

**UCSC McHenry Library Photovoltaic System
SOLAR LICENSE AGREEMENT**

EXHIBIT 3 to Solar Power Purchase Agreement

THIS SOLAR LICENSE AGREEMENT (this "SLA"), dated _____, 20__, ("Effective Date"), by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation ("Licensor" or "UNIVERSITY") and _____, a _____ ("LICENSEE"), collectively referred to as "the Parties".

WHEREAS, UNIVERSITY is the owner of certain real property comprising the campus of the UNIVERSITY of California Santa Cruz campus, a portion of which includes the real property improved with that certain building commonly known as the McHenry Library (the "Facility") as depicted on Exhibit A attached hereto; and

WHEREAS, LICENSEE seeks 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"), ; and

WHEREAS, this license is granted for the sole purpose of effectuating performances under the Solar Power Purchase Agreement ("SPPA"); and

WHEREAS, _____ ("Contractor") is a licensed, full-service energy services company with the technical capabilities to provide services to the UNIVERSITY and LICENSEE including, but not limited to, engineering, equipment and material procurement, construction management, installation, construction, training and monitoring and verification (collectively, "Construction Services"); and

WHEREAS, all the Construction Services required from LICENSEE hereunder will be performed and provided by CONTRACTOR and its subcontractors and agents, if any; and

WHEREAS, LICENSEE shall not perform any Construction Services hereunder; and

WHEREAS, capitalized items 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, intending to be legally bound, the Parties agree as follows:

1 Grant of License

1.1 Grant. UNIVERSITY hereby grants to LICENSEE, its agents and contractors, a non-exclusive, revocable License to enter upon and use the Licensed Area and

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 and for no other purpose (the "Permitted Use").

2 Term

- 2.1 Duration. The term of this SLA ("Term") shall commence on the Effective Date and end at 11:59 PM the day preceding the _____th anniversary of the Commercial Operation Date (as defined in Section 7.3 "Commercial Operation Date") unless and until it is sooner terminated pursuant to sections 2.2 ("Term Coterminous with SPPA"), 10.5 ("Condemnation") or 11.2.2 ("Remedies") or pursuant to termination of the SPPA. The date on which this SLA 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 SLA.

3 Consideration

- 3.1 Consideration. As total consideration for this License, LICENSEE shall provide electric power service to Licensor under the terms of the SPPA.

4 Use

- 4.1 Permitted Use. Permitted Use shall be as identified in Section 1.1 herein.
- 4.2 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 LICESNEE 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.
- 4.3 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 System, except for expected degradation and weather fluctuations, without the prior written approval of UNIVERSITY.

- 4.4 Prohibited Uses. LICENSEE shall not use or allow the Facility, Licensed Area, or UNIVERSITY'S campus 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. LICENSEE acknowledges and understands that this SLA 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. UNIVERSITY affirmatively represents that there are no prohibitions to its development of a Solar Photovoltaic System. 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 a finding of default pursuant to Section 11 of this SLA and Section 10 of the 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 SLA shall terminate, and the UNIVERSITY shall have no obligation to pay LICENSEE a Termination Fee pursuant to Exhibit 2, Attachment 16 of the SPPA.
- 4.5 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 users or occupants of the Facility and LICENSEE will not injure or annoy any users or occupants of the Facility. In the event that such interference occurs, LICENSEE agrees to take all reasonable steps necessary to eliminate such interference promptly, but no later than five (5) days from notification by 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 not cause unreasonable interference, including shading or other activity of the System as defined in Section 13 of the SPPA.
- 4.6 Subordination. This SLA 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. UNIVERSITY affirmatively represents that there are no prohibitions to its development of a Solar Photovoltaic System. UNIVERSITY will not subordinate its interest in the Facility as security for any LICENSEE loans or financing.

4.7 Applicable Laws, Regulations, Permits and Approvals. LICENSEE's activities pursuant to this SLA 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 services 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 this SLA 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 a finding of default by UNIVERSITY of this SLA pursuant to Section 10 of the SPPA or Section 11 of this SLA. LICENSEE shall be responsible for securing any required approvals, permits and authorizations from any federal, state or local agencies and shall comply with all applicable laws and regulations.

4.8 Determination of Violation. A judgment of any court of competent jurisdiction of any action or proceeding against LICESNSEE 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 the 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 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 SLA. UNIVERSITY affirmatively represents that the provision of Solar Power under this SLA does not in and of itself increase the cost of insurance. 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.

- 4.9 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.

5 Condition of Licensed Area

- 5.1 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 to perform its obligations herein and under the SPPA. LICENSEE has inspected the Licensed Area and every aspect thereof and represents to the UNIVERSITY that the Licensed Area is in acceptable condition for LICENSEE's anticipated use of the Licensed Area as provided in this SLA.
- 5.2 Condition of Existing Structure [insert any exceptions identified by Licensee]
- 5.3 As-Is Condition. Except as expressly set forth in Section 5.2 above, the Licensed Area is delivered by UNIVERSITY in an "as-is" condition, and LICENSEE hereby accepts the Licensed Area it is "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 statements 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.

6 Ownership of the System and Possessory Interest Taxes

- 6.1 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 sole and exclusive 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.

- 6.2 Security Interests in System. Subject to Section 4.6 herein and to Section 18.2 of 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 SLA. 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 SLA.
- 6.3 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.
- 6.4 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 SLA. If it becomes unlawful for LICENSEE to reimburse UNIVERSITY for any costs as required under this SLA, this SLA shall be revised to put UNIVERSITY 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.

7 Design, Installation, and Operation of the System

- 7.1 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 and requirements of the RFP which is incorporated by reference and made a part of this SLA. For purposes of this SLA, 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 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. 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 herein. LICENSEE’s construction and installation will comply with all applicable building codes. Parties acknowledge that LICENSEE may be required to complete some of the documents necessary for compliance with this SLA, the SPPA and the RFP after the Effective Date of this SLA.
- 7.2 UNIVERSITY Approval: Limitations. No procurement, construction, or installation by LICENSEE shall be permitted to begin until UNIVERSITY has approved the completed plans and specifications for the System and has issued a notice authorizing LICENSEE to proceed. 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 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 SPPA.
- 7.3 Commercial Operation Date. The Commercial Operation Date shall have the meaning set forth in the SPPA at Section 1.4.
- 7.4 Facility Mechanic’s Lien – Removal of Lien. 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 SLA, 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.

- 7.5 Payment and Performance Bonds. Before starting any installation, LICENSEE shall furnish a payment bond in the amount of \$_____ and a performance bond in the amount of \$_____, pursuant to the forms provided under the Request for Proposal, Exhibit 1, Attachments 5 and 6 to the SPPA.
- 7.6 Employment of Undocumented Aliens. LICENSEE verifies and warrants that, in entering into this SLA with UNIVERSITY, LICENSEE has not, in the preceding five years, been convicted of violating a UNIVERSITY, state, or federal law regarding the employment of undocumented aliens. LICENSEE shall not employ or contract with undocumented labor during the Term of this SLA.
- 7.7 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 1 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. 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 Exhibit 1. 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.
- 7.8 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 System design and specifications 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., 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 7.1, above. Prior to undertaking any such Alterations, LICENSEE shall submit to the UNIVERSITY specifics for the proposed Alterations, which shall be included in this SLA by amendment upon execution by both parties. 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.

7.9 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.

7.10 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, plans, and specifications, and is a necessary condition precedent to the issuance of a Certificate of Completion. If said inspection causes any damage to the System, UNIVERSITY shall be responsible for the costs to repair any such damage.

8. Operations and Maintenance

8.1 LICENSEE's Obligations

- 8.1.1 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, to the extent such repairs are necessary as a result of actions of LICENSEE and/or the Permitted Use, 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. UNIVERSITY shall provide a copy of warranty to LICENSEE. LICENSEE shall notify UNIVERSITY in writing fifteen (15) days prior to any planned downtime for maintenance and repair.
- 8.1.2 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 invitees.
- 8.1.3 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.
- 8.1.4 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 8.1.4 shall apply separately to each such System on each such Facility.

8.1.5 Section 8.1.4 does apply to the Facility that is the subject of this License. (both parties initial here): _____

8.1.6 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.

8.1.7 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.

8.1.8 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.

8.1.9 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 SLA, provided a list of such Hazardous Substances for review and approval by UNIVERSITY's Campus's Environmental Health & Safety Department attached hereto as Exhibit B. Any Hazardous Substance not listed on Exhibit B 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 SLA.

8.1.10 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.

8.1.11 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 1 to the SPPA. 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. In cases of emergency which UNIVERSITY determines that the continued operation of the System presents and imminent threat requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, the Parties agree that UNIVERSITY may disconnect the System prior to notification of LICENSEE. For routine and emergency repairs, the Parties shall contact the persons identified in the notice provisions in Section 13.1 below.

8.2 UNIVERSITY's Obligations

- 8.2.1 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.
- 8.2.2 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.
- 8.2.3 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.
- 8.2.4 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.
- 8.2.5 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.

8.2.6 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 SLA 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 SLA. 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 SLA 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.

9 Insurance; Indemnity; Representations and Warranties

9.1 Prior to LICENSEE's or CONTRACTOR's access to the Licensed Area, each, 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:

9.1.1 Commercial Form General Liability Insurance (contractual liability included) with minimum limits as follows

(a)	Each Occurrence	\$10,000,000
(b)	Products/Completed Operations Aggregate	\$10,000,000
(c)	Personal and Advertising Injury	\$10,000,000
(d)	General Aggregate	\$10,000,000

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.

9.1.2 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

9.1.3 Worker's compensation and employer's liability insurance in a form and amount covering LICENSEEs full liability under the Worker's

Compensation Insurance and Safety Act of the State of California, as amended from time to time.

- 9.1.4 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.
- 9.1.5 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.
- 9.1.6 Such insurance shall remain until all obligations under this Agreement have been met, including those of Section 10.

9.2 Additional Insured.

The insurance and the coverage referred to under 9.1.1 and 9.1.2 of this Section shall be endorsed to include "The Regents of the UNIVERSITY of California" as an additional insured for a period of ten (10) years, and including any insurance provided by CONTRACTOR to LICENSEE. Such a provision shall apply only in proportion to and to the extent of the negligent acts or omission 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 SLA, shall furnish the UNIVERSITY with Certificates of Insurance evidencing compliance with the requirements of this Section. Certificates shall provide for thirty (30) days (ten (10) days for non-payment of premium) advance written notice to UNIVERSITY of any material modification, change or cancellation of the above insurance coverages.

With the exception of the Worker's Compensation policies to be provided pursuant to Section 9.1, 9.2 and Section 9.3 above, the insurance policies provided by LICENSEE shall be endorsed to name the UNIVERSITY and its officers, directors, members, shareholders and employees and UNIVERSITY of California Santa Cruz as Additional Insureds CG2010 (11-85) or its equivalent, by endorsement ISO form CG 2037 (10/1) or its equivalent and such endorsement shall provide that such insurance shall be primary, and not excess or contributory to any insurance maintained by such Additional Insureds.

LICENSEE will provide UNIVERSITY with copies of all endorsements referenced herein.

9.3 No Limitation.

The coverage required herein shall not in any way limit the liability of LICENSEE, its officers, agents, partners, or employees.

9.4 Waiver of Subrogation. Notwithstanding the provisions of Section 9.7 herein, LICENSEE hereby waives any and all rights of recovery against UNIVERSITY and its officers, directors, members, shareholders and employees on account of loss or

damage to such waiving party or such waiving party's property or the property of others under its control (but, with respect to any party carrying third-party insurance, such waiver shall be effective only to the extent that such loss or damage is caused by or results from risks insured against under any such insurance policy). The property insurance to be maintained hereunder by CONTRACTOR shall permit the foregoing waiver of subrogation.

9.5 Non-Contributing. All insurance required to be carried by LICENSEE shall be non-contributing with any insurance carried by any Additional Insureds under said policies.

9.6 Form of Policies. All insurance required to be carried by LICENSEE and CONTRACTOR shall be maintained by with insurance carriers licensed to do business in the State of California, or those included in the List of Eligible Surplus Lines Insurers (LESLI) issued by the California Department of Insurance, having a general policyholders rating of not less than "A-" and financial rating of not less than "VIII" in the most current Best's Key Rating Guide. In no event will such insurance be terminated or otherwise allowed to lapse prior to termination of this Lease, or such longer period as may be specified herein. Each policy of insurance required hereunder (i) shall provide that it shall not be cancelled or modified without thirty (30) days (ten (10) days for nonpayment of premiums) prior Notice to UNIVERSITY, and (ii) shall not include any cross suits exclusion related to claims between any insureds, whether between Named Insured, between Named Insured(s) and Additional Insured(s) or between Additional Insureds.

9.7 Indemnification.

9.7.1 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 performance of this agreement 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 are caused by the negligent or intentional acts or omissions of UNIVERSITY, its officers, agents, or employees.

9.7.2 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 SLA 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 or are caused by the negligent or intentional 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 SLA, and shall indemnify UNIVERSITY from loss, expense, claim or cost on account thereof.

9.8 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 SLA, UNIVERSITY shall not be liable for any consequential or punitive damages other than UNIVERSITY-caused delay resulting in loss of utility rebates, and LICENSEE shall not be liable for any consequential or punitive damages other than LICENSEE-caused delay, resulting in loss of utility rebates.

9.9 Representations and Warranties. In addition to any representations and/or warranties provided herein by either Party, each Party represents and warrants to the other that:

- (a) it has the requisite power, authority, licenses, permits, or otherwise, to execute and deliver this SLA and perform its obligations hereunder;
- (b) the execution, delivery, and performance of this SLA have been duly authorized by, or are in accordance with, each Party's governing entity, and this SLA has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
- (c) its execution, delivery, and performance of this SLA will not breach or violate, or constitute a default under any contract, lease or instrument to which it is a Party or by which it or its properties may be bound or affected; and
- (d) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or order which would materially and adversely affect either Party's ability to perform hereunder.

10 **Removal of Equipment/Option to Buy-Out**

- 10.1 Removal of System. LICENSEE shall, within ninety (90) days after expiration or termination of this SLA (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/or 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 90-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."
- 10.2 Security for System Removal. Three (3) years prior to the expiration of this SLA, LICENSEE shall provide UNIVERSITY a "System Removal Work Letter", including 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 ten (10) 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 the escrow account for purposes of restoring the Facility. Interest on the escrow account shall be retained in the account for the benefit of whichever party is entitled to the funds in the account.
- 10.3 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. Before the expiration or early termination of this Agreement, UNIVERSITY shall 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.

10.4 **Section 10.3 does apply to the System that is the subject of this License. (both parties initial here):** _____

10.5 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.

10.6 Clear Title. At the expiration or other termination of this SLA, 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 SLA.

11 **Defaults and Remedies**

11.1 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. Unless otherwise specified in this SLA, the terms of SPPA Section 10 control defaults and remedies. Each of the following events shall be deemed to be an event of default hereunder:

11.1.1 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 sixty (60) days after written

notice thereof is given by UNIVERSITY to LICENSEE; provided, however, if such default is not reasonably curable within sixty (60) days, it shall not be deemed an Event of Default by LICENSEE if LICENSEE shall commence to cure such failure within said sixty (60) day period and thereafter diligently prosecutes such cure to completion as deemed reasonable by UNIVERSITY.

11.1.2 Any termination of the SPPA by UNIVERSITY for cause.

11.1.3 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 thirty (30) business days, or (b) shall remain undismissed for a period of sixty (60) days.

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

11.2 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:

11.2.1 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.

11.2.2 Terminate this SLA by providing a written notice to LICENSEE indicating that the SLA has been terminated and, if LICENSEE fails to do so by the Required Removal Date (as defined in Section 10.1, above), remove the System and any other property owned by LICENSEE from the Licensed Area.

11.2.3 Without terminating LICENSEE's obligations under this SLA, terminate LICENSEE's right of entry, use and possession under this SLA 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.

12 Prevailing Wage Rates, Payroll Records and Apprentices

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

12.2 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.

12.3 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:

12.3.1 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.

12.3.2 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.

12.3.3 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.

12.3.4 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 12.3 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.

13 **Miscellaneous**

13.1 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.

13.1.1 To LICENSEE:

ATTN:
TITLE:
ADDRESS:

PHONE:
FAX:

With a copy to Lender:

ATTN:
TITLE:
ADDRESS:

PHONE:
FAX:

13.1.2 To UNIVERSITY:

ATTN:
TITLE:
ADDRESS:

PHONE:
FAX:

ATTN: Lisa Akeson
TITLE: Director, Real Estate Office
ADDRESS: 1156 High Street
Santa Cruz, CA 95064
MS: REO/MBEST
PHONE: 831-459-5379
FAX: 831-502-7111

13.2 Integration: This SLA, together with the SPPA, the RFP, the Proposal, and the Attachments, 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. This agreement between the parties may not be changed, altered, or modified except by a writing signed by the parties.

13.3 Order of Precedence: The SPPA (Solar Power Purchase Agreement), UCSC Request for Proposal (hereinafter "RFP" marked Exhibit 1 to the SPPA), Seller's response to UC Request for Proposal (hereinafter "Proposal" marked as Exhibit 2 to the SPPA), including any subsequent written addenda, clarification, supplements, and/or revisions to the RFP and/or Proposal are incorporated herein by this reference and taken together constitute the entire agreement between the parties. In the event of any inconsistencies among the terms detailed in these documents the terms of the Solar License Agreement and the Solar Power Purchase Agreement shall take precedence over the inconsistent terms and all other terms shall remain in full force and effect. In the event of any inconsistencies among the terms of the RFP and the Proposal the terms of the

RFP shall take precedence. The terms of the SPPA, SLA, and the RFP shall take precedence over any inconsistent terms in the addenda, clarification, and/or supplements and all other terms shall remain in full force and effect.

- 13.4 Documents to be incorporated in the final Agreement shall include the Respondent's entire proposal, including any brochures, attachments and supplementary information. However, in the event of any conflict between this RFP and Respondent's proposal, the terms of this RFP shall control. This RFP shall govern any matter set forth herein that is not explicitly modified, added to or deleted by the provisions of the subsequent Agreement, including the final SLA and SPPA. In the event of any conflict between the terms of this RFP and the final SPPA and/or SLA, the terms of the final SPPA and/or SLA, as applicable, shall control.
- 13.5 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.
- 13.6 Limited Effect of Waiver: The failure of either UNIVERSITY or LICENSEE to enforce any of the provisions of this SLA, 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.
- 13.7 Severability. If any term or provision of this SLA shall be held invalid or unenforceable to any extent under applicable law by a court of competent jurisdiction, the remainder of this SLA shall not be affected thereby, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.
- 13.8 Counterparts: This SLA may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.
- 13.9 Survival: The obligations under Sections 6.3 and 6.4 (Copyright and Patent Obligations, and Possessory Interest Taxes, respectively), Section 7.4 (Facility Mechanic's Lien – Removal of Lien), 8.1.4 (Re-Roofing), 8.1.9 (Hazardous Substances) and 8.2.5 (Liens), or pursuant to other provisions of this SLA that, by their sense and context, are intended to survive termination of this SLA shall survive the expiration or termination of this SLA for any reason.
- 13.10 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 SLA shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes.

- 13.11 Successors and Assigns: This SLA and the rights and obligations under this SLA shall be binding upon and shall inure to the benefit of UNIVERSITY and LICENSEE and their respective permitted successors and assigns.
- 13.12 Assignment. 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 and upon such reasonable terms that UNIVERSITY may require. 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. UNIVERSITY's consent to one assignment shall not be deemed consent to any subsequent assignment.
- 13.12.1 Unique Expertise. Notwithstanding the foregoing, LICENSEE acknowledge that UNIVERSITY is relying upon the unique expertise and capability of the LICENSEE. LICENSEE must demonstrate that any proposed assignee has both the financial capacity and the technical ability to perform the obligations required under this SLA and the SPPA at a level deemed appropriate by UNIVERSITY
- 13.12.2 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 13.10.3. (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, or (iv) to one or more third parties as security for any financing or to an affiliated special purpose entity created for the financing or tax credit purposes related to the System. 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
- 13.12.3 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.
- 13.12.4 Assignment for Security. Nothing in this Section 13 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 13.10.3 above or with UNIVERSITY's consent in accordance with section 13.10.1,above, allow LICENSEE to assign its duties and obligations under this SLA.

- 13.13 Applicable Law. This SLA and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the State of California.
- 13.14 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, subject to the provisions of SPPA Section 18.1.
- 13.15 Attorneys' Fees. The prevailing party in any lawsuit or action under this SLA in addition to any other relief granted by the court or an arbitrator, shall be entitled to all reasonable attorneys' fees and costs.
- 13.16 No Recordation. LICENSEE shall not record this SLA nor any memorandum or short-form hereof, without prior consent of UNIVERSITY.
- 13.17 Time is of the Essence. Time is of the essence with respect to performance of every provision of this SLA.
- 13.18 Title to System. Unless ownership of the System is transferred from LICENSEE to UNIVERSITY in accordance with the terms of this SLA, 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. LICENSEE has the right to remove all the System at its sole expense on or before the expiration or termination of this SLA in accordance with Section 10. 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; and (ii) 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 SLA.
- 13.19 Nondiscrimination

13.19.1 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, sexual orientation, 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.). 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.

13.19.2 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.

13.20 Authority. Each of the individuals executing this SLA 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 SLA.

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 : _____

DRAFT

Solar License Agreement

Exhibits

- A. Facility Location Map at <http://maps.ucsc.edu/cdmchenrylibrary.html>
- B. List of Hazardous Substances Used by LICENSEE on Licensed Area

DRAFT