

ATTACHMENT B

SOLAR POWER PURCHASE AGREEMENT

SOLAR POWER PURCHASE AGREEMENT

Solar Power Purchase Agreement Attachments and Exhibits

Solar Power Purchase Agreement (SPPA)

Exhibit 1 – RFP

Exhibit 2 – RFP Proposal

Exhibit 3 – Solar License Agreement (SLA)

SOLAR POWER PURCHASE AGREEMENT

SOLAR POWER PURCHASE AGREEMENT

THIS SOLAR POWER PURCHASE AGREEMENT (the "SPPA") is made this ____ day of ____, 200_ (the "Effective Date") by and between The Regents of the UNIVERSITY of California, a California corporation, ("UNIVERSITY") and _____, a _____ ("LICENSEE"). UNIVERSITY and LICENSEE are sometimes referred to herein as the "Party" or, collectively, as the "Parties".

Whereas, UNIVERSITY and LICENSEE desire to agree to terms for the production and sale of solar generated electricity to serve UNIVERSITY's facilities by way of this SPPA, and

Whereas, concurrent with this SPPA the UNIVERSITY will grant to LICENSEE a license pursuant to a Solar License Agreement ("SLA") to develop, construct, own, and operate solar electric generating System(s) on UNIVERSITY's facilities to serve UNIVERSITY's electric loads;

Now, Therefore, the UNIVERSITY and LICENSEE agree as follows:

1. DEFINITIONS

In addition to the terms that are defined elsewhere in this Agreement, the following terms have the following meanings when used herein:

- 1.1 "Access Procedures" has the meaning set forth in Section 4.1 of the Solar License Agreement (SLA) and in Exhibit "D."
- 1.2 "Alterations" has the meaning set forth in Section 6.8 of the SLA.
- 1.3 "Applicable Laws" has the meaning set forth in Section 3.8 of the SLA.
- 1.4 "Commercial Operation Date" means the date that the UNIVERSITY has issued a Notice to Proceed for the construction and installation of the System(s) pursuant to Section 7.3 of the SLA.
- 1.5 "Contract Price" means the price of Electricity pursuant to Exhibit 2, Attachment 16.
- 1.6 "Electricity" means electrical energy, measured in kilowatt-hours that (a) is produced by the System, (b) is delivered by LICENSEE to the UNIVERSITY at the Electrical Interconnection Point, (c) meets the Green-e standard and (d) conforms to applicable utility and/or authoritative regulatory body standards.
- 1.7 "Electrical Interconnection Point" means the point(s) specified in the project design where the System connects to the existing electrical systems serving the Facility.
- 1.8 "Energy Management System" means the University's automatic controls system capable of receiving energy production data from the System
- 1.9 "Energy Service Provider" means an investor owned utility, a municipal utility or other electricity provider that serves electricity commodity to the Facility or to the campus where the Facility is located.
- 1.10 "Environmental Law(s)" means each and every applicable federal, state, UNIVERSITY and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal, state, UNIVERSITY and local governmental agency or other governmental authority pertaining to the protection of human health and safety or the environment.

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- 1.11 “Facility” or “Facilities” means the land or improvements owned and operated by UNIVERSITY on which the System will be installed.
- 1.12 “Fiscal Year” means the UNIVERSITY’s Fiscal Year, beginning on July 1 of each calendar year and ending on June 30 of the following calendar year.
- 1.13 “Force Majeure” means an act of God (such as earthquakes, fires, riots), actions or inactions of a regulatory authority, or actions of others such as strikes, lockouts, or other industrial disturbances, not within the control or arising from the fault of the party claiming Force Majeure and that has an adverse effect on that party’s ability to perform its obligations under this SPPA and to produce or accept Electricity for a period of at least ninety (90) days.
- 1.14 “Green-e” means the Renewable Energy Credit Standards program as administered by the Center for Resource Solutions. Detailed information about the Green-e Standard may be found at http://www.green-e.org/what_is/standard/standard.html
- 1.15 “Interest Rate” means the then-current prime rate for Bank of America, N.A., as that rate is announced from time to time.
- 1.16 “Hazardous Material” means, without limitation, any substance defined as “hazardous substance,” “hazardous waste,” “extremely hazardous waste,” or material known to cause cancer or reproductive toxicity, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1317 et seq.; Sections 25115, 25117, 25122.7, 25140, 25249.5, 25249.8, 25281, 25316 or 25501 of the California Health & Safety Code; and any substance regulated pursuant to any Environmental Law(s). The term “Hazardous Material” includes, but is not restricted to, asbestos, polychlorobiphenyls (“PCBs”) and petroleum.
- 1.17 “Lender” means any financial institution to which LICENSEE has pledged or collateral assigned LICENSEE’s rights under this Agreement and its rights to payment and a first security right in the System.
- 1.18 “Licensed Area” means the area of the Facility used by LICENSEE to install, operate and maintain the System, as described in Exhibit “B” of the SLA.
- 1.19 “LICENSEE” means the party to this Agreement that will install, own and operate the System and sell Electricity to the UNIVERSITY at the Facility.
- 1.20 “Lost Savings” means the cost to the UNIVERSITY of electricity not provided by the System as defined in Section 5 of the SPPA..
- 1.21 “Operational Year” means each twelve-month period commencing on the Commercial Operation Date.
- 1.22 “Renewable Energy Credit” means renewable energy credit(s) or certificates, emission reduction credits, investment credits, production tax credits, emission allowances, green tags, tradable renewable credits, and Green-e products related to renewable energy production and is a commodity that is separated or unbundled from the underlying electricity supplied System.
- 1.23 “Replacement Value” means the difference between the annual average otherwise applicable tariff prices as calculated per Exhibit 2, Attachment 16 to the SPPA, Section 3.and the contract price for Electricity.

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- 1.24 “Solar License Agreement” or “SLA” means the agreement between UNIVERSITY and LICENSEE for the installation and operation of the System at the Facility.
- 1.25 “SPPA” means this agreement between the UNIVERSITY and LICENSEE for the purchase and sale of Electricity from the System.
- 1.26 “State” means the State of California.
- 1.27 “System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, meters, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring (as more specifically defined in Exhibit C of the Solar License Agreement) installed in the Licensed Area for the purpose of generating Electricity for purchase by the UNIVERSITY.
- 1.28 “Term” means the term of this SPPA, which is twenty (20) years, commencing on the Effective Date, subject to earlier termination as set forth in Section 3.
- 1.29 “UNIVERSITY” means The Regents of the University of California, which owns and controls the Facility.
- 1.30 “Termination Fee” means the payment by the UNIVERSITY upon early termination of this Agreement.
- 1.31 “Utility” means the local provider of electric transmission and distribution services to the UNIVERSITY in the absence of the System.

2. AGREEMENT

- 2.1 Sale of Electricity by LICENSEE. LICENSEE will sell to UNIVERSITY all Electricity supplied by the System at the electrical Interconnection Point during the Term, according to the Annual Electricity Pricing Schedule in Exhibit 2, Attachment 16 . LICENSEE shall not offer or sell such Electricity to anyone other than the UNIVERSITY without the prior written consent of the UNIVERSITY.
- 2.2 Purchase of Electricity by UNIVERSITY. UNIVERSITY will purchase from LICENSEE all Electricity up to the available output of the System at the rate and in the manner set forth in Exhibits 1,2, and 3
- 2.3 Installation of System. LICENSEE will install the System at or on the Facility in accordance with the Solar License Agreement (the “SLA”) attached hereto as Exhibit 3.
- 2.4 Services Provided by LICENSEE. LICENSEE will provide all of the following as proposed in its response to the Request for Proposal dated {INSERT DATE} (“LICENSEE’s Response”), attached to the SLA as Exhibit G:
- 2.4.1 Meter. LICENSEE will measure the actual amount of Electricity delivered to the UNIVERSITY by the System at the Electrical Interconnection Point utilizing a commercially available revenue grade interval data-recording meter (the “Meter”). The Meter shall comply with industry standards for communication with the Ethernet, cellular and other common output capabilities. Meters must record solar production with a minimum of 15 minute intervals,
- 2.4.1.1 The Meter shall be installed and maintained at LICENSEE’s expense and shall have standard industry capabilities that will provide the UNIVERSITY with the ability

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to connect the meter to the UNIVERSITY's Energy Management System for the purpose of incorporating the System electrical output data into the energy usage database, or, at UNIVERSITY's option, LICENSEE shall make the Meter data readily available in secure web format.

2.4.1.2 LICENSEE will have the Meter tested every three years at LICENSEE's expense by a certified, independent, third party approved by the UNIVERSITY. UNIVERSITY shall be allowed to observe the Meter test, and LICENSEE shall provide notice of the testing to the UNIVERSITY at least ten (10) business days prior to the test date. LICENSEE shall provide signed copies of the results of the Meter test to the UNIVERSITY. In addition to the triennial test, LICENSEE shall test the Meter at any reasonable time upon the request of the UNIVERSITY.

2.4.1.3 If a Meter is determined to be inaccurate and such inaccuracy exceeds industry standard tolerance allowances, as such are defined by the California Public Utilities Commission for electric meters, and if it is unknown when the Meter inaccuracy commenced, then the invoices covering the period of time since the last Meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one half of such period. Adjustments that benefit the UNIVERSITY shall be reflected on the next invoice following the date of determination of the inaccuracy. Adjustments that benefit LICENSEE shall be included on LICENSEE's next invoice to the UNIVERSITY.

2.4.2 **Billing:** LICENSEE will bill UNIVERSITY and UNIVERSITY will pay LICENSEE for Electricity at the rate set forth in Exhibit 2, Attachment 16 .

LICENSEE shall render to UNIVERSITY an invoice each month for the preceding billing period during the Term of this Agreement setting forth the actual amount of kWh delivered ("Actual Production") and the amounts due LICENSEE for Electricity generated and delivered by the System. UNIVERSITY will remit full payment with each invoice to LICENSEE, subject to any offsets for Guaranteed Minimum Electricity Output shortfalls, due under SPPA, Section 5.

In the event UNIVERSITY disputes all or any part of any bill submitted by LICENSEE under this Agreement, UNIVERSITY shall pay the undisputed portion of the invoice when due and shall notify LICENSEE in writing within three (3) months from the date of receipt of any disputed invoice or adjusted invoice. The Parties shall use best efforts to resolve the dispute amicably and promptly, and upon determination of the correct billing amount, UNIVERSITY shall promptly pay or be paid the remaining portion or refund due (if any), with interest at the Interest Rate from the date payment was due until paid (in the case of an underpayment) or from the date paid until refunded (in the case of an overpayment). Late payment fees shall not be applied to amounts that are subject to a good faith dispute until the dispute is resolved and interest is calculated in accordance with this Section. In the event that disputed amounts cannot be resolved through the process of conference, disputes shall be addressed through the process provided in Section 10.8 of the SPPA.

LICENSEE shall submit invoices to the UNIVERSITY at the address as set forth below. LICENSEE shall also submit a duplicate invoice (copy only) to the UNIVERSITY at the address as noted.

Billing Contacts:

FACILITY Billing Contact: UNIVERSITY

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Section/Unit:
Attention:
Address:
Phone
Fax
Email

UNIVERSITY Billing Contact: UNIVERSITY
Section/Unit:
Attention:
Address:
Phone:
Fax:
Email:

Payment Address Notice:

UNIVERSITY shall submit all payments under this Agreement to LICENSEE's project representative at the address listed in SPPA Section 9. Parties agree that if UNIVERSITY receives notification to change the LICENSEE'S designated address for purposes of payment, UNIVERSITY will notify the project representative at the address listed in SPPA Section 9 and any Lender designated by LICENSEE pursuant to Section 12.1 of the SLA at least sixty (60) days prior to the first submittal of payment to the new address. Parties also agree that UNIVERSITY will submit payments under this Agreement by electronic funds transfer when electronic transfer becomes a readily available payment method for the UNIVERSITY.

2.4.3 Customer Service: LICENSEE will provide the following during the Term:

2.4.3.1 LICENSEE will produce and send bills to UNIVERSITY or its designee within fifteen (15) business days after the end of each billing cycle.

2.4.3.2 LICENSEE will post meter reads to a password protected web site and make this web site available to UNIVERSITY.

2.5 **Billing Validation and Verification.** UNIVERSITY may during the Term conduct occasional billing inquiries, validation and verification activities, or reconciliation procedures. During such UNIVERSITY inquiries, activities, and procedures, LICENSEE shall provide UNIVERSITY with the data and other information, including any billing algorithms and interval Meter data representing System output, used to generate billing determinants. UNIVERSITY will use its best efforts to provide or arrange for Utility metered interval data and billing data and information that can support LICENSEE's billing process, either directly through a data file transmission, receipt through regular mail services, or through the appropriate and established arrangement with the Utility. For purposes of this paragraph, Parties agree that "best efforts" means that the UNIVERSITY will authorize the applicable Utility to provide metered interval data and billing data and information directly to the LICENSEE, as per the Utility's rules and applicable regulations.

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3. TERM AND TERMINATION

The Term of this SPPA shall commence on the Effective Date and end at 11:59 P.M. of the day preceding the xxth anniversary thereof unless earlier terminated by a party pursuant to the terms of this SPPA. [15-year or 20-year term.]

3.1 UNIVERSITY Termination Rights. UNIVERSITY shall have the right to terminate the SPPA as follows:

3.1.1 For Cause. UNIVERSITY may terminate this SPPA (a) pursuant to Section 10.3, below a result of LICENSEE's default; or (b) thirty (30) days after delivery of written notice to LICENSEE and any lender who has a security interest in the System ("Lender") if a Force Majeure event has occurred and LICENSEE is unable to produce Electricity for more than 180 consecutive days.

3.1.2 For Convenience. In addition to the termination rights in Section 3.1.1, above, UNIVERSITY may terminate this SPPA for convenience, sixty (60) days after delivery of written notice to LICENSEE and any Lender. If UNIVERSITY terminates this Agreement for convenience pursuant to this section, UNIVERSITY shall pay LICENSEE a Termination Fee as described and calculated in Attachment 16 of the RFP Proposal, attached.

3.1.3 Termination of SLA. This SPPA shall terminate simultaneously with any termination of the SLA.

3.2 LICENSEE Termination Rights. LICENSEE shall have the right to terminate this SPPA at any time on thirty (30) days written notice to UNIVERSITY, without further liability, if any of the following occur: a) If, prior to the first date of scheduled delivery of Electricity, LICENSEE determines that the System cannot be built as planned or that its construction and operation would not be economically viable for the LICENSEE, including LICENSEE's determination that the installation of the System is not economically viable as a result of the need to comply with any environmental regulation. LICENSEE will be responsible for repairing any damage to the Facility arising from activities conducted by LICENSEE pursuant to the SPPA or SLA and shall reimburse UNIVERSITY for any direct costs associated with negotiation, review and approval of the SPPA and SLA, and installation of the System; b) Upon occurrence of a Force Majeure, including, but not limited to, LICENSEE's inability, after diligent efforts, to obtain or maintain required approval or permits from any governmental authority for the installation or operation of the System; c) In the event that, through no fault of LICENSEE and for other than a Force Majeure event, the System is permanently shut down due to renovation, damage, destruction or closure of the Facility, and UNIVERSITY and LICENSEE cannot agree upon an alternative location for the System (as defined in Section 12.2); d) Upon a Event of Default by UNIVERSITY (as defined in Section 10.4).

4. ENVIRONMENTAL COMPLIANCE

As a condition precedent to UNIVERSITY's obligations under this SPPA and the SLA, an analysis of the potential impacts associated with LICENSEE's proposed project is required under the California Environmental Quality Act ("CEQA"). If UNIVERSITY has not yet completed its analysis and related obligations under CEQA as of the Effective Date, LICENSEE shall not have any right to install the System until UNIVERSITY has complied with CEQA and issued a notice to proceed to LICENSEE.

5. GUARANTEE OF MINIMUM ELECTRICITY OUTPUT

The LICENSEE will designate the estimated Electricity output of the system for the first Operational Year in kWh. For subsequent years, the annual estimated Electricity output expected shall be revised every

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year on the anniversary of the Commercial Operation Date by an annual degradation factor. The LICENSEE must guarantee a portion of the annual estimated Electricity output at a minimum level equal to 90% of the annual estimated electricity output. Estimated and guaranteed electricity outputs are as provided in the Electricity Output Schedule Exhibit 2, Attachment 16 .

The degradation factor will be applied on a pro rata basis for System operations that do not span an entire Operational Year by multiplying the Annual Degradation Factor times the fraction of the Operational Year.

If LICENSEE fails to meet the Guaranteed Minimum Electricity Output requirement during an Operational Year, for reasons other than the UNIVERSITY's shading of the System, as described in Section 13 below, LICENSEE will pay UNIVERSITY, or UNIVERSITY may, at its option, offset against future payments due LICENSEE, an amount equal to the UNIVERSITY's Lost Savings. The formula for calculating Lost Savings is as follows:

$$LS = (GMEO - AE) \times RV$$

where:

LS = Lost Savings

GMEO = Guaranteed Minimum Electricity Output as measured in total annual kWh and indicated in Exhibit 2, Attachment 16 .

AE = Annual Electricity as measured in total annual kWh delivered by the System at the point of interconnection

RV = (ATP - ACP)

ATP = Annual average otherwise applicable tariff price in \$/kWh. This price is determined by dividing the total cost for delivered Electricity paid to the Energy Service Provider during the previous 12 month period by the total annual Electricity delivered by the Energy Service Provider

ACP is the contract price for the previous 12 month period in \$/kWh

If RV is zero or less, then no Lost Savings payment is due to the campus

If LICENSEE fails to pay the UNIVERSITY the amount due for any annual shortfall of the Guaranteed Minimum Electricity Output within 60 days after notice to make such payment, UNIVERSITY shall have the express right to withhold payment, up to the shortfall amount due, from any payments otherwise payable to LICENSEE for Electricity, regardless of any mortgage or assignment of payments given as security by LICENSEE under Section 17.5 or under Section 12.10.4 of the SLA.

6. RENEWABLE ENERGY CREDITS (RECS)

The Parties acknowledge that the State of California has established a market for unbundled environmental attributes of electricity generated from renewable fuel sources, and these valuable attributes are referred to as Renewable Energy Credits (RECs). Parties agree that LICENSEE will retain ownership of the RECs.

7. REBATES AND OTHER INCENTIVES

Any grant, rebate, incentive payment or credit by the Utility, the Federal Government, the California Energy Resources Conservation and Development Commission or any other agency paid as a result of the design, construction and operation of the System shall inure to the benefit of the LICENSEE.

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UNIVERSITY will cooperate in good faith, at no cost to UNIVERSITY, as necessary to enable LICENSEE to obtain all available incentives and rebates, including assignment to LICENSEE of any incentive received by UNIVERSITY, as consistent with this Agreement.

8. EMERGENCIES

In cases of emergency in which UNIVERSITY determines that the continued operation of the System presents an 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 from the Facility prior to notification of LICENSEE. If UNIVERSITY disconnects the System pursuant to this provision, UNIVERSITY will notify LICENSEE no later than 8 hours after the System is disconnected. The Parties agree that only LICENSEE or an agent designated by LICENSEE will be authorized to reconnect the System after the System is disconnected by UNIVERSITY pursuant to this emergency section.

9. COMMUNICATIONS AND CONTACTS

The representatives of the parties during the term of this SPPA will be:

UNIVERSITY CONTACT: UNIVERSITY	LICENSEE CONTACT
Section/Unit:	
Name:	Name:
Address:	
Phone:	Phone:
Email:	Email:

FACILITY CONTACT:	LICENSEE CONTACT
Section/Unit:	
Name:	Name
Address:	
Phone:	Phone:
Email:	Email:

UNIVERSITY EMERGENCY CONTACT	LICENSEE EMERGENCY CONTACT

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10. DEFAULT

- 10.1 Waiver. A waiver by either party of any term, covenant or condition of this SPPA shall not constitute a subsequent waiver of the same or any performance thereof by the other party.
- 10.2 Default by LICENSEE. At the option of UNIVERSITY as the non-defaulting party, the occurrence of any of the following shall constitute a material default and breach of this SPPA:
- 10.2.1 LICENSEE's failure to deliver Electricity from the System for a continuous period of sixty (60) days or for ninety (90) days in any six month period.
- 10.2.2 Unreasonable interference by LICENSEE with the operations of UNIVERSITY at the Facility, if the interference is curable by suspension of operation of the System and LICENSEE fails to suspend operation of the System within 48 hours of UNIVERSITY's notice to LICENSEE regarding the interference.
- 10.2.3 The making by LICENSEE of any general assignment for the benefit of creditors, or the filing of a petition to have LICENSEE adjudicated a bankrupt, or the filing of a petition for reorganization or arrangement under any law relating to bankruptcy unless in the case of a petition filed against LICENSEE, the same is dismissed within sixty (60) days; or the appointment of a trustee or receiver to take possession of substantially all of LICENSEE's assets located on the Facility or of LICENSEE's interest in this SPPA, when possession is not restored to LICENSEE within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of LICENSEE's assets located on the Facility or of LICENSEE's interest in the License, when such seizure is not discharged within sixty (60) days.
- 10.2.4 Failure by LICENSEE to perform or comply with any other material term of the SPPA within sixty (60) days after written notice to LICENSEE and any Lender by UNIVERSITY, unless UNIVERSITY agrees in writing to a longer period to cure the default.
- 10.2.5 Occurrence of an "Event of Default" as defined in Section 10.1 of the SLA.
- 10.3 UNIVERSITY Remedies. If any default by LICENSEE shall continue uncured, following notice of default where required herein, for the period applicable to the default alleged, UNIVERSITY may resort to any one or more of the following remedies:
- 10.3.1 Termination. UNIVERSITY may terminate the SPPA by providing written notice to LICENSEE indicating that the SPPA and the SLA have been terminated and requesting that the System be removed and the Facility restored to the pre-installation condition subject to ordinary wear and tear. If the LICENSEE fails to remove the System and restore the Facility within sixty (60) days of notice by UNIVERSITY, UNIVERSITY may consider the System abandoned and may remove the System and any other property owned by the LICENSEE from the Facility and dispose of LICENSEE's property in any manner within UNIVERSITY's discretion, but subject to applicable law.
- 10.3.2 Recovery of Damages and Expenses. UNIVERSITY may recover from LICENSEE any damages and expenses reasonably incurred as a result of LICENSEE's Default, including attorneys' fees and the cost to repair of the Facility to pre-installation condition.
- 10.3.3 Right of Offset. UNIVERSITY may elect to offset any damages resulting from LICENSEE's default against any monies owing or to be owed to LICENSEE under this Agreement. If the UNIVERSITY elects not to terminate the SPPA and SLA following an

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Event of Default by LICENSEE, this election shall not constitute a waiver by UNIVERSITY as to any subsequent Event of Default by LICENSEE.

- 10.4 Default by UNIVERSITY. At the option of LICENSEE as the non-defaulting party, the occurrence of any of the following shall constitute a material default and breach of this SPPA:
- 10.4.1 UNIVERSITY's failure to pay undisputed invoices for a continuous period of 180 or more days
- 10.4.2 The renovation, damage, destruction or closure of the Facility, for other than a "Force Majeure" event, which results in the permanent shutdown of the System at the Facility, if UNIVERSITY and LICENSEE are unable to agree upon an alternative location for the System as defined in Section 11 below.
- 10.4.3 UNIVERSITY's refusal to sign authorizations reasonably required by LICENSEE to obtain any rebate or subsidy contemplated in Section 7 above or UNIVERSITY's refusal to sign or comply with any material term of the approved interconnection agreement required by the Utility for interconnection of the System.
- 10.4.4 Failure by UNIVERSITY to perform or comply with any other material term of the SPPA or the Solar License Agreement within sixty (60) days after written notice by LICENSEE, unless LICENSEE agrees to a longer period to cure the default.
- 10.5 LICENSEE Remedies. If any default by UNIVERSITY shall continue uncured, following notice of default where required herein, for the period applicable to the default alleged, LICENSEE may resort to any one or more of the following remedies:
- 10.5.1 Termination. LICENSEE may terminate the SPPA and the SLA by providing written notice to LICENSEE indicating that the SPPA and the SLA have been terminated.
- 10.5.2 Damages. In the event of a termination under section 10.4.2, above, UNIVERSITY shall pay to LICENSEE a Termination Fee, calculated as set forth in Attachment 16 of Exhibit 2. The Parties acknowledge and agree that in the Event of Default of this Agreement by UNIVERSITY, LICENSEE's actual damages would be difficult or impossible to compute and that this Termination Fee calculation provision represents the reasonable estimate of such damages established by the parties in good faith consideration of the facts and circumstances surrounding the transactions contemplated by this Agreement as of the effective date.
- 10.5.3 Removal. In addition to the other remedies specified herein, LICENSEE may remove the System at its cost, provided the Facility is restored to a condition substantially similar to the pre-installation condition subject to ordinary wear and tear as called for by this SPPA.
- 10.6 Failure of LICENSEE to Perform Required Acts. Subject to LICENSEE's right to contest as provided elsewhere in this SPPA, if LICENSEE fails, refuses, or neglects during the Term to do any of the things required to be done by LICENSEE, UNIVERSITY shall have the right, but not the obligation, to do the same, but at the cost of and for the account of LICENSEE. Unless UNIVERSITY reasonably believes that its interests may be adversely affected by such delay, UNIVERSITY shall in no case take such action sooner than thirty (30) days after giving LICENSEE written notice of such failure, refusal or neglect. LICENSEE shall pay to UNIVERSITY on demand any sum expended by UNIVERSITY under this Section 9.6 together with interest thereon at the legal rate. Nothing contained in this Section 10.6 shall impair the rights of UNIVERSITY with regard to defaults or remedies under the remaining portion of this Section 10.

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10.7 Force Majeure. Any party claiming Force Majeure with respect to its performance hereunder shall advise the other party as soon as possible of the occurrence of the event and shall provide the other party with the basis of the claim, in writing, within ten (10) days of the occurrence of the event. Each party shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance

10.8 Disputes. LICENSEE shall perform its responsibilities under this Agreement during any dispute, except for a dispute alleging non-payment of payments due by the UNIVERSITY to LICENSEE. In the event that disputes arise between the Parties which cannot be resolved through conference and negotiation, such disputes shall be controlled by California law and both Parties shall have the right to have the dispute adjudicated by the California courts, provided however, that it shall be a condition precedent to the filing of any lawsuit that the parties shall first submit the dispute to mediation with a qualified mediator mutually agreed to by the parties. The parties shall be bound to participate in mediation in good faith and in confidence.

11. TEMPORARY SHUTDOWN OF SYSTEM

11.1 In-lieu Payments or Extension of Agreement. If, during the Term, renovations or damage to the Facility occurs, for reasons other than a "Force Majeure," which significantly reduces (greater than 90% of Expected Performance) or eliminates the use by UNIVERSITY of Electricity from the System or requires the temporary shutdown of the System, UNIVERSITY and LICENSEE may, by mutual consent, do either of the following as a means of avoiding default under this Agreement.

11.1.1 If such renovation or damage can be completed during the Term hereof, and if UNIVERSITY elects to proceed with such renovation or repair nevertheless, then UNIVERSITY shall pay in lieu fees to LICENSEE during the duration of the reduction or shutdown as set forth in the next sentence. Such in-lieu fees shall equal the actual payments made by the UNIVERSITY during the same period on a daily basis in the previous calendar year, unless the UNIVERSITY and LICENSEE mutually agree to an alternative "in-lieu" fee methodology. In exchange for UNIVERSITY's payment of in-lieu fees during System shutdown, LICENSEE shall provide an off-set or credit to UNIVERSITY at the end of the Term for the total number of kilowatt hours paid for during the shutdown on a 1:1 basis; or

11.1.2 UNIVERSITY and LICENSEE may agree to extend the Term by one day for each day that the System was shut down as an alternative to UNIVERSITY payment of in-lieu fees.

11.2 Notice. Under either alternative, UNIVERSITY will make a good faith effort to give as much notice as possible to LICENSEE prior to System shutdown.

12. PERMANENT SHUTDOWN OF THE SYSTEM AT FACILITY

If, through no fault of LICENSEE and for reasons other than Force Majeure, the System is permanently shut down due to renovation, damage, destruction or closure of the Facility, or if UNIVERSITY elects to relocate the System, LICENSEE shall be entitled to the following:

12.1 Notice of Shutdown. Within thirty (30) days after permanent shutdown of the System, UNIVERSITY shall provide written notice to LICENSEE indicating whether or not the UNIVERSITY intends to restore operation of the Facility or whether relocation of the System will be pursued.

12.2 Alternative Location. If, within ninety (90) days after permanent shutdown of the System, UNIVERSITY and LICENSEE agree on an alternative location from which LICENSEE can provide

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Electricity to UNIVERSITY, then UNIVERSITY shall pay the costs associated with relocation of the System. This alternative location, in the reasonable opinion of LICENSEE, shall have the potential to provide substantially similar overall system output as the original Facility, measured in total kilowatt-hours over a 12- month period, unless UNIVERSITY and LICENSEE mutually agree that this output level is not required. If UNIVERSITY and LICENSEE mutually agree upon an alternative location that is substantially inferior to the Facility for purposes of insolation or Utility rates (assuming different portions of the Facility have different Utility rates), then the pricing formula identified in Exhibits 2 and 3 will be equitably adjusted to compensate for the alternative location such that LICENSEE receives payments comparable to those which it would have received from the System at the Facility. LICENSEE shall be reimbursed for the period of System shutdown prior to relocation, if any, under the payment mechanisms specified in Section 11.1 above for Temporary Shutdown of the System. If, within ninety (90) days after permanent shutdown of the System, UNIVERSITY and LICENSEE have not agreed upon an alternative location for the System, LICENSEE may terminate this Agreement and receive a Termination Fee (as defined in Section described in section 10.5.2, above, and in Exhibit 2, Attachment 16).

13. RESTRICTIONS ON SHADING

UNIVERSITY will make all good faith efforts to avoid activities which result in overshadowing or shading of the System in a manner that would prevent LICENSEE from meeting the Expected Electricity Output as described in Exhibit 2, Attachment 16. In the event that UNIVERSITY's activities result in the System being overshadowed in manner that causes the System to produce less than 95 percent of the Expected Production Output on a kWh basis over any twelve (12) month period, UNIVERSITY agrees to pay "in-lieu" fees up to the Expected Performance Output as described in Section 11.1.1 above for the duration of the period for which the shading occurs. LICENSEE shall provide and justify data verifying the actual loss of generation that occurred due to shading. UNIVERSITY shall not be required to pay such in-lieu fees unless LICENSEE demonstrates to UNIVERSITY's satisfaction that the loss in generation is due to shading attributable to the UNIVERSITY's actions. Notwithstanding any other provision of this SPPA, the Parties agree that if UNIVERSITY's actions result in shading of the System such that the System produces less than 80 percent of the Expected Performance Output, the Parties shall make every effort to relocate the System to a mutually agreeable location. If the Parties cannot agree on an alternative location for the System, then LICENSEE will be entitled to a Termination Fee pursuant to Section 12, "Permanent Shutdown of the System at the Facility" and Exhibit 2 Attachment 16. The Parties agree that shading resulting from actions outside of the control of UNIVERSITY shall not give rise to the remedies provided for in this Section.

14. COMPLIANCE WITH APPLICABLE LAWS, INCLUDING UTILITY INTERCONNECTION STANDARDS

LICENSEE, at its own cost and expense, shall comply with all Applicable Laws relating to the operation of the System and the generation and sale of Electricity to UNIVERSITY, including obtaining and maintaining all relevant approvals and permits. In particular, LICENSEE, throughout the term of the SPPA, will fully comply with any and all operational standards and requirements imposed by the Utility, and comply with the electrical interconnection requirements as stated in the applicable and controlling Utility tariff. UNIVERSITY will cooperate with LICENSEE and, if necessary, will provide consents and execute with the Utility such agreements (if such agreements do not have unacceptable or prohibited terms and/or conditions, or impose additional costs on UNIVERSITY) as are necessary to permit the interconnection of the System. This electrical interconnection shall be done at no cost or liability to UNIVERSITY, and LICENSEE shall reimburse UNIVERSITY for all out of pocket costs incurred in connection with any interconnection agreement. Should the Utility demand fees or equipment exceed \$25,000 for electrical interconnection requirements, LICENSEE may at its sole discretion cease to proceed with installation of the System without further obligation to UNIVERSITY other than obligations which were incurred prior to notice from the Utility of the fees or the equipment costs and the obligation to restore the Facility to pre-installation condition if installation was initiated.

15. NON-DISCRIMINATION

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- 15.1 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.) 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.
- 15.2 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.

16. TAXES

LICENSEE shall pay all taxes, assessments or charges that at any time may be lawfully levied upon any interest in the Facility, the System, or this SPPA.

17. ASSIGNMENT

The duties and obligations of LICENSEE under this SPPA shall not be assignable by the LICENSEE in whole or in part without the written consent of UNIVERSITY and upon such reasonable terms and conditions that UNIVERSITY may require. UNIVERSITY's consent to one assignment shall not be deemed consent to any subsequent assignment.

- 17.1 Event of Default. In the event of default by any assignee of LICENSEE or any successor to LICENSEE in the performance of the terms hereof, UNIVERSITY may proceed directly against LICENSEE without the necessity of exhausting remedies against such assignee.
- 17.2 Unique Expertise. Notwithstanding the foregoing, LICENSEE acknowledges that UNIVERSITY is relying upon the unique expertise and capability of LICENSEE. LICENSEE must demonstrate that any proposed assignee has both the financial capacity and the technical ability to perform the obligations required under the SPPA at a level deemed appropriate by UNIVERSITY.
- 17.3 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 SPPA. 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 assumes LICENSEE's obligations hereunder, or (ii) to another limited liability company of which LICENSEE is the 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.
- 17.4 Consent to Assignment. UNIVERSITY consents to the assignment by LICENSEE to the Lender, of LICENSEE' s right, title and interest in and to this Agreement, 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.

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17.5 Assignment for Security. Nothing in this paragraph 17 shall (i) prohibit LICENSEE from assigning or granting a lien on LICENSEE's rights to payments under this SPPA for purposes of collateral security or (ii), except as permitted under section 17.3. above or with UNIVERSITY's consent in accordance with section 17.4,above, allow LICENSEE to assign its duties and obligations under this SPPA.

18. FINANCING

18.1 Non-Subordination. UNIVERSITY will not subordinate its interest in the Facility as security for any LICENSEE loans or financing. However, and notwithstanding the provisions of Section 18.2, below, LICENSEE may pledge its interest in the SPPA, including any rights to payment and the System, as security for loans or financing. If LICENSEE's Lender(s) requests additional terms and conditions to those already provided in this SPPA, UNIVERSITY will consider any such requests, but may refuse such requests in its sole and absolute discretion and may withhold consent or approval of such additional terms and conditions.

18.2 Security Interests in System. UNIVERSITY acknowledges that LICENSEE will be financing the acquisition and installation of the System with financing accommodations from one or more financial institutions and that LICENSEE's obligations will be secured by, among other collateral, a pledge or collateral assignment of this Agreement and LICENSEE's rights to payment and a first security right in the System. In order to facilitate such financing, and with respect to any such financial institutions of which LICENSEE has notified UNIVERSITY in writing (each, a "Lender") UNIVERSITY and LICENSEE agree as follows:

18.3 Classification of System as Personal Property. UNIVERSITY acknowledges that it has been advised that part of the collateral securing financial accommodations of LICENSEE is the granting of a first priority security interest ("Security Interest") in the System to Lender to be perfected by a filing under the Uniform Commercial Code ("UCC"). UNIVERSITY consents to such filings so long as they reflect the Parties' agreement that any filing to perfect or provide notice of the Security Interest clearly document the Parties' intent that the System is considered personal property only and is not considered a fixture to the Facility. These filings by LICENSEE or Lender may include filing of a Financing Statement (FORM UCC-1) which clearly covers the System as personal property only and not as a fixture.

18.4 LICENSEE shall not create any interest in or lien upon the real property underlying the Facility or the Facility or the interest of the UNIVERSITY therein and shall expressly disclaim the creation of such an interest or a lien. The foregoing obligation shall also apply to Lenders as defined in 18.2.

18.5 UNIVERSITY will use commercially reasonable efforts to place its successors and assigns on notice of the ownership of the System by LICENSEE and/or Lender, the existence of the security interest, and the fact that the System is not part of the Facility or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.

18.6 UNIVERSITY is not aware of any existing lease, mortgage, security interest or other interest in or lien upon the Facility that could attach to the System as an interest adverse to Lender's security interest therein.

19. AMENDMENT

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

20. AUDIT

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UNIVERSITY, or its designated representative, shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. LICENSEE will maintain such records for possible audit for a minimum of three (3) years after final payment under this agreement, unless a longer period of records retention is stipulated. LICENSEE will allow the auditor(s) access to such records during normal business hours after reasonable notice and to allow interviews of any employees who might reasonably have information related to such records. Further, LICENSEE will include a similar right of the University to audit records and interview staff in any subcontract related to performance of this Agreement.

21. INDEPENDENT CONTRACTOR

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

22. TIMELINESS

Time is of the essence in this Agreement.

23. GOVERNING LAW

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

24. UNENFORCEABLE PROVISION

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

25. COUNTERPARTS.

This SPPA may be executed in multiple copies, each of which shall be deemed an original, but all of which shall constitute one agreement after each party has signed such a counterpart.

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.

LICENSEE:

By: _____

TITLE: _____

UNIVERSITY:
The Regents of the
UNIVERSITY of California

By: _____

TITLE: _____

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TERMINATION FEE SCHEDULE

In the event of a termination of this Agreement pursuant to Sections 10.5.2 or 12.2, other than Force Majeure or default by the LICENSEE, UNIVERSITY shall pay to LICENSEE an Early Termination Payment corresponding to the year in which early termination occurs.

The Early Termination Payment shall be calculated as the Net Present Value of the remaining unpaid amounts the UNIVERSITY would have otherwise paid the LICENSEE for the provision of solar electricity provided under this contract.

Early Termination Payment = Net Present Value of the sum of (annual contract price x Guaranteed Minimum Electricity Output) for each of the remaining years of the contract.

If an early termination occurs on a date other than an anniversary of the Commercial Operation Date, the unpaid amount for that year will be calculated by multiplying the sum of the annual contract price and the Guaranteed Minimum Electricity Output by a simple ratio of the # of months remaining until the anniversary of the Commercial Operation Date divided by 12 months.

Early Termination Occurs in Year:	Early Termination Payment
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

