shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring LICENSEE's repair or alteration at all times, consistent with the SPPA . LICENSEE and UNIVERSITY each shall notify the other Party upon the discovery of a malfunction in any System. LICENSEE shall commence repairs to any malfunctioning System and restore the supply of

Electricity, as soon as reasonably possible after notice or upon its own discovery of any of such conditions during normal business hours and, subject to the Access Procedures in Exhibit D. If an emergency condition exists, LICENSEE shall promptly dispatch the appropriate personnel to perform the necessary repairs or corrective action in an expeditious and safe manner, subject to the UNIVERSITY's emergency rights under the SPPA . For routine and emergency repairs, the Parties shall contact the persons identified in the notice provisions in Section 12.1, below.

#### 7.12 UNIVERSITY's Obligations.

7.12.1 In general Subject to any specific limitations in this SLA, UNIVERSITY shall at all times during the Term use commercially reasonable efforts to maintain the Facility, other than the System, in good condition and repair so as to be able to receive and utilize the Electricity delivered by LICENSEE. UNIVERSITY will maintain in good working order and available at all times, its connection and service contract(s) with the relevant Utilities so that UNIVERSITY can, upon any suspension or interruption of Electricity from the System, provide the Facility with the full requirements for Electricity.

7.12.2 Maintenance. All obligations of UNIVERSITY in this SLA regarding maintenance of the Facility shall be subject to the right of UNIVERSITY during periods of renovation of any part of the Facility to issue a shut down order to the System, consistent with the SPPA. UNIVERSITY will use commercially reasonable efforts to remedy any interruption as soon as possible, consistent with these provisions.

7.12.3 Health and Safety. UNIVERSITY shall at all times maintain the Facility consistent with all Applicable Laws pertaining to the health and safety of persons and property.

7.12.4 Notice of Damage. UNIVERSITY shall promptly notify LICENSEE of any matter it is aware of pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

7.12.5 Liens: UNIVERSITY shall not directly or indirectly cause, create, incur, assume or suffer to exist any liens on or with respect to the System or any interest therein. If the UNIVERSITY breaches its obligations under this section, it shall immediately notify LICENSEE in writing, shall promptly cause such lien to be discharged and released of record without cost to LICENSEE.

7.12.6 No Relocation Assistance. Other than any relocation payment mutually agreed upon by the parties under Section 12.2 of the SPPA, the parties to this License agree that no relocation payment or relocation advisory assistance under Applicable Law will be sought or provided in any form as a consequence of this License. LICENSEE also acknowledges that LICENSEE, its employees, contractors, subordinates or assignees are not entitled to any relocation payment or relocation advisory assistance due to their occupancy at the Facility. In the event an assignment of this License is permitted pursuant to the terms herein, LICENSEE shall incorporate the above paragraph into each assignment. Failure to do so may obligate LICENSEE for any damages and costs resulting from claims for relocation payments from its assignees.

### 8. INSURANCE AND INDEMNITY.

8.1 Prior to LICENSEE's access to the Licensed Area, LICENSEE, at its sole cost and expense, shall insure its activities in connection with this Agreement and obtain, keep in force and maintain insurance as follows:

8.1.1 Comprehensive or Commercial Form General Liability Insurance (contractual liability included) with minimum limits as follows:

(a)	Each Occurrence:	\$2,000,000
(b)	Products/Completed Operations Aggregate:	\$5,000,000
(c)	Personal and Advertising Injury	\$2,000,000
(d)	General Aggregate*	\$5,000,000

\* applicable to commercial form only

However, if such insurance is written on a claims-made form following termination of this Agreement, coverage shall survive for a period of not less than three years. Coverage shall provide for a retroactive date of placement coinciding with the Effective Date.

8.1.2 Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single limit no less than Two Million Dollars (\$2,000,000.) per occurrence.

8.1.3 Worker's compensation and employer's liability insurance in a form and amount covering LICENSEE's full liability under the Worker's Compensation Insurance and Safety Act of the State of California, as amended from time to time.

8.1.4 Property insurance, fire and extended coverage form in an amount sufficient to reimburse LICENSEE for all of its System and personal property located on or in the Licensed Area including improvements hereinafter constructed or installed.

8.1.5 Such other insurance in such amount which from time to time may be reasonably required by the mutual consent of UNIVERSITY and LICENSEE against other insurable risks relating to performance.

8.2 Additional Insured. The insurance and the coverage referred to under 8.1.1 and 8.1.2 of this Section shall be endorsed to include "The Regents of the UNIVERSITY of California" as an additional insured. Such a provision, however, shall apply only in proportion to and to the extent of the negligent acts or omissions of LICENSEE, its officers, agents, partners, employees; or any person or persons under LICENSEE's direct supervision and control. LICENSEE, prior to the execution of this Agreement, shall furnish the UNIVERSITY with Certificates of Insurance evidencing compliance with the requirements of this Section.

8.3 No Limitation. The coverage required herein shall not in any way limit the liability of LICENSEE, its officers, agents, partners, or employees.

8.4 Waiver of Subrogation. Notwithstanding the provisions of Section 8.5 herein, LICENSEE hereby waives any right of recovery against UNIVERSITY due to loss of or damage to the property of LICENSEE when such loss of or damage to property arises out of the acts of God or any of the property perils included in the classification of fire, extended perils ("all risk" as such term is used in the insurance industry) whether or not such perils have been insured or non-insured.

8.5 Indemnification.

8.5.1 UNIVERSITY's Obligation. UNIVERSITY shall indemnify, defend and hold harmless LICENSEE, its officers, partners, agents, and employees from and against any claims, damages, costs, expenses, or liabilities (collectively "Claims") arising out of or in any way connected with this License including, without limitation, Claims for loss or damage to any property, or for death or injury to any person or persons, but only in proportion to and to the extent that such Claims arise from the negligent or wrongful acts or omissions of UNIVERSITY, its officers, agents, or employees.

8.5.2 LICENSEE's Obligation. LICENSEE shall (a) indemnify, defend and hold harmless UNIVERSITY, its officers, agents, and employees from and against any Claims arising out of or in any way connected with this License including, without limitation, Claims for loss or damage to any property or for death or injury to any person or persons, but only in proportion to and to the extent that such Claims arise from the negligent or wrongful acts or omissions of LICENSEE, its officers, partners, agents, or employees, and (b) indemnify, defend and hold the UNIVERSITY harmless against all Claims for infringement of any patent, copyright, trade secret, trade name, trademark or any other proprietary or contractual rights, and claims for payment of taxes arising from LICENSEE's actions pursuant to this Agreement, and shall indemnify UNIVERSITY from loss, expense, claim or cost on account thereof.

8.6 Waiver and Release/Limitation of Damages. LICENSEE agrees and acknowledges that UNIVERSITY shall not be liable under any circumstances for any loss of or injury to or interference with LICENSEE's business including, without limitation, loss of profits or consequential damages however occurring and including, but not limited to, those occurring through or in connection with or incidental to (i) any failure to supply any access, utilities, or any other service which UNIVERSITY has agreed to provide or may provide, (ii) any surges or interruptions in electricity, or (iii) the failure of or interruptions in services of any telephone or telecommunications lines, wires, cables or any service or equipment, whether or not caused by any negligence of UNIVERSITY or by UNIVERSITY's installation of, maintenance of, or failure to maintain any of the foregoing. Without limiting the foregoing or any of the other provisions of this Agreement, UNIVERSITY's liability under this Agreement, if any, shall not be liable for any consequential or punitive damages.

## 9. REMOVAL OF EQUIPMENT/OPTION TO BUY-OUT

9.1 Removal of System. LICENSEE shall, within sixty (60) days after expiration or termination of this Agreement (the "Required Removal Date"), remove the System from the Facility, return the Facility to its pre-installation condition (except to the extent that UNIVERSITY shall otherwise consent) and ordinary wear and tear, and peaceably and quietly leave, surrender and yield the Facility to UNIVERSITY. LICENSEE's removal of the System shall not affect the integrity of UNIVERSITY's roof (for a roof mounted System), which shall be as leak proof as it was prior to removal of System. UNIVERSITY may, in its sole discretion, extend the time allowable for LICENSEE to remove the System upon written request by LICENSEE within this 60-day period. Upon completion of LICENSEE's removal of the System and performance of any necessary repairs, a qualified representative from UNIVERSITY shall inspect the Facility to determine if the Facility was left in accordance with this Section. If UNIVERSITY's representative determines that LICENSEE has not removed the System or repaired damage in an adequate or timely manner in accordance with this Section, UNIVERSITY shall have the right to any and all remedies as specified herein or in the SPPA, including, but not limited to, consideration of the System as "abandoned."

9.2 Security for System Removal. Three (3) years prior to the expiration of this SLA, LICENSEE shall provide UNIVERSITY an estimate of the cost to remove the System and

restore the Facility at the end of the Term. LICENSEE and UNIVERSITY shall then meet and confer within thirty (30) days after such estimate is provided to resolve any concerns regarding such estimated cost, and a revised estimate taking those concerns into account shall then constitute the final restoration cost estimate. LICENSEE shall then provide either (i) a performance bond covering such final restoration cost estimate, or (ii) an account established with a financial institution reasonably satisfactory to UNIVERSITY, requiring the signatures of both LICENSEE and UNIVERSITY for all withdrawals, into which payments under the SPPA shall be deposited by UNIVERSITY until the balance in such account reaches the final restoration cost estimate. Such account shall serve as the security for the restoration of the Facility, and such funds shall be released to LICENSEE when the Facility restoration is accepted by UNIVERSITY. In event of a default by LICENSEE, UNIVERSITY shall have the right to use all the funds in such account for purposes of restoring the Facility. Interest on such account shall be retained in the account for the benefit of whichever party is entitled to the funds in the account.

9.3 UNIVERSITY's Option to Purchase System. UNIVERSITY shall have an option to purchase (a) the System including any alterations thereto or (b) any portions of the System for fair market value at any time during the Term or at the end of the Term. UNIVERSITY shall, within one hundred and eighty (180) days before the expiration or early termination of this Agreement, advise LICENSEE as to whether it shall enter negotiations with LICENSEE to exercise its option to purchase the System. LICENSEE and UNIVERSITY shall first attempt to agree on a fair market value for the System. "Fair market value" shall mean the price that would be established in an arm's length transaction between an informed and willing buyer and an informed and willing seller under no compulsion, respectively, to buy or sell, and neither of which is related to UNIVERSITY, LICENSEE or any financing entity of LICENSEE. If the parties cannot agree on a value, fair market value shall be determined at the time UNIVERSITY exercises the purchase option described in this section, by an independent energy appraiser mutually acceptable to both UNIVERSITY and LICENSEE. UNIVERSITY's exercise of its option pursuant to this section shall obviate the obligations of LICENSEE to remove the System or return the Facility to its pre-installation condition above.

9.4 Condemnation. In the event that the whole or any portion of the Facility is acquired or condemned by any authority or sold by UNIVERSITY in lieu thereof, then this SLA shall terminate at UNIVERSITY's election as of the date the condemning authority takes title or such earlier date as reasonably necessary. In such event, LICENSEE shall be entitled to a termination fee pursuant to the SPPA. UNIVERSITY agrees to immediately notify LICENSEE in the event of such termination. The entire award in any such condemnation proceeding shall be and remain the property of UNIVERSITY, and LICENSEE hereby fully waives and relinquishes any right to seek an award or participate in the condemnation proceeding.

9.5 Clear Title. At the expiration or other termination of this License, LICENSEE shall execute and deliver to UNIVERSITY within thirty (30) days a good and sufficient Quitclaim Deed to any rights arising under this SLA. If LICENSEE fails or refuses to deliver such Quitclaim Deed, a written notice by UNIVERSITY documenting this failure shall, after ten (10) days from the date of recordation of said notice, be conclusive evidence of such termination against LICENSEE and all persons claiming interest under this License.

## 10. DEFAULTS AND REMEDIES.

10.1 Event of Default. UNIVERSITY has entered into this SLA upon the condition that LICENSEE shall timely and faithfully perform all of LICENSEE's obligations hereunder. Each of the following events shall be deemed to be an event of default hereunder:

10.1.1 Failure by LICENSEE to observe or perform any of the covenants or provisions of this SLA to be observed or performed by LICENSEE, where such failure shall continue for a period of fifteen (15) days after written notice thereof is given by UNIVERSITY to LICENSEE; provided, however, if such default is not reasonably curable within fifteen (15) days, it shall not be deemed an Event of Default by LICENSEE if LICENSEE shall commence to cure such failure within said fifteen (15) day period and thereafter diligently prosecutes such cure to completion as deemed reasonable by UNIVERSITY.

10.1.2 Any termination of the SPPA by UNIVERSITY for cause.

10.1.3 LICENSEE shall be insolvent, generally not pay its debts as they mature, make a general assignment for the benefit of creditors, commence any case or proceeding seeking to have an order for relief entered on its behalf as a debtor, or to adjudicate it bankrupt or insolvent or seeking a reorganization, arrangement, liquidation or dissolution of it or its debts under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors or seeking the appointment of a receiver, trustee or similar official, and such case or proceeding (a) results in entry of an order for relief which is not fully stayed within seven (7) business days, or (b) shall remain undismissed for a period of thirty (30) days.

10.1.4 At UNIVERSITY's election, any default by LICENSEE under the provisions of Section 10.2 of the SPPA.

10.2 Remedies. Upon the occurrence of an Event of Default by LICENSEE, in addition to any other rights and remedies available to UNIVERSITY at law or in equity and subject to the provisions of this Article, UNIVERSITY shall have the option to pursue any one or more of the following remedies without any additional notice or demand whatsoever:

10.2.1 If the default relates to work to be performed by LICENSEE, perform such work or cause it to be performed, for the account of LICENSEE, without waiving such Event of Default, and without liability to LICENSEE for any loss or damage which may result to LICENSEE's equipment or business by reason of such work, and LICENSEE, on demand shall pay to UNIVERSITY as a license fee hereunder, the cost of such work plus ten percent (10%) thereof as administrative costs.

10.2.2 Terminate this Agreement by providing a written notice to LICENSEE indicating that the Agreement has been terminated and, if LICENSEE fails to do so by the Removal Date (as defined in section 9.1, above), remove the System and any other property owned by LICENSEE from the Licensed Area.

10.2.3 Without terminating LICENSEE's obligations under this Agreement, terminate LICENSEE's right of entry, use and possession under this Agreement and enter into the License Area, repossess the same and expel LICENSEE and those claiming under LICENSEE, without being deemed guilty of trespass and without prejudice to any other remedy, including without limitation, damages.

## 11. PREVAILING WAGE RATES, PAYROLL RECORDS AND APPRENTICES

11.1 Subcontractors. For purposes of this Agreement, the term Subcontractor shall not include suppliers, manufacturers, or distributors.

11.2 Labor Code Compliance. LICENSEE shall comply and shall ensure that all Subcontractors comply with Sections 1770, 1771, 1772, 1773, 1774, and 1775 of the State of California Labor Code. LICENSEE shall pay not less than the general prevailing per diem wage

rates as established by the State of California Department of Industrial Relations for each craft, classification, or type of worker required to install the system. LICENSEE shall cause all subcontracts to include the provision that all Subcontractors shall pay not less than the prevailing rates to all workers employed by such Subcontractors in the execution of the Construction Work.

11.3 Records. LICENSEE and all Subcontractors shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyworker, apprentice, worker, or other employee employed in connection with the System. All payroll records shall be certified as being true and correct by LICENSEE or Subcontractors keeping such records; and the payroll records shall be available for inspection at all reasonable hours at the principal office of LICENSEE on the following basis:

11.3.1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or the employee's authorized representative on request.

11.3.2 A certified copy of all payroll records shall be made available for inspection upon request to UNIVERSITY, the State of California Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State of California Division of Industrial Relations.

11.3.3 A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that the request by the public shall be made to either UNIVERSITY, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal offices of LICENSEE or Subcontractors. Any copy of the records made available for inspection as copies and furnished upon request to the public or any public agency by UNIVERSITY shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of LICENSEE awarded the Contract or performing the Contract shall not be marked or obliterated.

11.3.4 LICENSEE shall file a certified copy of the payroll records with the entity that requested the records within 10 days after receipt of a written request. LICENSEE shall inform UNIVERSITY of the location of such payroll records for the Project, including the street address, city, and county; and LICENSEE shall, within 5 working days, provide notice of change of location of such records. In the event of noncompliance with the requirements of this Article 14.3 or with the State of California Labor Code Section 1776, LICENSEE shall have 10 days in which to comply following receipt of notice specifying in what respects LICENSEE must comply. Should noncompliance still be evident after the 10- day period, LICENSEE shall forfeit to UNIVERSITY, as a penalty, \$25 for each day, or portion thereof, for each worker, until strict compliance is accomplished.

## 12. MISCELLANEOUS

12.1 Notices. Unless a provision in this SLA specifically provides otherwise, all notices and other communications required or permitted under this SLA shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, by overnight service or by hand delivery (including by means of a professional messenger service) to the addresses set forth below, or sent by electronic facsimile to the telefacsimile numbers set forth below. Any such notice or other communication shall be deemed to be effective on the date given if given by hand delivery, on the date received as confirmed by acknowledgement of receipt if by telefacsimile, on the day after the date sent if sent by overnight



service, or three (3) days after the date sent if sent by first class mail. Either party may by similar notice given change the address to which future notices or other communications shall be sent.

To:

ATTN:  
TITLE:  
ADDRESS:  
PHONE:  
FAX

With a copy to Lender:

ATTN:  
TITLE:  
ADDRESS:  
PHONE:  
FAX:

To UNIVERSITY:

ATTN:  
TITLE:  
ADDRESS:  
PHONE:  
FAX

12.2 Integration; Exhibits: This Agreement, together with the SPPA and the Exhibits and Schedules executed hereunder, constitutes the entire agreement and understanding between the UNIVERSITY and LICENSEE with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits and Schedules referred to herein are integral parts hereof and thereof and are made a part of this Agreement by reference.

12.3 Cumulative Remedies: Except as set forth to the contrary herein, any right or remedy of UNIVERSITY or LICENSEE shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

12.4 Limited Effect of Waiver: The failure of either UNIVERSITY or LICENSEE to enforce any of the provisions of this Agreement, or the waiver thereof in any instance shall not be

construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

12.5 Severability. If any term or provision of this Agreement shall be held invalid or unenforceable to any extent under applicable law by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.

12.6 Counterparts: This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

12.7 Survival: The obligations under Sections 5.3 and 5.4 (possessory taxes, copyright and patent obligations), Section 6.4 (LICENSEE removal of liens), 9.2 (roof repair), 7.1.9 (hazardous materials) and 7.2.5 (Removal of UNIVERSITY liens), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.

12.8 Relation of Parties: The relationship between the UNIVERSITY and LICENSEE shall not be that of partners, agents or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes.

12.9 Successors and Assigns: This License Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of UNIVERSITY and LICENSEE and their respective permitted successors and assigns.

12.10 Assignment.

12.10.1 LICENSEE shall not assign, sublease, permit the use of, or otherwise transfer any interests in and to this Agreement either in whole or in part, without the consent of the UNIVERSITY in the form of a formal written amendment. In no event shall LICENSEE's interest in this Agreement be assigned or transferred to an entity that is not the same entity which has the rights and obligations of LICENSEE under the SPPA.

12.10.2 Definition of Assignment. For purposes of this section, the sale, assignment, transfer or disposition, directly or indirectly, of any type which results in a change of control of LICENSEE shall be deemed an assignment of this SLA. Change of control shall be as defined in common law, and may be the result of a single or multiple related transactions which result in the cumulative transfer of more than fifty percent (50%) of the voting stock or equity interests of LICENSEE. However, in no event shall the transfer of shares (i) to a Lender which meets the qualifications under Subsection 12.10.3. (below), which assumes LICENSEE's obligations hereunder, or (ii) to a limited liability company of which LICENSEE is the sole and managing member, or (iii) in an open market transaction sale of shares of a public held company be considered an assignment needing UNIVERSITY's approval. LICENSEE shall have a continuing duty to provide UNIVERSITY with written notice of any material change in the LICENSEE's business structure and/or financial status.

12.10.3 Consent to Assignment. UNIVERSITY shall consent to the assignment by LICENSEE to a Lender, of LICENSEE's right, title and interest in and to this SLA, provided that, in the reasonable opinion of the UNIVERSITY, the proposed assignee is reasonably capable of fulfilling LICENSEE's financial and System management obligations hereunder.

12.10.4 Assignment for Security. Nothing in this section 12 shall (i) prohibit LICENSEE from assigning or granting a lien on LICENSEE's rights to payments under

this SLA for purposes of collateral security or (ii), except as permitted under subsection 12.10.3. above or with UNIVERSITY's consent in accordance with section 12.10.1, above, allow LICENSEE to assign its duties and obligations under this SLA.

12.11 Applicable Law. This Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the State of California.

12.12 Estoppel Certificate: Either party shall, upon not less than thirty (30) days prior written request by the other party or such party's lender, execute, acknowledge and deliver to the other party or to such party's lender in writing, in a commercially reasonable form, a factually accurate form of Estoppel Certificate, which may be relied upon by any prospective Lender.

12.13 Attorneys' Fees. The prevailing party in any lawsuit or action under this Agreement in addition to any other relief granted by the court or an arbitrator, shall be entitled to all reasonable attorneys' fees and costs.

12.14 No Recordation. LICENSEE shall not record this Agreement nor any memorandum or short-form hereof.

12.15 Time is of the Essence. Time is of the essence with respect to performance of every provision of this Agreement.

12.16 Title to System. Unless ownership of the System is transferred from LICENSEE to UNIVERSITY in accordance with the terms of this Agreement, title to the System and any equipment placed on the Licensed Area by LICENSEE shall be held by LICENSEE. All of the System shall remain the property of LICENSEE and shall not become fixtures. LICENSEE has the right to remove all the System at its sole expense on or before the expiration or termination of this Agreement in accordance with Section VII. UNIVERSITY acknowledges that LICENSEE may enter into financing arrangements including promissory notes and financial and security agreements for the financing of the System (the "Collateral") with a third party financing entity and may in the future enter into additional financing arrangements with other financing entities. In connection therewith, UNIVERSITY (i) consents to the installation of the Collateral to the extent that the Collateral is part of the approved System; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any payment due or to become due hereunder and that such Collateral may be removed at any time without recourse to legal proceedings, so long as such removal is performed in accordance with this Agreement.

12.17 Nondiscrimination.

12.17.1 LICENSEE's Obligations. LICENSEE shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. LICENSEE shall ensure that the evaluation and treatment of its employees and applicants for employment are free from such discrimination and harassment, and shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

12.17.2 Inclusion in Subcontracts. LICENSEE represents and warrants that it shall include the substance of the nondiscrimination and compliance provisions of this clause in all subcontracts in connection with its obligations hereunder.

12.18 Authority. Each of the individuals executing this Agreement on behalf of the LICENSEE or the UNIVERSITY represents to the other party that such individual is authorized to do so by requisite action of the party to this Agreement.

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, UNIVERSITY and LICENSEE have executed this Agreement as of the Effective Date.

UNIVERSITY: The Regents of the  
UNIVERSITY of California

By: \_\_\_\_\_

NAME: \_\_\_\_\_

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

LICENSEE: \_\_\_\_\_

By: \_\_\_\_\_

NAME: \_\_\_\_\_

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

## Solar License Agreement

### Exhibits

- A. Facility Location Map
- B. Licensed Area Map and System Definition
- C. Not used
- D. Access Procedures for Facility
- E. Project Requirements for Design, Construction and Procurement, and Operation and Maintenance
- F. Request for Proposals
- G. Proposal
- H. Form of Estoppel Certificate
- I. Hazardous Substances

Exhibit "A" (to SLA)

Facility Location Map

(This Exhibit will be completed once the Facilities included in this contract have been selected by the LICENSEE and approved by the UNIVERSITY)

Exhibit "B" (to SLA)

Licensed Area Map and System Definition

(This Exhibit will be completed once the Facilities included in this contract have been selected by the LICENSEE and approved by the UNIVERSITY)

Exhibit "C" (to SLA)

Not used



Exhibit "D" (to SLA)

Access Procedures for the Facility

Licensee shall notify the university Facility contact as identified in Section 9 of the SPPA or as designated by the University 24 hours prior to access.

## Exhibit "E" (to SLA)

### Project Requirements for Design, Construction and Procurement, and Operation and Maintenance

#### General

This Exhibit will contain the System design documents which will reflect the final installed System (Record Documents). Prior to the submittal of final Record Documents, Licensee shall submit preliminary project design documents for signature in order to complete the SLA. Licensee understands that Record Documents are required to be submitted for the purposes of full and complete compliance with the applicable provisions of this SLA.

Also to be listed in this Exhibit are project design, construction and installation requirements, constraints and specifications that are deemed to be necessary by the University, and the outcome of any environmental review. Licensee understands that the project design, construction and installation documents will address these special considerations and be included in the review process by University.

#### 1.1 Design

System design documents shall be prepared, stamped, and signed by an engineer or engineers licensed in the State of California. Licensee also understands that System design documents that are submitted for review without the appropriate professional engineering stamp will not be reviewed and will be returned to Licensee as incomplete and insufficient System documentation.

System design documents will include, but not be limited to, the following:

1. Site plan
2. System layout
3. System schematics
4. System capacity calculations
5. System single line electrical diagram
6. Point of interconnection single line electrical diagram
8. Construction documents—plans, elevations, sections, details, specifications, etc.
9. Structural calculations and structural and mounting details
10. Wind loading and seismic calculations
11. List of equipment and materials schedule
12. Manufacturers' data and cut sheets on solar photovoltaic panels, inverters and balance of systems equipment
13. Geotechnical report as applicable
14. Construction Specifications

Licensee agrees to design and construct the System in accordance with all applicable building codes and standards. System design documents will expressly identify the applicable building codes and standards. The system design documents (and installation) shall be submitted to the University for review and approval. The Licensee shall allow sufficient time in the project schedule for this review to take place.

Licensee will:

- a. Complete the design for all elements of the project, including but not limited to: civil, structural, architectural, mechanical, electrical, and specialty consulting areas.

Drawings shall be prepared and stamped by an engineer (or engineers) licensed in the State of California.

- b. Incorporate the requirements of permitting agencies as may become apparent in the course of design. The Licensee will apply for and secure all required permits and provide all necessary reports, studies and support required to obtain any permits for any agency that has jurisdiction.
- c. Include the cost of all permit fees. The Licensee is responsible for all permit coordination site inspections, and permit compliance.
- d. Submit design for review at the completion of design development; at 50% completion of construction documents; at initial 100% completion of construction documents; and after incorporating any corrections and changes required by the University, for backcheck of 100% complete construction documents, before commencing construction. After each submittal the Licensee will attend "comments resolution meeting." The Licensee will review the University's comments at this meeting and will be prepared, with the proper people in attendance, to resolve the University's comments. Comments will be resolved to the Licensee's and the University's mutual satisfaction. The University may employ peer reviewers at its expense as part of the review process.
- e. Prepare draft Operations and Maintenance Guide to serve as the basis for preparing the final Operations Manual during the Construction phase.
- f. Provide all submittals on CD in AutoCAD 14 or latest version for drawings, and Microsoft Word for specifications; in addition, provide five sets of half-size drawings on white bond paper for all reviews, and five sets of full-size drawings on white bond paper at the time of construction. Provide the Record Documents on CD as noted above, as well as three sets of full-size Record Documents on white bond paper at the completion of construction.  
~~Provide all submittals on CD in AutoCAD 14 or latest version; in addition, provide five sets of half-size drawings on white bond paper for all reviews, and five sets of full-size drawings on white bond paper at the time of construction. Provide three sets of full-size record documents at the completion of construction.~~

## 1.2 Construction

The Licensee shall construct the Project in accordance with University-approved plans, specifications and submittals prepared by the Licensee to meet or exceed all requirements of the University. The Licensee shall:

- a. Conduct weekly meetings, as necessary, with the University to provide schedules, status updates and technical input. The Licensee is responsible to provide meeting notes, in electronic format within 3 working days from conclusion of the meeting.
- b. Provide required shop drawings and material data submittals. All shop drawings shall be submitted as full-size drawings at a scale usual for the given system, and sufficient to fully show and explain all relevant features, dimensions, etc.
- c. Provide complete management, supervision, and reporting of all aspects of the construction of this Project, including but not limited to scheduling and conducting weekly meetings with the University.

- d. Provide resident engineering and contract administration, and inspections, including special inspections, necessary for the functional, safe, and on-schedule completion of the Project, starting with the issuance of a Notice to Proceed from the University and extending through issuance of Notice of Completion and Acceptance. University staff will perform inspection to verify compliance with the-contract documents.
- e. Ensure compliance with applicable local, state, and federal codes, building and environmental permit requirements and enforcement of the Contract Documents.
- g. Provide any laboratory, surveying, and other contracted services as required to complete project construction inspection and testing tasks for all equipment.
- h. Prepare and maintain a schedule for the duration of a project using Microsoft Project. The schedule will be updated and presented at the weekly meeting with the University.
- i. Implement and maintain an internal records management and document control system as required, to support project operations.
- j. Implement a Safety Program. This includes but is not limited to the following activities:
  1. Assign a Safety Engineer to monitor and control this program for the Project.
  2. Develop an on-site Project Safety Plan for review and approval by the University.
  3. Administer and enforce the University approved on-site Project Safety Plan for the Project.
  4. Ensure its Contractor performance for safety and health issues relating to their workers at the Project Site. This shall include workers in direct employment to the Licensee and workers involved in a subcontracting, equipment supply, or any other project related oral or written arrangement with the Licensee.
  5. Report accidents, claims, and other on-going safety related issues to the University.
- k. Adhere strictly to construction access requirements as established by the University and provided in writing during the entire length and scope of the project construction. This shall include the Licensee, its employees, contractors, and/or agents.

As part of the closeout process, prior to the commissioning of the system, the Licensee shall:

- a. Conduct a walk-through with the University and address comments as necessary with to generate a completion punch list and subsequently to confirm all items are complete.
- b. Administer and coordinate the project contract closeout process and resolve any warranty provision issues.
- c. Report progress of project contract closeout to the University.

### 1.3 Solar PV System Specifications

The Licensee shall provide the solar modules, inverters, and balance of systems, referred to as the solar PV system that meets the following minimum technical specifications:

- IEEE 1262 “Recommended Practice for Qualifications of Photovoltaic Modules”
- PV modules and inverters specified must be listed on the California Energy Commission’s PTC list and must qualify for eligibility under the California Public Utilities Solar Generation Incentive Program

- UL 1703 – “Flat-Plate Photovoltaic Modules and Panels”
- IEEE 929-2000 – “Recommended Practice for Utility Interface of Photovoltaic Systems” and
- UL 1741 – “Standard for Static Inverters and Charge Controllers for use in Photovoltaic Systems”
- Other acceptable PV system listing for components and electrical hardware recognized labs include ETL Semko and FM Global
- Other technical codes that will apply include:
  - AMSE PTC 50 (solar PV performance)
  - ANSI Z21.83 (solar PV performance and safety)
  - NFPA 853 (solar PVs near buildings)
  - NEPA 70 (electrical components)
  - IEEE 1547 (interconnections)
  - National Electrical Safety Code – ANSI C2 - 1999
  - All applicable State Building Codes and requirements
- Systems must be designed and installed using UL or ETL listed components, including mounting systems.

#### 1.4 Solar PV System Installation

The Licensee shall provide the labor necessary to install all solar PV equipment, materials, and components to interconnect to the local utility grid with the exception of required equipment supplied and/or installed by the Utility.

Installation must comply with the following codes and regulations:

- PV systems must be installed in compliance with all applicable state building codes including OSHA and the State Building Standards Code
- PV system must be installed in compliance with all applicable local building codes, including the National Electrical Code:
  - Article 690 – Solar Photovoltaic Systems
  - Article 705 – Interconnected Electrical Power Production Sources
- IEEE 929-2000 – Recommended Practice for Utility Interface of Photovoltaic (PV) Systems
- National Electrical Safety Code – ANSI C2-1999
- ANSI/IEEE 519 1992
- IEEE 1262 Recommended Practice for Qualifications of Photovoltaic Modules

All systems must be installed in accordance with all applicable requirements of local electrical codes and the National Electrical Code (NEC), including but not limited to Article 690, “Solar Photovoltaic Systems” and Article 705 – “Interconnected Electrical Power Production Sources”.

All Balance of Systems (wiring, component, wiring, conduits, and connections) must be suited for conditions for which they are to be installed. Inverters shall be installed in all-weather enclosures (NEMA 4) suitable for exterior location. An interval data meter must be installed to measure the AC output of the inverter. This meter should be located in close proximity to the existing billing meter and in a location accessible to University facilities personnel

#### 1.5 Utility Grid Interconnection

The Licensee shall supply, install, and deliver all solar PV equipment required to interconnect to the campus distribution system and the local utility grid. The Licensee shall fulfill all application,

study, and testing procedures to complete the interconnection process. All costs associated with the interconnection shall be borne by the Licensee.

Interconnection standards will comply with all codes and regulations listed in Section 1.3 and 1.4 above and with "Rule 21" of the local utility company interface requirements for solar photovoltaic systems. Licensee will assist the University in preparing and submitting appropriate interconnection agreements with the local utility company. This shall be done at no cost or liability to the University.

#### 1.6 Commissioning and Acceptance Test

The completeness of the construction will be formally verified by the University against design documents. The University shall observe and verify the PV system's performance. The acceptable productive solar power output will be measured in kW (AC) at the building electrical interconnection point, and must be consistent with the specifications for the system. Approvals as required by the state fire marshal and Pacific Gas & Electric will be a pre-requisite for acceptance.

A Certification of Acceptance will be issued by the University to the Licensee upon the approval of the Commissioning and Acceptance Test.

#### 1.7 Operation & Maintenance Manuals and ~~As-Built~~Record Drawings Documents

~~Licensee shall provide to the University two (2) sets of site-specific operation, maintenance, and parts manuals for each installed solar PV system. These O&M Manuals shall cover all components, options, and accessories supplied. The Manuals shall include maintenance, troubleshooting, and safety precautions specific to the supplied equipment at the site. The Licensee shall also provide one (1) sets of Record Documents in AutoCAD 14 or higher (for drawings) and Microsoft Word (for specifications). These requirements shall be delivered prior to acceptance of the site-specific solar PV system.~~  
Licensee shall provide to the University two (2) sets of site-specific operation, maintenance, and parts manuals for each installed solar PV system. These O&M Manuals shall cover all components, options, and accessories supplied. The Manuals shall include maintenance, troubleshooting, and safety precautions specific to the supplied equipment at the site. The Licensee shall also provide one (1) sets of As-Built drawings in AutoCAD 14 or higher. These requirements shall be delivered prior to acceptance of the site-specific solar PV system.

Because the solar PV system is privately-owned by the Licensee, the Licensee is responsible for all costs associated with the operation and maintenance. All PV system warranties and workmanship guarantees will be in effect during the term of the SLA and the SPPA.

#### 1.8 Warranties and Guarantees

The Licensee shall provide evidence of the following warranties:

- 5-year complete solar PV system warranty
- 20-year solar PV panel warranty
- 10-year roof penetration and building penetration warranty
- 5-year complete operational power capacity warranty

Exhibit "F" (to SLA)  
RFP

Request for Proposals (RFP) "UNIVERSITY Facility Solar Power Purchase Program", with Addenda

Exhibit "G" (to SLA)

\_\_\_\_\_ Proposal



Exhibit "H" (to SLA)

Form of Estoppel Certificate

Premises: \_\_\_\_\_ . License Number: \_\_\_\_\_ .  
License dated: \_\_\_\_\_, 200X, between the UNIVERSITY, and TBD (LICENSEE).  
The undersigned, UNIVERSITY under the above License, certifies  
to \_\_\_\_\_, holder or proposed holder of a note or other  
obligation secured, or to be secured, by a mortgage or deed of trust upon the above ground  
License on the premises and assignee, or proposed assignee of said License, that;

1. Said License is presently in full force and effect and unmodified except as indicated at the end of this certificate.
2. The Term thereof commenced on \_\_\_\_\_, 200X, and will expire on \_\_\_\_\_, and the Commencement Date became effective and commenced on \_\_\_\_\_, 200X.
3. To the best of UNIVERSITY's knowledge, LICENSEE's Work has been substantially completed in accordance with all the terms and conditions of the License.
4. LICENSEE's Obligations under said License, including those incorporated by reference in the Solar Power Purchase Agreement, have been met through \_\_\_\_\_.
5. The address for notices to be sent to the undersigned is as set forth in said License, or as set forth below.
6. To the best of UNIVERSITY's knowledge, LICENSEE is not in default under the License, nor do any conditions exist or has any event occurred that, given the giving of notice or the passage of time, would ripen into a default under the License, except as set forth below.
7. [Any other certifications or information reasonably requested by LICENSEE and UNIVERSITY.]

In the event of any inaccuracy in the information set forth in this certificate, UNIVERSITY shall be estopped to deny the accuracy thereof as to the certificate holder named above, its successors and assigns. Any capitalized terms used herein and not otherwise defined shall have the meaning set forth in the License.

Dated: \_\_\_\_\_, 2005.

UNIVERSITY:

\_\_\_\_\_

BY: \_\_\_\_\_

Its:

LICENSE MODIFICATION, IF ANY, AND CHARGES, DEFAULTS, ETC., IF ANY, TO BE LISTED HERE:

EXHIBIT "I" (to SLA)  
LIST OF HAZARDOUS SUBSTANCES USED BY LICENSEE ON LICENSED AREA

\*\*\* To Be Prepared and Submitted by LICENSEE