

ENERGY STORAGE SITE LICENSE AND SERVICES AGREEMENT

AGREEMENT NUMBER: \_\_\_\_\_

THIS ENERGY STORAGE SITE LICENSE AND SERVICES AGREEMENT BY AND  
BETWEEN THE TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY AND LICENSE

FOR THE LICENSED AREA LOCATED AT

CALIFORNIA STATE UNIVERSITY HUMBOLDT

DATED: [Month Day, 202X]

This Energy Storage Site License and Services Agreement (“Agreement”) is made and effective [MONTH AND DAY], 201[Choose an item], by and between the Trustees of the California State University, California State Polytechnic University Humboldt (“University”) (collectively “Trustees”) and [Company Name] (“Licensee”).

**RECITALS:**

**WHEREAS**, Trustees are authorized to lease or license their real property pursuant to Section 89048(e) of the California Education Code; and

**WHEREAS**, Trustees own certain real property in the County of Humboldt, State of California, upon which is located the Licensed Area on the premises of California Polytechnic State University, Humboldt; and

**WHEREAS**, Licensee desires to obtain, and Trustees desire to provide, a license to use the Licensed Area to install, maintain, and operation of an energy storage system; and

**WHEREAS**, Licensee desires to sell, and Trustees desire to purchase, peak demand reduction services delivered by the energy storage system (“System”), as further defined in the Project Manual

**NOW, THEREFORE**, in consideration of these recitals, the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

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## 1. DEFINITIONS

Except as specifically provided to the contrary in this Agreement, or unless the context clearly requires otherwise, the capitalized terms in this Agreement shall have the meanings set forth below.

- 1.1. "AC" means alternating current.
- 1.2. "Access Procedures" means the Site access procedures for Licensee set forth in Rider D and, if applicable, Appendix A of Rider B-2 (University Site Specific Construction Requirements).
- 1.3. "Actual Peak Demand Reduction" means the difference in peak kW demand in a Billing Cycle as measured by the peak kW demand stated in the Counter-factual Bill and the actual peak kW demand stated in the Local Electric Utility bill for purposes of calculating the demand charges for the Billing Cycle.
- 1.4. "Addendum" or "Addenda" mean(s) any document(s) issued by Trustees during the bidding process that may modify or supersede portions of the Request for Proposals.
- 1.5. "Affiliate" means, with respect to Licensee, any other legal entity directly or indirectly controlling, controlled by, or under common control with Licensee.
- 1.6. "Agreement" means this Solar License and Power Purchase Agreement and all riders, attachments, and appendixes attached hereto or incorporated by reference.
- 1.7. "Alterations" means changes to, replacement of, or alteration to the System, including the erection of additions and structures in or upon the System as further defined in Section 8.12.
- 1.8. "ANSI" means American National Standards Institute.
- 1.9. "Applicable Law" means any and all applicable federal, state, and local laws, codes, ordinances, rules and regulations, and all issued permits and licenses.
- 1.10. "As-Built Drawings" means the Licensee's annotated set of Construction Documents that have been contemporaneously revised by the Licensee during the course of the System's installation and construction to identify changes to the System subsequent to the approval of the Construction Documents so as to record the System's actual physical constructed condition.
- 1.11. "As-Is" means the term used to notify Licensee that no express or implied warranty regarding the Site and Licensed Area is provided by Trustees. Licensee therefore takes the Site and Licensed Area at Licensee's own risk, without recourse against Trustees for their condition or performance. 'As is' translates into 'with all faults.'
- 1.12. "ASME" means American Society of Mechanical Engineers.
- 1.13. "Billing Cycle" means the period in which Licensee shall bill Trustees for the Electricity delivered by the System which shall be on a calendar month basis following the Notice of Commercial Operation. In the event the first day of delivery of Electricity falls on a day other than the first day of the month Licensee shall bill the Metered amount of Electricity for the remaining portion of the month.
- 1.14. "Business Day" means any day other than a Saturday, a Sunday, or a day on which commercial banks in New York, New York, are authorized or required to close. The first Friday after the US Thanksgiving holiday shall not be a Business Day.
- 1.15. "CEC" means the California Energy Commission.

- 1.16. “CEQA” means the California Environmental Quality Act, which is a California environmental law that provides certain rules and regulations related to the issuance of permits and approval of projects. CEQA applies to all discretionary projects proposed to be conducted or approved by a California public agency, including private projects requiring discretionary government approval.
- 1.17. “COD” means the Commercial Operation Date.
- 1.18. “Collateral Assignment” means an assignment, if any, to a Lender of certain rights and interests of the Licensee in the System or this Agreement for any time period during the Term.
- 1.19. “Commercial Operation Date” means the date on which the System commences delivery of peak demand reduction services, which date shall not be earlier than the date all of the following conditions have been met: (a) the System is substantially complete and available for commercial operation to the full extent of designed capability as demonstrated during the commissioning and performance validation; (b) all permits and licenses required to be obtained under Applicable Law in connection with the operation of the System have been obtained and be in full force and effect; (c) Trustees have entered into an interconnection agreement for the System with the applicable Local Electric Utility; and (d) Licensee has provided the Notice of COD to Trustees (Rider M).
- 1.20. “Construction Completion Date” means the date all following conditions have been met: (a) construction of all System support structures, patching of the existing paved licensed area surfaces to previous conditions, has been completed; (b) all temporary onsite fencing has been removed; and (c) all temporary facilities and all licensed area surfaces affected by Licensee’s construction of the System are fully restored to previous conditions and available for the areas original use. Construction Completion Date will be formally recognized by Trustees within five (5) business days after receipt of notification in writing by Licensee of completion of these conditions.
- 1.21. “Construction Documents” means the design drawings, specifications, general conditions, supplementary general conditions, special conditions, addenda, and change orders developed to convey in detail the design, function, and construction of the System.
- 1.22. “Construction Start Date” has the meaning provided in Section 8.3.
- 1.23. “Contract Year” means each twelve-month period commencing on the COD and each anniversary thereof.
- 1.24. “Controlling Interest” with respect to Licensee means fifty percent (50%) or more of outstanding ownership interest or the power to vote such percentage of ownership interest.
- 1.25. “Cost Savings” means, for each billing cycle during the Term, the total dollar amount of the Counter-factual Bill minus the total dollar amount of the Local Electric Utility bill.
- 1.26. “Counter-factual Bill” means the bill for each billing cycle generated by Licensee by adding the billing determinant interval data from the System Meter to the Local Electric Utility and, if applicable, the Utility Revenue Meter(s) to determine the electric utility charges (energy and demand) that would have been billed to Trustees for each Billing Cycle in the absence of the peak demand reduction services delivered by the System. In the event there is a discrepancy in the demand data (kW) from the Local Electric Utility Revenue Meter and the demand data from the Utility Revenue Meter, the higher demand value will be used for purposes of the Counter-factual Bill, subject to true-up in a later billing cycle once final settlement data becomes available.

- 1.27. “CPUC” means the California Public Utilities Commission.
- 1.28. “CSU” means the Trustees of the California State University.
- 1.29. “CSU Deputy Building Official” means an individual appointed by the California State Polytechnic University Humboldt and who is responsible for University-specific building code, and administrative and operational control. This individual acts under the authority of the CSU Building Official in the CSU Office of the Chancellor, who is responsible for the overall administration and operational control of the building code for the CSU.
- 1.30. “DC” means direct current.
- 1.31. “Demand Response” refers to energy resource programs that compensate electricity customers for reducing consumption.
- 1.32. “DER” means Distributed Energy Resource(s).
- 1.33. “Differing Site Conditions” has the meaning provided in Section 8.11.
- 1.34. “Disclosing Party” has the meaning provided in Section 19.34.
- 1.35. “Double Incentive” means Rebates, discounts, Incentives or services from any other CPUC-authorized energy efficiency program for the System. Notwithstanding any other provision hereof, Double Incentive does not include: (a) any state or federal investment tax credits associated with the System; (b) any other state or federal tax credits or tax benefits (including depreciation) associated with the System; and (c) Renewable Energy Credits generated by the System.
- 1.36. “Due Date” means thirty (30) days after receipt by Trustees of Licensee’s invoice for delivery of Electricity.
- 1.37. “Effective Date” means the date set forth in the first paragraph of this Agreement.
- 1.38. “Electrical Interconnection Point” means the point(s) specified in the Construction Documents where the System connects to the existing electrical transmission line(s) serving the Site.
- 1.39. “Electricity” means electrical energy, measured in kilowatts and kilowatt-hours that is produced by the System and delivered by Licensee to Trustees at the Electrical Interconnection Point and that conforms to the applicable Local Electric Utility and/or authoritative regulatory body standards.
- 1.40. “Energy Management System” means a computer application system used by University facility operators to monitor, control, and optimize the performance of the electricity and/or transmission system on University premises.
- 1.41. “Energy Management Web Portal” means a password protected website maintained by Licensee that will display energy use, battery throughput in kW and kWh terms, and Peak Demand Reductions achieved by the System. The portal shall be capable of exporting data in CSV file format in a standard, recurring, and automated process.
- 1.42. “Environmental Attributes” means any and all credits, offsets and other benefits related to the avoidance of the emission of any gas, chemical or other substance into the air, soil or water resulting from the use of renewable energy, including but not limited to Renewable Energy Credits and any similar benefits for which a market may exist now, or at a future time, and all reporting rights with respect to the Environmental Attributes.

- 1.43. “Environmental Laws” means all federal, state, and local laws, statutes, ordinances, and regulations now or hereafter in effect, and in each case as amended, and any judicial or administrative interpretation thereof relating to the regulation and protection of human health, safety, the environment, and natural resources (including, without limitation, ambient air, surface water, groundwater, wetlands, land, surface or subsurface strata, wildlife, aquatic species, and vegetation), including, without limitation, laws and regulations relating to emissions, discharges, releases, or threatened releases of hazardous materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials. However, this definition shall in no way be considered, or otherwise serve, to waive or abridge any of CSU’s immunities, including but not limited to those under the Eleventh Amendment to the U.S. Constitution, or to subject CSU to any laws to which it is immune under the Eleventh Amendment or any other applicable immunity.
- 1.44. “EDR” means “Expected Demand Reduction.”
- 1.45. “Expected Demand Reduction” means the expected reduction in peak kW demand by month specified in Section 4.2.
- 1.46. “Fiscal Year” means the State of California fiscal year, beginning on July 1 of each calendar year and ending on June 30 of the following calendar year.
- 1.47. “General Conditions” means the SLPPA General Conditions as set forth in the Request for Proposals, which is attached hereto as Rider B.
- 1.48. “Guaranteed Construction Completion Date” for [1<sup>st</sup> licensed area] and [2<sup>nd</sup> licensed area] shall be no later than [Month, day, year], subject to any extensions as provided in Section 8.6.
- 1.49. “Guaranteed Savings” means, for a given Contract Year, the Price for the Contract Year specified in Section 4.1 times the sum of the Guaranteed Demand Reductions for each month of the Contract Year specified in Section 4.3.
- 1.50. “Hazardous Material” means, without limitation, any substance defined as “hazardous substance,” “hazardous waste,” “extremely hazardous waste,” or stated to be 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 as amended, 49 U.S.C. Section 5101, 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, 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.
- 1.51. “IEEE” means Institute of Electrical and Electronics Engineers.
- 1.52. “Incentive” means financial support, including Rebates and low-interest loans, funded or administered by any utility (PG&E, SCE or SDG&E, SMUD or TID) or the CPUC, to install facilities such as the System. Notwithstanding any other provision hereof, Incentive does not include (a) the state or federal investment tax credits associated with the System (b) any other state or federal tax credits or tax benefits (including depreciation) associated with the System, or (c) Renewable Energy Credits.
- 1.53. Not Used
- 1.54. “kW” means kilowatt (AC), a unit of power equal to one thousand watts.
- 1.55. “kWh” means kilowatt-hour, a unit of energy equal to one thousand watt-hours.

- 1.56. “Lender” means any financial institution or other provider of capital or credit (and successors in interest and assignees permitted under this Agreement) that provide(s) development, bridge, construction, takeout, term debt or Tax Equity Financing (including any associated cash equity) or refinancing for the System on behalf of Licensee, including any sale leaseback, monetization of tax benefits, back leverage financing, or credit derivative arrangements. Licensee’s Lender includes any System Lessor and Tax Equity Investor.
- 1.57. “Licensed Area” means the portion of the Site licensed by Trustees to Licensee to install, operate and maintain the System, as further described in Rider A-1.
- 1.58. “Licensee” means the legal entity who, pursuant to this Agreement, holds a license to use the Licensed Area for the installation, maintenance, and operation of the System and sell Electricity.
- 1.59. “Local Electric Utility” means the public utility entity that provides electricity delivery service to the University premises upon which the Licensed Area is located.
- 1.60. “Meter” means a device capable of collecting electricity consumption data that includes kWh and fifteen (15) minute or less kW and KVAR demands as recorded and may be transmitted or collected via telephone lines or wireless telephone and that otherwise has the capabilities set forth in Section 6.1 of this Agreement.
- 1.61. “NFPA” means National Fire Protection Association.
- 1.62. “Notice of COD” means written notice in a form substantially similar to Attachment 4 of the contract document which the Licensee gives Trustees stating that the System has satisfied requirements (a) through (c) of the definition of “Commercial Operation Date” and specifying the Commercial Operation Date. The Notice of COD shall include a surveyor’s description of the physical boundaries of the System.
- 1.63. “Notice to Proceed to Construction” means written notification in a form substantially similar to Rider K from Trustees to Licensee that Licensee may begin construction of the System subject to the terms and conditions of this Agreement.
- 1.64. “Other System Attributes” means (i) any tax, investment, or depreciation credit or benefit that belongs to the owner of the System. Other System Attributes do not include the Electricity or the Renewable Energy Credit produced by the System(s).
- 1.65. “Parties” means Trustees and Licensee, each of whom may also be referred to as “Party.”
- 1.66. “Peak Demand Reduction” means the maximum value, measured in kW, in each billing cycle recorded by the Local Electric Utility Revenue Meter minus the maximum value, measured in kW, in each billing cycle recorded by the System Meter for the same 15-minute interval.
- 1.67. “Performance Threshold” means the amount of \$XX,XXX.
- 1.68. “Permitted Use” has the meaning provided in Section 3.1.
- 1.69. “Price” means the Price, rounded to the nearest hundredth of a cent (\$0.0000), to be paid by Trustees to Licensee in each Contract Year for the Electricity generated by the System and delivered to Trustees as provided in Section 4.1.
- 1.70. “Project Manual” means System documentation which includes, but is not limited to, System Design Schematics, equipment data sheets, Construction Documents, As-Built drawings, and System operation and emergency instructions provided by Licensee to Trustees pursuant to Section 9.5.
- 1.71. “Proposal” means the technical and cost proposal packages submitted by Licensee on the bid date.
- 1.72. [Intentionally left blank]

- 1.73. “Rebate” means an identified and pre-specified amount of money to be paid to Trustees for the installation of the System at the Trustees Site.
- 1.74. “Receiving Party” has the meaning provided in Section 19.33.
- 1.75. “REC(s)” means “Renewable Energy Credit(s).”
- 1.76. “Release” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment in violation of Environmental Laws.
- 1.77. “Renewable Energy Credit(s)” means renewable energy credit(s) or certificates, emission reduction credits, emission allowances, green tags, tradable renewable credits, and Green-e products related to renewable energy production supplied from the System.
- 1.78. “Request for Proposals” means the documents submitted by Trustees to potential proposers describing and specifying the requirements for the Work and the System.
- 1.79. “Revenue Meter” means an electric meter attached to the service account number listed in Exhibit A. The data generated by the Local Electric Utility and, if applicable, any other Utility Revenue Meter(s) will be used to calculate the Utility Counter-factual Bill, inclusive of energy and demand charges, for electric energy and power that would have been used at the Site in each Billing Cycle but for the operation of the System.
- 1.80. “Rider A-1” means a rider to this Agreement that consists of the “Map and Premises Location and Licensed Area”.
- 1.81. “Rider A-2” means a rider to this Agreement that consists of the “Generation Summary and Known Site Restrictions”.
- 1.82. “Rider B” means a rider to this Agreement that consist of the “ESSLSA General Conditions”.
- 1.83. “Rider C” means a rider to this Agreement that consists of the terms and conditions of the “Performance Guarantee”.
- 1.84. “Rider D” means a rider to this Agreement that consists of the “Operational Access Procedures for the Site and Licensed Area”.
- 1.85. “Rider E” means a rider to this Agreement that consists of the “Schedule”.
- 1.86. “Rider F” means a rider to this Agreement that consists of the “Bond Forms”.
- 1.87. “Rider G” means a rider to this Agreement that consists of the “Trustees Consent and Estoppel Certificate Template”.
- 1.88. “Rider H” means a rider to this Agreement that consists of the “Licensee Sample Electricity Invoice” containing the information that Licensee shall include in its invoices for Electricity to Trustees for each Billing Cycle.
- 1.89. “Rider I” means a rider to this Agreement that consists of the “Scope of Work and Final ESSLSA Rate”.
- 1.90. “Rider J” means a rider to this Agreement that consists of the “University Premises Specific Geotechnical Report(s)” consisting of University provided Geotechnical Reports (if available) for each licensed area.

- 1.91. “Rider K” means a rider to this Agreement that consists of “Request for Proposal No. [XXXX] Energy Storage Site License and Services Agreement and all Addenda”.
- 1.92. [Intentionally left blank]
- 1.93. “Rule 21” means the Local Electric Utility tariff rule describing the interconnection, operating and metering requirements for generating facilities to be connected to the Local Electric Utility’s distribution system. In the event Local Electric Utility is not a CPUC-jurisdictional investor-owned utility, “Rule 21” shall be understood to refer to the provisions of Local Electric Utility’s tariff or other applicable rules or regulations that are comparable in content to Rule 21.
- 1.94. “Site” means the University premises under the control and jurisdiction of Trustees, a portion of which is the Licensed Area described in Rider A-1, which will accommodate the System.
- 1.95. “Substitute Licensee” means the Lender or any other permitted purchaser of, or successor to, the interests in a judicial or non-judicial foreclosure sale or otherwise that meets the conditions of assignment set forth in Section 12.5 and shall be substituted for the Licensee under this Agreement.
- 1.96. “System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices, and wiring (as specified in the Project Manual) installed in the Licensed Area for the purpose of generating Electricity for purchase by Trustees.
- 1.97. “System Lessor” means the legal entity that owns the System and licenses the System to the Licensee.
- 1.98. “System License” means an agreement, if any, between the Lender and Licensee whereby the Licensee licenses the System from the Lender.
- 1.99. “System Meter” means the revenue grade meter that records the energy and power used to charge and discharged by the System
- 1.100. “Tax Equity Financing” means a transaction or series of transactions involving one or more investors seeking a return that is enhanced by Tax credits and/or Tax depreciation (each a “Tax Equity Investor”) and generally (i) described in Revenue Procedures 2001-28 (sale-leaseback (with or without “leverage”)), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably applied or analogized to a solar project transaction (as opposed to a wind farm or rehabilitated real estate) or (ii) contemplated by Section 50(d)(5) of the Code, as amended (a pass-through lease).
- 1.101. “Term” means the period that shall commence on the Effective Date and continue for a period of ten (10) years from the Commercial Operation Date unless terminated earlier pursuant to the provisions in this Agreement.
- 1.102. “Termination Date” means the date on which this Agreement terminates.
- 1.103. “Termination Fee” means the amount, if any, payable to Licensee in the event of certain circumstances of early termination under the terms and conditions of this Agreement.
- 1.104. “Tier One” means the minimum equipment standards pursuant to **California Public Resources Code Sections 25780-25784** and/or CSI which are the minimum acceptable equipment standards as of the date of the Notice to Proceed of this Agreement for installation of the System.
- 1.105. “Transaction Fee” means the nonrefundable fee to be paid by Licensee to University as provided in Section 3.9.

1.106. “Trustees” means the State of California, acting by and through the Trustees of the California State University, on behalf of University).

1.107. “UL” means Underwriters Laboratories, Inc.

1.108. “University” means California State Polytechnic University Humboldt.

1.109. “Force Majeure Event” means an event or circumstance that is beyond the control and without the fault or negligence of the Party affected and that by the exercise of reasonable diligence the Party affected was unable to prevent, provided the event or circumstance is limited to the following: riot, war, invasion, act of foreign or domestic enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority, ionizing radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds, earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity, labor strikes at national level or industrial disputes at a national level, or labor strike or industrial disputes by labor not employed by the affected Party, its subcontractors or its suppliers and that affect an essential portion of the Agreement, but excluding any industrial dispute that is specific to the performance of this Agreement.

Neither Party is responsible for any failure to perform its obligations under this Agreement, if it is prevented or delayed in performing those obligations by an event of force majeure. Where there is an event of force majeure, the Party prevented from or delayed in performing its obligations under this Agreement must immediately notify the other Party giving full particulars of the event of force majeure and the reasons for the event of force majeure preventing that Party from, or delaying that Party in performing its obligations under this Agreement and that Party must use commercially reasonable efforts to mitigate the effect of the event of force majeure upon its or their performance of the Agreement and to fulfil its or their obligations under the Agreement. Upon completion of the event of force majeure the Party affected must as soon as reasonably practicable recommence the performance of its obligations under this Agreement. An event of force majeure does not relieve a Party from liability for an obligation that arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event, unless the actual act of payment is affected by an event of force majeure. Licensee has no entitlement to and Trustees have no liability for: (a) any costs, losses, expenses, damages or the payment of any part of this Agreement during an event of force majeure; and (b) any delay costs or damages in any way incurred by Licensee due to an event of force majeure. Licensee is responsible for the care of the Licensed Area and the System during an event of force majeure.

1.110. “Utility” shall be any provider of electric commodity services to the University in the absence of the System. A Utility may be an investor owned utility, an energy service provider, a community choice aggregator, a publicly owned utility, or other similar retail provider of electricity commodity service.

1.111. “Watt” means a unit of power equal to 1 joule per second; the power dissipated by a current of 1 ampere flowing across a resistance of 1 ohm.

1.112. “Work Product” has the meaning provided in Section 7.7.

1.113. “Yieldco” means [insert name of company] that is directly or indirectly under the operating control of [insert name of company] and is a United States entity.

END OF ARTICLE

## 2. TERM

- 2.1. **Term.** The Term of this Agreement shall commence on the Effective Date and shall continue for a period of ten (10) years from the Commercial Operation Date unless terminated earlier pursuant to the provisions in this Agreement.
- 2.2. **Holding Over.** This Agreement shall terminate upon expiration of the Term or earlier termination without any further notice thereof by Trustees and no possession by Licensee of the Licensed Area shall be permitted without Trustees' prior written approval, except as provided in Section 13.1. Any possession of the Licensed Area by Licensee after expiration of the Term or early termination of this Agreement shall not constitute a renewal or extension of this Agreement or, except as provided in Section 13.1, give Licensee any rights in or to the Site or Licensed Area or any portion thereof.

END OF ARTICLE

## 3. USE

- 3.1. **Permitted Use.** Trustees grant to Licensee a non-exclusive license [or, in the case of a ground-mount installation, an exclusive license] to use the Licensed Area for the construction, maintenance, operation, examination, testing, measuring, inspecting and removal of the System, including Meters, for the production, transformation, transmission and sale of solar photovoltaic generated Electricity, Renewable Energy Credits and for no other use or purpose (the "Permitted Use"), which license shall not be revocable by Trustees during the Term except as a result of Trustees' valid exercise of one or more of Trustees' termination rights under this Agreement. [In the case of an exclusive license, Licensee shall grant Trustees access to the Licensed Area on an as-needed basis.]
- 3.2. **No Trustees Warranties.** Licensee acknowledges that Trustees have not made any statements or representations or warranties regarding the Site's or the Licensed Area's fitness for Licensee's anticipated use, and Licensee agrees that it is not relying upon any statement or representation or warranty by Trustees or any third party regarding the Site or Licensed Area, the fitness of the Site or the Licensed Area for any particular use of Licensee or any other matter. Licensee acknowledges and accepts the Licensed Area in "As-Is" condition. Licensee has had an opportunity to inspect the Site and Licensed Area prior to the Effective Date, as described in Section 8.10.
- 3.3. **Licensee Waiver.** Trustees hereby expressly disclaim and Licensee hereby waives all implied warranties regarding the Site or the Licensed Area including, without limitation, any warranty of merchantability or warranty of fitness for a particular use or purpose.

Licensee hereby initials this Section to verify this waiver.

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- 3.4. **Lead Based Paint Disclaimer.** Licensee, by acceptance of this license, is hereby notified and informed and shall assume that the Licensed Area contains lead-based paint. Licensee shall be prepared to perform localized abatement. Licensee accepts the Licensed Area in its "As-Is" condition and shall hold harmless, indemnify, and defend Trustees and Trustees' officers, agents and employees from all liability, damages, and claims which may occur to any real or personal property or persons by: (A) any Release of lead on the Site or the Licensed Area caused by Licensee or its affiliates, officers, agents and employees ("Licensee Indemnitors"); or (B) any environmental claim from any third party with regard to any violation or alleged violation of any Environmental Laws that dictate handling of lead by Licensee or the Licensee Indemnitors, or any actual, threatened or alleged Release of lead affecting the Site or the Licensed Area by the Licensee or Licensee Indemnitors. If lead based paint containment and/or removal will be required solely as a result

of Licensee's installation of the System at the Licensed Area, Licensee shall not install the System until all lead based paint containment and/or removal work is performed and certified as completed by a licensed lead based paint contractor approved by Trustees. Licensee shall submit copies of the certification of completion of any and all lead based paint work to Trustees pursuant to the Notice provisions in Section 19.9 prior to the installation of the System at the Licensed Area.

**Licensee hereby initials this Section to verify this indemnity and agreement.**

- 3.5. **Limitation on Use.** Licensee shall not permit or suffer any use of the Site or the Licensed Area or any part thereof by others, or provide the System for the use by others, without first obtaining Trustees' written consent, except as it relates to the Permitted Use. Licensee is only to use the Licensed Area for the Permitted Use. No change in the Permitted Use may be made by Licensee without the prior written approval of Trustees.
- 3.6. **Prohibited Uses.** Licensee shall not use or allow the Site or the Licensed Area to be used for any improper, immoral, or unlawful purposes, nor shall Licensee cause, maintain or permit any nuisance in, on, or about the Site or the Licensed Area. Licensee will not use or allow the Site or the Licensed Area to be used for any purpose inconsistent with this Agreement. Licensee shall comply with all rules and regulations adopted by Trustee and/or University for the Site, and shall comply with all CSU and University orders, requirements and recommendations concerning Licensees use of the Site and Licensed Area, provided that no such rule, regulation, order, requirement or recommendation shall materially increase the costs of Licensee's compliance with its obligations under this Agreement or cause unreasonably interfere with the operation of the System. Such rules and regulations include but are not be limited to prohibitions against the possession or use of firearms, liquor, and illegal drugs.
- 3.7. **Licensee Signage and Lighting.** Licensee shall not erect or install any signage or exterior lighting without the written approval of Trustees, which shall be at the sole discretion of Trustees.
- 3.8. **No Interference/Quiet Enjoyment.** Licensee shall operate, maintain and repair the System in a manner that will not obstruct or interfere with Trustees' use of the Site or other Trustees property or the rights of any other occupants of the Site. Licensee will not injure or annoy any occupants of the Site or other Trustees property. Such interference shall be a default of this Agreement subject to the cure periods provided in Section 15.1.3. In the event interference occurs, Licensee agrees to take all reasonable steps necessary to eliminate such interference promptly, but no later than thirty (30) days after Trustees have notified Licensee subject to the extensions provided in Section 15.1.3. Trustees may construct, reconstruct, modify or make alterations to the Site and Licensed Area, so long as such activities do not cause interference (including shading) with the operation of the System. Scheduled cleanings are exempt and Licensee shall have adequate space to wash panels during the spring recess, fall recess, winter recess and the summer period between the end of the spring semester and the start of the fall semester, all as per the Academic Calendar posted on the website <https://www.humboldt.edu/> . Additional cleanings may be permitted by mutual agreement of the Parties.
- 3.9. **Subordination, Easements, and Rights of Way.** Licensee acknowledges and understands that the license provided to Licensee under this Agreement and all rights of Licensee thereunder are subject and subordinate to all existing leases, easements, rights of way, declarations, restrictions or other matters of record, and all existing agreements of Trustees with respect to the Site and Licensed Area. Trustees reserve 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 with Licensee's use of the Licensed Area and the System.

- 3.10. **Transaction Fee.** Licensee shall pay a Transaction Fee to University for Trustees' administrative oversight, Trustees' project/construction management services, third-party plan/peer review services and materials inspection/testing services (quality assurance), regardless of actual costs incurred. Licensee shall pay 7% of construction costs as shown on CPDC Form 2-7 s at the address provided in Section 19.9 in three (3) installments as follows: (a) 25% within (i) 60 days of contract signing for carport and roof-mount installations or (ii) 90 days of contract signing for ground-mount installations; (b) 50% at issuance of NTP; and (c) 25% at COD. The Transaction Fee shall not be adjusted irrespective of Trustees' actual costs and is non-refundable. The Transaction Fee does not include interconnection costs or other costs (permits, licenses and utility connections) associated with Licensee's obligations under the provisions of this Agreement.
- 3.11. **Applicable Law and Regulations.** All activities conducted by Licensee pursuant to this Agreement shall be in compliance with Applicable Law, and shall be conducted at Licensee's own cost and expense.
- 3.12. **Violation of Law.** Licensee shall immediately suspend any use of the System, upon notice by the CPUC, the CEC, or any governmental authority having jurisdiction over any of Licensee's activities under this Agreement which constitutes a lawful order to suspend operation of the System, until such order is removed or the cause for such order, if any, is corrected and the applicable governmental authority concurs that the cause is corrected.
- 3.13. **No Infringement.** Licensee represents and warrants that Licensee's installation and operation of the System at the Site shall not infringe upon any third party's intellectual property or other proprietary rights. In addition, Licensee shall pay all royalties and license fees which may be required for the methodology, techniques, and for other intellectual property, in connection with the System. Licensee shall indemnify Trustees against and defend all suits or claims for infringement of any patent, copyright, trade secret, trade name, trademark or any other proprietary or contractual rights and shall hold Trustees harmless from loss, expense, claim, or cost on account thereof.
- 3.14. **Ownership of System.** Licensee, Lender(s), System Lessor and/or their permitted assigns, with respect to the System, shall at all times retain title to and be the legal and beneficial owner(s) of the System, including the right to any tax credits available under federal or state law.
- 3.14.1. **Personal Property.** The System shall remain the personal property of Licensee, System Lessor, and/or their permitted assigns and shall not attach to or be deemed a part of, or fixture to, the Site. The System shall at all times retain the legal status of personal property. Licensee shall be entitled to, and is hereby authorized to, file one or more precautionary Uniform Commercial Code (UCC) filing(s) in such jurisdictions as it deems appropriate with respect to the System in order to protect its rights in the System. The System shall be clearly marked and identified by the Licensee as being the property of the Licensee, System Lessor, and/or their permitted assigns. Licensee shall reimburse Trustees for any actual costs incurred in order to provide documents required for such filing(s), if any. Trustees agree to such UCC 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 Licensed Area or the Site.
- 3.14.2. **Security Interests in System.** Except as otherwise provided in this Agreement, Trustees acknowledge and agree that Licensee may grant or cause to be granted to a Lender a security interest in the System and Licensee's rights under this Agreement, and Trustees expressly disclaim and waive any rights they may have in the System at law or in equity. Any security interest in or mortgage of the System shall not create any right or interest in the Site or the Licensed Area and shall be subject to the terms and conditions of this Agreement.

3.14.3. **Legal Description.** Within sixty (60) days of the receipt of Licensee’s Notice of COD, Trustees shall provide Licensee a legal description of the physical location of the System and the property where the Local Electric Utility service account associated with the Site is located.

END OF ARTICLE

**4. PROVISION OF ENERGY STORAGE SYSTEM AND DEMAND CHARGE MANAGEMENT SERVICES**

4.1. Price. The Price paid by Trustees for Storage Services shall be the Price of \$0.XXXX per Month.

4.2. Expected Demand Reduction. The Licensee’s software modeling projects that the System should be able to produce the Expected Demand Reductions by month specified in the table below. (NOTE: Using Dataset provided with RFP).

Expected Demand Reduction	
Contract Year	Expected Peak kW Reduction
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	

4.3. Purchase Obligation. Trustees’ obligation in any Contract Year shall be to purchase all of the Peak Demand Reductions delivered or deemed delivered to Trustees by the System in any Contract Year, up to an amount

equal to 120% of the EDR for such Contract Year. If Licensee delivers more than 120% of the EDR in any Contract Year, Trustees shall not be obligated to purchase any Peak Demand Reductions in excess of 120% of EDR.

- 4.4. Environmental Attributes included in Price. The Price includes all environmental attributes available as a result of the System, including any Renewable Energy Credits (RECs) to be used by Trustees at Trustees' sole discretion.
- 4.5. Energy use for charging. Licensee shall use best efforts to charge system with lowest cost energy.
- 4.6. Rebates and Other Incentives. Any grant, Rebate, incentive payment, Incentive or credit paid as a result of the ownership design, construction and operation of the System or the energy produced thereby shall inure to the benefit of the Licensee. Trustees will cooperate in good faith as necessary to enable Licensee to obtain all available incentives and rebates, including assignment to Licensee of any incentive received by Trustees in connection with the System.
- 4.7. Distributed Energy Resource Market Products. Licensee has the right to utilize the capabilities of the System to provide Distributed Energy Resource Market Products, including agreements for the purchase and sale of such products entered into after the Effective Date of this Agreement. The net benefits of Distributed Energy Resource Market Products will be shared equally between Licensee and Trustees. Licensee shall be solely responsible for performing and complying with any agreement to provide Distributed Energy Resources Market Products. Licensee shall be entitled to all revenues and other benefits associated with Distributed Energy Resource Market Products entered into prior to the Effective Date of this Agreement.

## 5. SYSTEM INVOICING AND PAYMENT

- 5.1. Invoicing Methodology. The invoiced amount due from Trustees to Licensee shall be for each Billing Cycle the all-inclusive monthly lease cost adjusted for capacity factor and/or underperformance penalties. The capacity factor is defined as the number of hours BESS was operational during the billing period divided by the total number of hours in the billing period. If the capacity factor is less than XX% then \$XXXXXX will be deducted from the Trustees' for that billing period. If the BESS Performance Report (BPR) indicates that the Licensee's load and PV generation forecast software is generating forecasts that error greater than XX% from actual for more than XX% of the hours in the billing period, then the Licensee will have one month to modify, calibrate, or otherwise improve their software to improve accuracy. If the BPR for the next month shows that the forecast accuracy is still not meeting the aforementioned percentages, then an underperformance penalty of \$XXXXX will be assessed for that billing period and subsequent billing periods until the agreed upon percentages are met or exceeded. After achieving acceptable performance, the one month grace period would again apply to future BPRs. E
- 5.2. **Invoicing.** Licensee shall deliver to Trustees an electronic invoice and a hard copy invoice for each Billing Cycle on the twentieth (20th) of each month during the Term to the address as set forth in Section 19.9 of this Agreement. Each invoice shall contain all the information provided in Rider H, and shall state the charges and the amounts due Licensee for Electricity produced by the System and delivered to Trustees by the System.
- 5.3. **Invoice Remittance.** Trustees shall pay invoices to Licensee by check, wire transfer, or electronic funds transfer, at Trustees' discretion, by the Due Date.
- 5.4. **Invoice Disputes.** In the event Trustees dispute all or any part of any invoice submitted by Licensee under this Agreement, Trustees shall nevertheless pay the undisputed portion of the invoice when due and shall notify Licensee in writing within ninety (90) calendar days from the date of receipt of any disputed invoice or adjusted invoice. The Parties shall work in good faith to resolve the invoice dispute(s) amicably

and promptly. If upon determination of the correct billing amount, it is determined that Trustees have underpaid Licensee, Trustees shall promptly pay the amount due to Licensee. If upon determination of the correct billing amount it is determined that Trustees have overpaid, Licensee shall promptly credit to Trustees the amount of overpayment. Notwithstanding the above paragraph, the Parties shall have the rights set forth in Section 19.28, provided that any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 5.4 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made.

- 5.5. **System Reporting.** Within sixty (60) calendar days after the end of each Contract Year, Licensee shall submit to Trustees audited reports related to Licensee's financial performance and, in a format reasonably acceptable to Trustees, a summary of the System's technical performance for that Contract Year, and cumulatively from the COD. Licensee shall provide an Energy Management Web Portal to Trustees to analyze performance of the system. The Energy Management Web Portal shall be compliant with Trustee's IT security policy and standards in effect as of the Effective Date, as described in the Integrated State University Administrative Manual (ICSUAM) Section 8000. Licensee shall be deemed to have satisfied the delivery requirement for financial performance if the applicable report is publicly available on the SEC EDGAR information retrieval system.

END OF ARTICLE

## 6. METERING

6.1. **Interval Data Recording Meter.** Licensee shall measure the actual amount of Electricity delivered to Trustees by the System at the Electrical Interconnection Point utilizing a commercially available revenue grade meter that shall comply with the ANSI code for electricity Meters C12.1-2008 or its successor (“Meter”). The Meter shall be installed and maintained at Licensee’s expense. The Meter provided and installed by the Licensee shall have standard industry telemetry capabilities for communication with Ethernet, cellular and other common output capabilities, including but not limited to KYZ output connection, that will provide Trustees with the ability to connect the Meter to the University’s Energy Management System for the purpose of incorporating System electrical output data into the University energy monitoring system. Licensee understands that this is a necessary capability in the event that Trustees require real time monitoring of Trustees’ total energy demand and usage for the purpose of complying with, for example, the requirements of a Utility administered Demand Response program in which Trustees are a participant. Actual physical connection to the Meter by Trustees for the above stated purpose shall be at Trustees’ expense, with review and approval by the Licensee.

6.1.1. Licensee will ensure that the System Meter’s timekeeping mechanism is synchronized with that of the Local Electric Utility Revenue Meter, such that the time stamps created by both meters (i.e., date and time) are identical when the System is delivering Peak Demand Reduction services. Licensee’s failure to meet this requirement shall be a default of this Agreement subject to the cure periods provided in Section 15.3.1.

6.2. **Meter Calibration.** Licensee shall have the Meter tested every two (2) years at Licensee’s expense by a certified independent third party approved by Trustees. Trustees shall be allowed to observe the Meter test, and Licensee shall provide notice of the testing to Trustees at least ten (10) Business Days prior to the test date. Licensee shall provide signed copies of the results of the Meter test to Trustees. In addition to the bi-annual test, Licensee shall test the Meter at any reasonable time upon the request of Trustees; Trustees shall reimburse Licensee for the cost of any additional tests requested by Trustees, unless such testing demonstrates that the Meter was operating outside of industry standard tolerance allowances or as defined by the CPUC or other applicable governing authority for electricity meter calibration and operation.

6.3. **Meter Inaccuracy.** If the Meter is determined to be inaccurate and such inaccuracy exceeds ANSI C12.20 Standard accuracy range or, if more stringent, as defined by the CPUC or other applicable governing authority for electricity Meters, and if the date that such inaccuracy commenced is known, then all invoices since the date on which such inaccuracies began shall be corrected. If it is unknown when the Meter’s inaccuracy commenced (if such evidence exists, such date will be used to adjust prior invoices), 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 which benefit Trustees shall be reflected on the next invoice following the date of determination of the inaccuracy. Adjustments which benefit Licensee shall be included on Licensee’s next invoice to Trustees.

END OF ARTICLE

## 7. SYSTEM DOCUMENTS

7.1. **Associated Agreements.** Within thirty (30) calendar days after the Effective Date of this Agreement or no later than thirty (30) calendar days after receipt of any other agreement described herein, to the extent such agreement is not available as of the Effective Date, Licensee shall provide Trustees copies of all forms of other agreements, including but not limited to interconnection agreements, rebate agreements, or other required agreements, which Licensee anticipates it will want Trustees to execute in order to effectuate the purpose of this Agreement. In the event Licensee subsequently determines any other agreement(s) are

necessary to effectuate the purpose of this Agreement, Licensee shall provide Trustees a copy of the agreement within five (5) business days after such determination. Trustees shall notify Licensee no later than thirty (30) calendar days after it receives a form of agreement as to whether the agreement is acceptable to Trustees or Trustees will require an amendment to be acceptable to CSU. If Trustees require an amendment, Trustees will provide written notice as to the form of required amendment within such thirty (30) calendar day period. The final agreements submitted to Trustees for execution shall not deviate materially from, or impose any obligations on Trustees beyond, those approved forms of agreements, and Trustees will not unreasonably withhold Trustees' signature on such final agreements.

**7.2. Interconnection Agreement.** Trustees will be the party to the interconnection agreement with the applicable Local Electric Utility. The Licensee shall assist the Trustees with submitting and negotiating the interconnection agreement by providing information as needed to satisfy utility requirements until such time as the interconnection agreement is executed or withdrawn. The Trustees shall be responsible for all fees associated with the interconnection agreement(s) with the applicable Local Electric Utility and for all costs of interconnecting the System with the Local Electric Utility's system including any legal fees or any other similar type costs that may be incurred by Trustees in connection with any such negotiation and execution. In the event interconnection of the System with the Local Electric Utility's system will trigger a need for Distribution Upgrades or Network Upgrades, as defined in Rule 21 ("Upgrades"), Trustees shall be solely responsible for the cost of the Upgrades. Trustees shall have the right to terminate the Agreement with no Termination Fee in the event the cost estimate for the Upgrades exceeds an amount that Trustees, in Trustees' sole discretion, deems to be reasonable. Trustees shall provide notice of a termination under this section within ten (10) Business Days following Trustee's receipt of the Local Electric Utility's final cost estimate for the Upgrades.

**7.3. System Compliance.** Licensee agrees that the System shall be designed, at Licensee's cost, to comply with all applicable California building codes and standards, CSI Tier One standards and provisions of Rule 21 or its successor, and in accordance with Trustees permit process, in effect as of the Effective Date. System design and Construction Documents shall expressly state and identify the applicable building codes and standards. System design and Construction Documents submitted by Licensee must include, but shall not be limited to, the following:

- System schematics
- Single line electrical diagram
- Short circuit and coordination study
- Electrical Interconnection Point schematics
- Electrical Interconnection Point single line electrical diagram
- Documentation supporting the Utility Interconnection Agreement
- Construction plans (structural, civil, mechanical, etc.)
- Structural calculations (as necessary or required)
- List of equipment and materials schedule
- Construction schedule

- Foundation recommendations as applicable (consistent with owner supplied geotechnical report)
- As-Built Drawings

**7.4. Electric Power Requirements.** Electricity from the System must be provided at 60 Hertz and at the appropriate voltage for electrical interconnection to the Site at the voltage service level, which will be specified by Trustees.

The System components must comply with all standards relevant to the operation and installation of energy storage equipment by UL or other nationally recognized testing facility. Batteries, enclosures, inverters and components must be certified to comply with the following requirements:

- UL Subject 1741, “Standard for Static Inverters and Charge, Converters, Controllers and Interconnection System Equipment for use with Distributed Energy Resources”
- UL Subject 1973 “Batteries for Use in Light Electric Rail Applications and Stationary Applications”
- UL Subject 1642 “Standard for Lithium Batteries”
- UL Subject 508 “Standard for Industrial Control Panels”
- Any and all requirements as listed by the SGIP incentive program and/or the CEC for the installation of energy storage systems.
- Other codes that will apply include, but are not limited to: ANSI C12.1-2008; (electricity metering)
- NFPA 70 (including NFPA 70E Arc flash)
- IEEE 1547 (interconnections)
- NFPA 855, Standard for the Installation of Stationary Energy Storage Systems

**7.5. Approval; Permits.** Trustees shall assist Licensee in obtaining all necessary consents, approvals, and permits required to perform Licensee’s obligations under this Agreement, and those related to the Local Electric Utility, any Governmental Approval, and Incentive program, and any consents, waivers, approvals or releases required pursuant to any applicable tariff, contract or provision of the California Code of Regulations. It is the sole responsibility of the Licensee to secure all required approvals prior to the commencement of the System’s construction or operation.

7.5.1. The following are the plan check approvals required by Trustees for the System(s): University Deputy Building Official, Code Plan Check, State Fire Marshal, Local Fire Agency, Electrical Systems Peer Review, Geotechnical Engineer and Seismic Peer Review. DSA review for accessibility will be necessary should any University accessible path of travel or accessible parking at the Site be modified as part of the System design.

**7.6. Professional Engineer.** Licensee understands that all System design, Construction Documents, and engineering calculations must be submitted to Trustees under the authority of a registered architect and/or licensed professional engineer(s) certified to practice in California.

**7.7. Ownership of Designs.** All drawings, specifications, calculations, data, notes and other materials and documents, including electronic data furnished by Licensee to Trustees under this Agreement (“Work Product”), are the instruments of service of Licensee, and Licensee will retain all statutory and other reserved rights provided by Applicable Law, including copyrights. However, upon the Commercial Operation Date, Licensee will grant to Trustees an irrevocable, non-exclusive, non-sublicenseable, royalty-free license to use the Work Product in connection with the System during the Term of this Agreement.

- 7.8. **Schematic Design.** Licensee shall submit outline specifications for the System in sufficient detail to convey an initial indication of the design of the System as it relates to the Site and Licensed Area, other buildings and the University premises, the materials to be used in construction, and the types of mechanical, electrical and structural systems to be utilized, for approval by Trustees, and Trustees shall review and respond to Licensee within fifteen (15) Business Days of receipt of such System schematic design.
- 7.9. **Construction Documents.** Licensee shall submit 60% and 95% Construction Documents for the System. The Construction Documents shall address System constraints and specifications that are deemed to be reasonably necessary by Trustees' Deputy Building Official and Cal Poly Humboldt Facilities Management staff. Trustees will review the Construction Documents for compliance with Applicable Law and this Agreement and notify Licensee in writing within fifteen (15) Business Days of receipt of the 60% and 95% Construction Documents as to whether or not Trustees approve the submittals or have comments. If Trustees do not approve the submittals, Trustees' written notice shall specify the deficiencies thereof. Trustees' approval of the Construction Documents shall not be unreasonably withheld, conditioned, or delayed. Should any external review agencies (e.g., the State Fire Marshal) take longer than the specified fifteen (15) days to complete their review and approvals, such delay shall be deemed to be out of the control of Trustees and no penalty should be assessed, provided Licensee's obligations will be extended as provided in Section 8.6.
- 7.10. **Submittals.** Licensee shall submit to Trustees shop drawings, samples, material lists, and manufacturer's equipment brochures setting forth in detail the materials and equipment to be installed in connection with the installation work, and shall obtain Trustees' written approval with respect thereto, which such approval shall be provided within five (5) Business Days of submittal by Licensee and shall not be unreasonably conditioned, withheld, or delayed.
- 7.11. **Trustees Review.** Reasonable changes to System schematic design and Construction Documents required by Trustees shall be submitted to Licensee and, subject to the limitations set forth in Sections 7.8 and 7.9, Licensee shall incorporate such changes into the System Schematic Design and Construction Documents and return such documents to Trustees within fifteen (15) days of Licensee's receipt of Trustees' required changes.
- 7.12. **No Trustees Responsibility.** In no event shall Trustees' review or approval of the System design and Construction Documents or any other submittals by Licensee in accordance with this Agreement be interpreted as making Trustees responsible for, and Licensee acknowledges that Trustees are not responsible for, any aspect of the design, construction, maintenance, or operation of the System.
- 7.13. **As-Built Drawings.** Licensee shall deliver As-Built Drawings to Trustees following completion of the System's installation. The As-Built Drawings will reflect the final installed System. Licensee understands that As-Built Drawings are required to be submitted for the purpose of full and complete compliance with the applicable provisions of this Agreement.
- 7.14. **System Installation Schedule.** Rider E to this Agreement provides a schedule of the System's development, installation, construction documentation, technical review, and the responsible Party for each action.

END OF ARTICLE

## 8. SYSTEM CONSTRUCTION AND INSTALLATION

- 8.1. **Installation Work.** Licensee and Trustees will, in accordance with the provisions of this Agreement and Applicable Law, cooperate reasonably and in good faith on the design, permitting, construction, interconnection, and installation of the System, including tasks related to the interconnection agreement

for the System, so as to enable Licensee and/or its Affiliates, to meet their obligations under this Agreement.

Licensee shall, at its sole cost and expense, design, build, install, own, maintain, and operate the System, as generally described in Rider I, in compliance with this Agreement and Applicable Law. With the exception of minor field changes, the construction and installation of the System and all related matters are subject to and shall be completed in accordance with this Agreement and Trustees' approved System design and Construction Documents. A "minor field change" is defined as a change or deviation from Trustees' approved System plans, System drawings, or Construction Documents that does not significantly affect the construction, installation, operation, or aesthetics of the System or materially deviate from the design, construction, installation, or operation of the System, as originally approved by Trustees.

8.1.1. Notwithstanding any provision herein to the contrary, Licensee acknowledges and agrees that all onsite labor employed for the installation work shall be paid at the then-current prevailing wage rates as established by the California Department of Industrial Relations pursuant to Section 1770 of the California Labor Code, and all on-site labor shall be paid in accordance with the provisions of Applicable Law, including, without limitation, the applicable provisions of the California Labor Code. All contractors and subcontractors performing on-site installation work must register with the Department of Industrial Relations (DIR) and obtain and maintain current registration numbers. At Trustees' request in accordance with Applicable Law, Licensee and its contractors shall provide Trustees with payroll records for onsite labor employed in connection with the installation work.

8.1.2. Licensee, or Licensee's contractors and subcontractors, shall be duly licensed by the California Contractors State License Board with contractor's license, registered with the Department of Industrial Relations (DIR).

8.1.3. California law requires that state agencies achieve three percent (3%) participation for disabled veteran business enterprises ("DVBEs"). In connection with the installation work, Licensee, or Licensee's contractors or designees, shall show good faith efforts to utilize DVBEs for contracts and subcontracts in the aggregate amount of at least three percent (3%) of the cost of all on-site labor associated with the installation work, but without including the cost of any related software, materials, and equipment that are the personal property of Licensee. Licensee, or Licensee's contractors or designees, will identify the DVBEs that will be utilized in connection with the installation work to Trustees on forms provided by Trustees. Licensee agrees that any replacement of such identified DVBEs will require Trustees' consent, which consent will not be unreasonably withheld, conditioned, or delayed. Failure to provide, or Licensee's contractors or designees, to comply with its obligations in this clause may be cause for termination of this Agreement, recovery of damages under rights and remedies due Trustees, and penalties as outlined in Military and Veterans Code section 999.9 and Public Contract Code section 10115.10 or section 4110, to the extent applicable.

**8.2. Trustees Approval.** No construction or installation by Licensee or its contractor shall be permitted to begin until (i) Trustees have approved in writing the Construction Documents and specifications, (ii) Licensee has satisfied all the conditions precedent necessary to commence construction including, but not limited to, all tasks listed under development in Rider E, (iii) final interconnection costs have been determined by the Local Electric Utility and agreed to by the Trustees, and (iv) Trustees have issued a Notice to Proceed which notice shall occur within five (5) Business Days after the conditions in (i), (ii) and (iii) have been satisfied. Should interconnection costs referenced in condition (iii) result in an updated SLPPA Price that is greater than the University specific hurdle rate as published in the RFP on the University variables coversheet for the University premises to which the system is being interconnected, the Trustees may terminate this Agreement by written notice to the Licensee. In the event of such notice

by the Trustees, this Agreement shall terminate, Trustees shall retain any Transaction Fee paid or due as of the date of such termination notice, Licensee shall comply with Section 13.1 and neither Party shall have any further obligation to the other Party.

**8.3. Construction Start Date.** Licensee shall start construction of the System after receipt of Trustees' Notice to Proceed. Licensee shall provide written notice to Trustees of the date that Licensee commences construction at the Site (the "Construction Start Date") and shall diligently pursue construction until the System's completion. If Licensee has not commenced substantial construction activities by [Month, day, year], either Party may terminate this Agreement by written notice to the other Party. In the event of such notice by either Party, this Agreement shall terminate, Trustees shall retain any Transaction Fee paid or due as of the date of such termination notice, Licensee shall comply with Section 13.1 and neither Party shall have any further obligation to the other Party.

**8.3.1. Construction Supervision.** During the course of the installation work, Licensee, or Licensee's contractors or designees, will have a qualified construction supervisor onsite with whom Trustees can communicate with respect to the Installation Work. If, in the reasonable judgment of Trustees, such construction supervisor is incompetent, unqualified, poorly performing, or disorderly, Licensee shall, upon request by Trustees, promptly replace such construction supervisor with an individual reasonably acceptable to Trustees.

**8.4. Completion of System.** The Parties agree that the COD will occur no later than [Month, day, year] (the "Guaranteed Commercial Operation Date") unless otherwise agreed to by the Parties in writing and except as provided in Section 8.6.

**8.5. Liquidated Damages for Delay.** If Licensee has not achieved the Construction Completion Date by the Guaranteed Construction Completion Date, it shall pay liquidated damages to Trustees as provided in this Section 8.5. Liquidated damages will be assessed at a per calendar day cost of \$1,000. All such liquidated damages shall be assessed for each day beyond the Guaranteed Construction Completion Date, except Licensee shall be excused from its obligations to pay liquidated damages pursuant to this Section 8.5 during the period of any excused extension as set forth in Section 8.6.

**8.6. Extensions of Dates.** The Guaranteed Construction Completion Date and the Guaranteed Commercial Operation Date shall be extended as follows:

8.6.1. For any delays caused by Force Majeure Events, provided that Licensee exercises commercially reasonable efforts to mitigate any delay caused by such Force Majeure;

8.6.2. For any delays caused by Trustees, including any failure to timely provide any approval, inspection or notice Trustees are obligated to provide pursuant to this Agreement;

8.6.3. For delays caused by a government agency or public utility, including any failure to timely provide any approval or notice Licensee is obligated to obtain pursuant to this Agreement;

8.6.4. For delays caused by a Utility;

8.6.5. For delays caused by Differing Site Conditions pursuant to Section 8.11;

8.6.6. For delays caused by changes in the installation work pursuant to Section 8.11.1;

8.6.7. For delays caused by emergency changes pursuant to Section 8.11.2;

8.6.8. For delays caused by archeological finds pursuant to Section 8.16; and

8.6.9. By the mutual written agreement of the Parties.

- 8.7. **Notice of Commercial Operation Date.** Licensee shall in a form substantially similar to Attachment 4 notify Trustees in writing no less than ten (10) days and no more than fifteen (15) days before the date on which Licensee expects the COD to occur. Licensee shall give Trustees the Notice of COD within twenty-four hours after its occurrence. Licensee warrants that the System as built will be fully consistent with all documentation previously approved by Trustees as of the COD except for any minor field changes as set forth in Section 8.1. The COD establishes when Licensee may begin to sell Electricity from the System.
- 8.8. **Punch List.** Trustees shall have fifteen (15) calendar days after receiving the Notice of COD to inspect the Site and the System for compliance with the Trustee approved Construction Documents. Trustees shall present Licensee with a list of any material deficiencies found by Trustees together with a punch list of tasks reasonably related to the installation work to be completed post-COD that relate to Trustees' ownership and use of the Site and Licensed Area, including but not limited to tasks related to cleanliness, safety, security, accessibility, and noise above manufacturer's specifications at the Site and/or with respect to the System. The Licensee shall have thirty (30) calendar days (or such reasonably longer time period if thirty (30) calendar would not be reasonably sufficient) after Licensee's receipt of Trustees' notice to correct any deficiencies and to complete the tasks on said punch list.
- 8.9. **Construction Performance Bond.** Before starting any construction or installation, Licensee shall furnish a performance bond in an amount calculated by multiplying the kW (AC) capacity of the System as described in this Agreement by \$250/kW, which provides an estimate of the amount necessary to restore the Site and Licensed Area to its pre-installation condition in the event Licensee fails to complete the installation of the System in accordance with this Agreement. Trustees shall release to Licensee any such construction performance bond no later than first day of the second Contract Year.
- 8.9.1. **Licensee Payment and Performance Bonds for initial physical construction:** In addition to the Bond in Section 8.9, the Licensee shall furnish, for each counterpart signed, two surety bonds in the form prescribed by Trustees. Each bond shall be in an amount equal to 100 percent of the mutually agreed upon construction costs and executed by an admitted surety insurer licensed in the State of California and listed in the latest published United States Treasury Department list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies." Reference the following websites: State of California Department of Insurance at: <https://interactive.web.insurance.ca.gov/companyprofile/companyprofile> and the US Treasury listing at: <https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm> One of the surety bonds shall guarantee faithful performance of the installation work by the Licensee and the other shall secure payment of laborers, mechanics, or material men employed in connection with the installation work. Such bonds are subject to the approval of Trustees. The surety bonds required by this Subsection 8.9.1 shall remain in full force and effect during the term of the construction and for a period of one year after the Commercial Operation Date. Trustees shall release to Licensee all such bonds no later than the first day of the second Contract Year. If change order(s) exceed 110% of the mutually agreed upon construction costs, Trustees may demand in writing that the Licensee provide such further bonds or additional surety to the extent of such additional construction costs, not exceeding that originally required, as in Trustees' opinion is necessary, considering the extent of the Installation Work remaining to be done.
- 8.10. **Licensee's Access and Inspection.** Licensee acknowledges that, prior to the Effective Date of the Agreement, Licensee was provided access to the Site and Licensed Areas in order to conduct feasibility and configuration assessments, environmental assessments, and other inspections of the Site and Licensed Areas, as Licensee deemed necessary. Licensee's access to the Site and Licensed Areas shall be subject to Access Procedures reasonably adopted from time to time by Trustees including, but not limited to, the procedures set forth in Rider D (Operational Access Procedures for Site and Licensed Areas). Only

Licensee's employees, agents, and contractors retained by Licensee(s) shall be permitted access to the Site and Licensed Area; provided that Lender and its employees and agents (all as agents of Licensee) shall have access to the Site and Licensed Area once during each calendar year to inspect the System, subject to the same access procedures as Licensee.

- 8.11. **Differing Site Conditions.** If during the course of the installation work, either Party identifies a condition, event, or circumstance related to the Site and/or the installation work for which Trustees would be responsible to remedy or otherwise address (a "Differing Site Condition"), and Trustees and Licensee agree (each in its reasonable discretion) that it would be beneficial to utilize Licensee's contractors to remedy or otherwise address such Differing Site Condition, then the Parties shall enter into a written agreement, separate and apart from the Agreement, with respect to such Differing Site Condition, which such written agreement shall provide that the Differing Site Condition will be remedied or otherwise addressed at Trustees' sole cost and expense.

Trustees can only be charged the direct cost of the work as negotiated with the subcontractors plus a mark-up of no more than 15% from the sub-contractor to cover all overhead, profit, supervision, home office, warranty, bond, insurance, project management, and processing costs. The general contractor is limited to a mark-up of no more than 10% (to be calculated on the subcontractors direct cost) to cover all overhead, profit, supervision, home office, warranty, bond, insurance, project management, and processing costs for coordinating the work done by the subcontractor. If the general contractor self performs the changed work, the general contractor can charge the direct cost of the work plus 15% for overhead, profit, supervision, home office, warranty, bond, insurance, project management, and processing costs. Trustees will only pay the actual cost of work and all hourly labor rates shall be verified by certified payroll records or an audit of the contractors accounting records for that classification, if rates are claimed in excess of the minimum prevailing wage rate.

- 8.11.1. **Allowable Time Extensions.** For any change in the installation work that affects the critical path of the project, the Licensee shall be entitled only to such adjustments in time by which completion of the entire installation work is delayed due solely to performance of the changed installation work. However, no extension of time shall be granted for a change in the installation work unless the Licensee demonstrates to the satisfaction of Trustees that the installation work is on the critical path and submits an updated CPM schedule showing that an extension of time is required and that the Licensee is making, or has made, every reasonable effort to guarantee completion of the additional installation work called for by the change within the time originally allotted for the Agreement.

- 8.11.2. **Emergency Changes.** Changes in the installation work agreed by Trustees to be made necessary due to unforeseen Site conditions, discovery of errors in the Construction Documents requiring immediate clarification in order to avoid a serious installation work stoppage, changes of a kind where the extent cannot be determined until completed, or under any circumstances whatsoever when deemed necessary by Trustees are kinds of emergency changes which may be authorized by Trustees in writing to the Licensee. The Licensee shall commence performance of the emergency change immediately upon receipt of written direction from Trustees.

If agreement is reached as to compensation and/or time adjustment for the purpose of any emergency change, then compensation and/or time extension, as appropriate, will be as provided in Sections 8.5 and 8.6. If agreement is not reached as to compensation and/or time adjustment at the time of commencing the emergency change, then compensation and/or time extension, as appropriate, then Licensee shall proceed with the changed installation work subject to a requirement that time and materials records and summaries be witnessed and maintained until the changed installation work is complete and the dispute is resolved by the Parties.

- 8.12. **Modifications/Alterations.** On and after the Commercial Operation Date, Licensee shall have no right to change the approved design and Construction Documents or to make material Alterations to the System without receiving prior written approval of Trustees, except for minor field changes pursuant to Section 8.1. On and after the Commercial Operation Date, prior to undertaking any Alterations, Licensee shall submit to Trustees detailed and complete plans and specifications for the proposed Alterations. In Trustees' sole discretion, Trustees 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. Trustees shall not unreasonably delay or withhold written approval of Licensee's proposed Alteration. However, as a condition to consenting to the Alterations, Trustees may impose reasonable requirements, including the requirement that Licensee provide Trustees with a surety bond or other financial assurance that the cost of the Alterations will be paid when due, and reimbursement of any costs incurred by Trustees in responding to Licensee's request. Any such Alterations shall be performed in accordance with all Applicable Laws, including any and all necessary permits and approvals by Trustees. Licensee agrees to provide Trustees with sufficient advance notice of any proposed Alterations to allow the coordination and approval by Trustees of the construction schedule for such Alterations.
- 8.13. **Security.** At all times during the construction of the System on the Licensed Area and any other authorized use areas, Licensee shall keep any and all areas of construction adequately secured for safety and security purposes. Licensee shall coordinate with the Site manager and comply with all Site security requirements when accessing the Site. Licensee hereby acknowledges that Trustees shall have no obligation whatsoever to provide guard services or other security measures for the benefit of the Licensee. Licensee assumes all responsibility for the protection of Licensee, its agents and invitees and the property of the Licensee and of Licensee's subcontractors, agents and invitees from acts of third parties except as set forth in Article 17.
- 8.14. **Acceptance.** When the installation work (or any phase thereof) has been completed in all respects in accordance with this Agreement, Trustees will file a notice of completion with the county recorder in the county in which the Site is located, in which event, and to the extent applicable hereto, the stop notice clause of the California Public Contract Code shall be in effect.
- 8.15. **Inspection of System.** Trustees' inspections of the System during construction shall be allowed in accordance with Section 11.1. In no event shall Trustees' inspections of the System be interpreted as making Trustees responsible for, and Licensee acknowledges that Trustees are not responsible for, the design or construction of the System.
- 8.16. **[Archaeological Finds].** The Site is located on an archeological sensitive area. If Licensee discovers any artifacts during excavation and/or construction, Licensee shall stop all affected work and notify Trustees. Trustees will employ, at Trustees' cost and expense, the services of a Native American monitor and archeologist to be present whenever excavation of the Site occurs at any depth. Licensee is responsible to notify Trustees in advance of any digging or excavation so these monitors can be scheduled. If Licensee discovers human remains, Licensee shall notify Trustees who will be responsible for contacting the county coroner and a qualified archaeologist. Licensee shall be entitled to a day-for-day extension pursuant to Section 8.6 for any impact on schedule due to any delays or stoppage of installation work pursuant to this Section 8.16] Applicable only on certain campuses.

END OF ARTICLE

## 9. LICENSEE'S PERFORMANCE OBLIGATION

- 9.1. **General.** Licensee shall cause the System to be operated and maintained in good repair and operation at Licensee's sole expense, including the cost of capital repairs and replacements, in a commercially reasonable

manner throughout the Term. 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 any maintenance and repairs to the Site and Licensed Area if such maintenance and repairs are necessary as a result of Licensee's use.

- 9.2. **Performance Guarantee.** Licensee's sole and exclusive delivery performance guarantee will be as set forth in Rider C attached hereto.
- 9.3. **Outage Reporting.** Within thirty (30) calendar days of any outage of 25% or more of the System capacity lasting more than twenty-four (24) hours, Licensee shall provide to Trustees a report indicating the nature and cause of the outage and the steps taken by Licensee to correct the problem.
- 9.4. **Licensee's Failure to Maintain.** If Licensee fails to maintain the System in good repair and operation consistent with industry standards for operators of similar systems, Trustees shall give Licensee written notice to perform such maintenance and repair activities as are reasonably required under this Agreement. Licensee shall commence within ten (10) calendar days after receiving such written notice from Trustees and diligently complete the requested maintenance or repairs; provided that if it disputes the need for such maintenance and repair activities then such dispute will be resolved pursuant to the provisions of Section 19.28. If Licensee fails to commence the requested maintenance or repair activity within the allowed time, Licensee shall be subject to fines of \$250 per day until the maintenance or repair is completed, and Trustees shall deduct the sum of the daily fines from the payments otherwise due to Licensee under this Agreement. In the event of an emergency and/or if there is a safety hazard and Licensee fails to commence repairs and act diligently to address the emergency or repair such safety hazard within the timeframe set forth above after notice of such emergency or safety hazard from Trustees, then Trustees shall have the right to address the emergency and repair the System at Licensee's expense. Any amount so expended by Trustees shall be paid promptly by Licensee upon Trustees' submittal of the work invoices to Licensee, or Trustees may deduct the amount expended from invoices submitted to Trustees by Licensee for amounts due Licensee for Electricity delivered to Trustees. Except as set forth in this Section 9.4, Trustees shall have no right to conduct or have such work performed and any such maintenance or repair activity sanctioned or conducted by Trustees will be a breach of this Agreement and will cause the immediate and permanent cessation of Licensee's obligations with respect to the Performance Guarantee set forth in Rider C.
- 9.5. **Project Manual.** Within thirty (30) days of COD, Licensee shall provide a Project Manual to University staff. Licensee shall subsequently notify University in writing of any changes to the Project Manual within fifteen (15) calendar days of such change.
- 9.6. **Shut down Training.** Within thirty (30) days of acceptance of COD, Licensee shall instruct and train CSU's designated personnel on how to shut down the System in the event of an emergency. CSU may reasonably request additional training and Licensee will conduct such training at CSU's expense. The training session(s) may be recorded by CSU at CSU's expense.
- 9.7. **Lien /Removal of Liens.** During the Term, except for any liens in favor of the Lender, Licensee shall not cause or permit any liens to attach or to be placed upon or encumber the System or the Licensed Area or Site arising out of or resulting from 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) calendar days of notification thereof by the post of a bond, payment of the lien or otherwise. If Licensee fails to remove the lien within the allowed time period, Trustees, in addition to its other remedies under this Agreement, 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 hold harmless, defend and indemnify Trustees 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.

- 9.8. **Health and Safety.** Licensee shall take all necessary and reasonable safety precautions and shall comply with all Applicable Law pertaining to the safety of persons and real and personal property. Licensee shall immediately report to Trustees any death, loss time injury, or property damage that occurs within the Licensed Area or the Site or as part of Licensee's operation of the System.
- 9.9. **Hazardous Material.** Licensee agrees to comply with all applicable environmental laws pertaining to the use, storage and disposal of Hazardous Material at the Site and Licensed Area. Licensee shall indemnify, defend and hold harmless Trustees and Trustees' officers, agents, representatives, and employees from any and all liabilities and costs (including 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, resulting from any violation of environmental laws caused by Licensee or Licensee's representatives at the Site. In addition, Licensee shall reimburse Trustees for any and all costs related to investigation, clean up and/or fines incurred by Trustees for non-compliance with environmental laws that are caused by Licensee or Licensee's representatives. Trustees reserve the right to inspect the Licensed Area for purposes of verifying compliance with these Hazardous Materials and environmental laws.
- 9.10. **Notice of Damage.** Licensee shall promptly notify Trustees of any matter of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to affect the System or Trustees operations.
- 9.11. **Customer Service Support.** Licensee will provide customer service support accessible to Trustees twenty-four (24) hours per day, seven (7) days per week. For purposes of this provision, "accessible" means that Licensee will provide a designated customer service telephone number with a voice mail system which records the time and date of the call. Licensee agrees that it will respond to Trustees' messages on this designated customer service voice mail system within twenty-four (24) hours of Trustees' call.
- 9.12. **Academic Component.** Licensee will provide one LCD display, which will be installed at a location on the University. The location chosen by Trustees must be within 6' of an electrical outlet and an Ethernet jack with access to the Internet. The display will provide a rotating overview of the System's performance, environmental benefits, and a description of how solar PV works.

END OF ARTICLE

## 10. TRUSTEES OBLIGATIONS

- 10.1. **General.** Subject to any specific limitations in this Agreement, Trustees shall at all times during the Term use commercially reasonable efforts to maintain the Site, other than the System, in good condition and repair so as to be able to receive and utilize the Electricity delivered from the System. Trustees shall at all times maintain the Site consistent with all Applicable Law pertaining to the health and safety of persons and property. Trustees will maintain in good working order and available at all times, Trustees' connection and service contract(s) with the applicable Local Electric Utility so that Trustees can, upon any suspension or interruption of Electricity from the System, obtain electricity from a Utility. All obligations of Trustees under this Agreement regarding maintenance shall be subject to the right of Trustees during periods of renovation, or maintenance and repairs to any part of the Licensed Area or Site to issue a shutdown order to the System, consistent with Section 11.6.
- 10.2. **Liens.** Trustees 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 Trustees breach their obligations under this section, Trustees shall immediately notify Licensee in writing and shall promptly cause such lien to be discharged and released of record without cost to Licensee.

END OF ARTICLE

## 11. GENERAL TERMS AND CONDITIONS

- 11.1. **Inspections.** Trustees shall be permitted access to inspect the System upon twenty-four (24) hours [or, in the case of a ground-mount installation, three (3) business days] prior written notice to Licensee. Trustees' 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 Trustees' personnel on all non-emergency inspections, and must comply with all safety protocols provided by Licensee to Trustee. This requirement in no way prohibits Trustees from inspecting any and all portions of the Site and Licensed Area at any time.
- 11.2. **System Maintenance.** Licensee shall notify University twenty-four (24) hours prior to accessing the Site and Licensed Area to perform System maintenance. Licensee shall be subject to Access Procedures reasonably adopted from time to time by Trustees including, but not limited to, the procedures set forth in Rider D (Operational Access Procedures for Site and Licensed Area). Only Licensee's employees, agents and contractors retained by Licensee(s) shall be permitted access to the Site and Licensed Area.
- 11.3. **System Malfunctions.** Trustees and Licensee each shall notify the other Party as soon as possible but not more than twenty-four (24) hours following such Party's discovery of any material malfunction in the operation of the System or of their discovery of an interruption in the supply of Electricity from the System by providing notice in accordance with Section 19.9. Licensee and Trustees shall each designate personnel and establish procedures such that each Party may provide notice of conditions requiring Licensee's repair or Alteration at all times, consistent with Subsection 11.5.1.
- 11.4. **System Malfunction Repairs.** Licensee shall commence repairs to the malfunctioning System and restore the supply of Electricity, as soon as reasonably possible after receipt of Trustees' notice or upon Licensee's discovery of any of the conditions causing a malfunction in the operation of the System, subject to the Operational Access Procedures for the Site and Licensed Area defined in Rider D. In the event Licensee must repair the System and requires Trustees' personnel to be present after normal business hours, Licensee shall reimburse Trustees for all costs for after hour's access to the Site and Licensed Area and shall bear all costs incurred by Trustees to facilitate Licensee's repair of the System.
- 11.5. **System Emergencies.**
- 11.5.1. **Notification.** Licensee and Trustees each shall notify the other Party as soon as possible upon the discovery of an emergency condition involving the System. For emergencies requiring repairs to the System, the Parties shall contact the persons identified in Section 19.9 (Notices).
- 11.5.2. **Immediate Dispatch.** If an emergency condition involving the System exists, Licensee shall immediately dispatch the appropriate personnel to perform the necessary repairs or corrective action in an expeditious and safe manner, subject to Trustees emergency rights under Subsection 11.5.3 (System Emergencies: Disconnection of System).
- 11.5.3. **Disconnection of System by Trustees.** In case of emergency in which Trustees determine 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 Trustees may disconnect the System from the Licensed Area and Site prior to notification of Licensee. Trustees will notify Licensee if Trustees disconnect the System pursuant to this provision no later than eight (8) hours after the System is disconnected. Parties agree that only Licensee or an agent designated by Licensee will be authorized to reconnect the System after the System is disconnected by Trustees pursuant to this section. In no event shall Trustees be liable for any damage for actions taken by Trustees in the event of an emergency.

## 11.6. System Shutdowns.

11.6.1. **Scheduled Shutdown.** If Licensee schedules a shutdown of the System, Licensee shall notify Trustees in writing as soon as practical after Licensee schedules such shutdown but in no event less than fifteen (15) calendar days prior to the start of such shutdown. Such notice shall include the reasons and expected duration of such shutdown.

11.6.2. **Unscheduled Shutdown.** If a shutdown of the System occurs that is not scheduled, Licensee shall provide notice to Trustees as soon as possible. For any shutdown which duration exceeds twenty-four (24) hours, Licensee shall be required to notify Trustees of the cause and time of expected resumption of operation of the System.

11.7. **Trustees Temporary System Shutdown Allowance.** During the Term, Trustees shall be entitled to shut down the System in order to perform maintenance, repairs and renovations to the University. Licensee will work in good faith with Trustee to minimize the impact of such shutdowns on campus operations to the extent practical in Trustees' sole reasonable judgment. .

In the event such shutdown due to Trustees' maintenance, repairs and renovations exceeds fifty (50) hours during a Contract Year, or exceeds eight-hundred (800) hours during the Term, Trustees shall pay Licensee an In Lieu Peak Demand Reduction Payment for the Deemed Peak Demand Reduction for the duration of the period in excess of the fifty (50) hours during a Contract Year.

11.8. **Permanent Shutdown of the Site.** If during the Term, through no fault of Licensee and for reasons other than a Force Majeure Event, the System is permanently shut down due to Trustees' renovation, destruction or closure of the Site, the following provisions shall apply:

11.8.1. **Notification.** Trustees shall notify Licensee as soon as possible but in no event less than one hundred and twenty (120) calendar days prior to the planned permanent Site shutdown that will result in the shutdown of the System. Trustees shall provide written notice to Licensee indicating whether Trustees desire to relocate the System.

11.8.2. **Relocation.** Trustees and Licensee agree to negotiate in good faith to find an alternative location where Licensee can relocate the System and from which Licensee can provide Electricity to Trustees in conformance with this Agreement. If the Parties can agree on such new location and if the Parties agree that such new location has sufficient solar insolation to meet its EEP, then this Agreement shall be amended to substitute the alternative location as the Licensed Area and Trustees shall pay reasonable costs associated with relocation of the System. Trustees will be obligated to pay an In Lieu of Electricity Payment for all Deemed Generated Energy during the period of relocation.

11.8.3. **No Adequate Alternative Site.** If Trustees and Licensee cannot locate an alternative site that meets the requirements of Subsection 11.8.2 but can mutually agree upon an alternative location which is inferior to the Licensed Area for purposes of solar installation, then Trustees and Licensee shall in good faith attempt to negotiate an adjustment in the Price to compensate for the alternative location such that Licensee receives payments comparable to those which it would have received from the System at the original Licensed Area. If the Parties mutually agree to such change in Price, then the Parties shall amend all relevant terms in this Agreement and Licensee shall proceed to relocate the System (or as much of System as practical) to the new location. If the Parties agree to such relocation, Trustees shall pay for the reasonable costs for Licensee to relocate the System. Trustees shall reimburse Licensee for the period of temporary System shutdown prior to relocation under the options specified in Section 11.7.

- 11.8.4. **Termination due to Permanent Shutdown of the Site.** If, within seventy-five (75) calendar days prior to date that Trustees will commence the permanent Site shutdown for reasons set forth in this section, Trustees and Licensee have not agreed upon an alternative location for the System, Licensee shall remove the System pursuant to Section 13.1 of this Agreement, and Trustees shall pay Licensee a Termination Fee pursuant to Section 16.1 of this Agreement and neither Party shall have any further obligation to the other Party.
- 11.9. **Trustees System Repair Costs.** If Trustees damage the System as a result of Trustees' operations, maintenance, repairs or renovations, and for reasons other than in connection with a Force Majeure Event, Trustees shall reimburse Licensee reasonable costs to repair the damage to the System. If, in Trustees' sole opinion, Trustees deem the costs to repair the System are unreasonable, then Trustees may elect to terminate the Agreement, in which case Licensee shall remove the System in accordance with Section 13.1 and Trustees shall pay Licensee the Termination Fee in accordance with Section 16.1.
- 11.10. **Damage Covered by Insurance.** Subject to the provisions in Section 16.5 (Early Termination Due to Force Majeure Event) and any Trustees Consent and Estoppel Certificate if during the Term the System is wholly or partially destroyed or damaged by an event covered by insurance or required to be covered by insurance under this Agreement, the Licensee shall use the proceeds of such insurance to restore the System to its original capacity. If Licensee determines that it is not economically feasible to restore the System after such loss event, Licensee shall give Trustees written notice of such determination as soon as practical. In that case and subject to the terms of any Trustees Consent and Estoppel Certificate, the Agreement shall be terminated and the insurance proceeds shall be paid in the following order of interest:
- 11.10.1. First, to pay for the reasonable costs to remove the damaged System and restore the Licensed Area and Site to their original condition as of the Effective Date save for normal wear and tear. If the insurance proceeds are insufficient, or there are no insurance proceeds as provided in this Agreement to cover the costs to restore the Licensed Area and Site, Licensee shall be responsible to remove the System and restore the Licensed Area and Site at Licensee's sole cost.
- 11.10.2. Second, to make a payment to Licensee in the amount equal to the Termination Fee as of the date immediately preceding the casualty event minus the amount paid to remove the System pursuant to Subsection 11.10.1.
- 11.11. **Condemnation.** In the event that the whole or any portion of the Site or the Licensed Area is acquired or condemned by any authority or sold in lieu thereof, Trustees agree to notify Licensee immediately of such condemnation or sale. The Parties agree that the terms set forth in Section 10.3 of this Agreement shall apply as if the condemnation or sale were the same as an overshadowing or shading event, and the Parties agree to follow the procedures set forth in Sections 10.3.1 through 10.3.2 of this Agreement. The entire award in any such condemnation proceeding or sale shall be and remain the property of Trustees, and Licensee hereby fully waives and relinquishes any right to seek an award or participate in the condemnation proceeding.
- 11.12. **No Conflict with the Agreement.** Licensee warrants that all other contracts and agreements (including warranties and guarantees) related to the System or Licensees' business of designing, building, operating, maintaining and financing the System shall contain no terms or provisions that conflict with Licensee's performance obligations pursuant to this Agreement. Upon Trustees' written request as provided in Section 19.8, Licensee shall provide Trustees with copies of all such agreements and Licensee shall notify Trustees in writing and provide copies of all significant amendments to such agreements within thirty (30) days after any such amendment.

END OF ARTICLE

## 12. SYSTEM FINANCING AND ASSIGNMENT

### 12.1. Assignment and Change of Control.

12.1.1. Assignment. Except as otherwise provided in this Article 12, the rights, duties and obligations of Licensee under this Agreement shall not be assignable by the Licensee in whole or in part without the written consent of Trustees and upon such reasonable terms and conditions that Trustees may require. Trustees consent to one assignment shall not be deemed consent to any subsequent assignment. Licensee shall pay Trustees three thousand dollars (\$3,000) upon the second assignment of Licensee's interest and each subsequent assignment, and Licensee warrants that such payment shall be made a contractual requirement in perpetuity in all agreements assigning the rights, duties and obligations of Licensee under this Agreement in which Licensee is relieved of its duties and obligations hereunder. Except with respect to assignments set forth in Section 12.1.1.2 and 12.1.1.3, no such assignment shall relieve Licensee of its obligations under this Agreement unless Trustees have agreed otherwise in writing. With respect to assignments set forth in Section 12.1.1.2 and 12.1.1.3, Licensee's assignee shall assume all the obligations of Licensee under this Agreement and the Licensee shall be relieved of its duties and obligations hereunder. The following transactions or events, including any transfers of Controlling Interests, shall not constitute an assignment that is subject to Trustees' prior written approval:

12.1.1.1. to a Lender pursuant to a financing as set forth in Section 12.3 of this Agreement,

12.1.1.2. to an Affiliate or a limited liability company of which Licensee is a member;

12.1.1.3. sale, transfer, assignment or disposal of the direct or indirect equity interests in the Licensee to Yieldco; or

12.1.1.4. to a Tax Equity Investor in connection with a Tax Equity Financing.

12.1.2. Change of Control. Except for assignments or transfers pursuant to Section 12.1.1.1, 12.1.1.2, 12.1.1.3 and 12.1.1.4 and ignoring transfers of publicly traded securities, no Controlling Interest in Licensee may be sold, transferred or assigned (whether through a single transaction or a series of transactions over time) without Trustee's prior written approval, not to be unreasonably withheld, conditioned or delayed.

12.2. **Trustees Approval.** Licensee acknowledges that Trustees are relying upon the unique expertise and capability of Licensee. Any assignment of this Agreement (except those exclusions set forth in Sections 12.1.1.1 through 12.1.1.4) shall be subject to Trustees' written approval, which approval shall not be unreasonably withheld. Licensee shall provide Trustees with thirty (30) calendar day's written notice of each proposed assignment that requires Trustees' approval. Licensee must include in such notice supporting documentation sufficient to demonstrate to the reasonable satisfaction of Trustees that such proposed assignee has both the financial capacity and the technical and managerial ability to perform the duties and obligations required under this Agreement. For purposes of assessing the proposed assignee's financial capacity, a review of audited financial statements or other financial documentation shall be made by the Trustees to ensure prospective assignee possessed sufficient financial resources and satisfactory investment grade credit ratings as measured by Fitch BBB, Moody's Baa, and Standard & Poor's BBB. For purposes of demonstrating the proposed assignee's technical and managerial ability, documentation showing the entity meets the applicable prequalification requirements specified in the Request for Proposals associated with Trustees' selection of Licensee shall be sufficient. If Trustees determine in their sole reasonable judgment that those standards are satisfied, Trustees shall approve such proposed assignment. In the event Trustees determine in their sole reasonable judgment that the proposed assignee fails to meet

the standards for demonstrating the financial capacity and the technical ability to perform the duties and obligations required under this Agreement, Trustees shall promptly give Licensee written notice of Trustees' determination and Licensee shall be prohibited from making such assignment. Trustees shall notify Licensee within thirty (30) calendar days after Trustees' receipt of Licensee's notice of a proposed assignment as to whether Trustees approve the proposed assignment.

**12.3. Collateral Assignment.** Trustees acknowledge 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 under the financing documents will be secured by, among other collateral, a pledge or collateral assignment of Licensee's rights under this Agreement and a first security right in the System. Licensee may assign its interest in the System, including Licensee's rights under this Agreement, as security for loans or financing of the System including a sale-leaseback of the System (the "System Lease") with a System Lessor. Trustees' consent to the initial assignment, including a sale and System Lease, is for the purpose of financing the System. Trustees will work in good faith with Licensee and Lender to agree upon the documentation that may be required in connection with the financing.

**12.4. The Trustees Consent and Estoppel Certificate.** Trustees shall, upon not less than thirty (30) calendar days' prior written request by Licensee or Licensee's Lender, execute, acknowledge and deliver to Licensee or to Licensee's Lender a statement in writing, substantially in the form of the document provided in Rider G, "Trustees Consent and Estoppel Certificate," with such amendments as may be reasonably requested by Lender. If the Trustees Consent and Estoppel Certificate is not applicable to the Lender's financing structure, then Trustees, the Lender and Licensee shall in good faith work to agree upon a consent and estoppel. The consent and estoppel must be in a form and substance agreed to by Trustees, the Lender and Licensee.

**12.5. Licensee's Default Under Financing Agreements.** The provisions of this Section 12.5 apply subject to any modifications to this section included in the terms of any consent and estoppel entered into pursuant to Section 12.4. Licensee agrees to require any Lender to notify Trustees in writing of any default of Licensee under any agreement with the Lender regarding the System. If the Lender notifies Trustees that an event of default under the System Lease or other financing agreement has occurred and that the Lender has elected to exercise its rights and remedies there under or under any of the related security documents, then, upon the exercise of such rights and remedies, the Lender or any other qualified purchaser of, or successor to, the interests in a judicial or non-judicial foreclosure sale shall be substituted for the Licensee under this Agreement, provided that the conditions in this section are satisfied. In that event, Trustees will continue to perform their obligations under this Agreement in favor of the Substitute Licensee provided that such Substitute Licensee expressly acknowledges in writing that (i) it is assuming all rights, duties, and obligations of Licensee under this Agreement and (ii) it agrees to cure all of Licensee's defaults under this Agreement existing at the time such Substitute Licensee assumes the rights, duties and obligations of the Licensee; and provided further that the Lender has included in such notice supporting documentation sufficient to demonstrate to the reasonable satisfaction of Trustees that such proposed Substitute Licensee or designee has both the financial capacity and the technical ability to perform the duties and obligations required under this Agreement per the standards described in Section 12.2. If Trustees determine in their sole reasonable judgment that those standards are satisfied, Trustees shall approve such proposed Substitute Licensee or designee for the remaining Term and on the same terms and conditions contained in this Agreement.

In the event Trustees determine in their sole reasonable judgment that the proposed Substitute Licensee or designee has failed to satisfy the requirements (i) and (ii) in the preceding paragraph, Trustees shall promptly give the Lender written notice of Trustees' determination and the Lender and Licensee shall be prohibited from making such assignment.

END OF ARTICLE

### 13. REMOVAL OF SYSTEM

- 13.1. **System Removal.** Licensee shall, at its sole cost, during the summer period between the end of the spring semester and the start of the fall semester as per the Academic Calendar posted on the University official website after the expiration or any earlier termination of this Agreement, remove the System from the Licensed Area and Site, return the Licensed Area and Site to its pre-installation condition except for ordinary wear and tear and peaceably and quietly leave, surrender and yield the Licensed Area to Trustees; provided that, if the expiration or any earlier termination occurs less than sixty (60) days prior to end of the then-applicable spring semester, then Licensee's obligation to remove the System shall be during the summer period in the following calendar year. In no case shall Licensee's removal of the System damage the Licensed Area or Site. Notwithstanding the foregoing, Trustees may, within their sole discretion, grant Licensee access to the Licensed Area and the Site, as contemplated and for the purposes specified in this section, prior to the end of the then-applicable spring semester, provided that such access shall not interfere with Trustees' normal operation and use of the Site. Trustees may also, within their sole discretion, extend the time allowable for Licensee to vacate the Licensed Area and remove the System upon written request by Licensee within the otherwise applicable time period for removal. Upon completion of Licensee's removal of the System and completion of any necessary repairs, Trustees shall inspect the Site and Licensed Area to determine that the Site and Licensed Area were left in accordance with this section. If Trustees determine that Licensee has not removed the System or repaired damage in an adequate or timely manner in accordance with this section, Trustees shall have the right to draw on any and all security as specified in Section 13.2. During such removal time period for purposes of Licensee being able to meet the removal and restoration requirements provided by this section, Trustees shall grant to Licensee, any Affiliate of Licensee, and any other entity designated thereby by Licensee that is involved or intends to be involved in meeting the removal and restoration requirements required by this section, an assignable, non-exclusive easement or license on, under, over and across the University premises, for access to and from, and ingress to and egress from, the Licensed Area and Site. Among other things, such access easement or license shall contain all of the rights and privileges for access, ingress, egress and roads as are set forth in this Agreement.
- 13.2. **Security for System Removal.** Twelve (12) months prior to the expiration of the Term, Licensee shall provide Trustees with an estimate of the cost to remove the System and restore the Site and Licensed Area in accordance with the Section 13.1. Licensee and Trustees shall then meet and confer within thirty (30) calendar days after such estimate is provided to resolve any concerns regarding such removal and the amount of the estimated cost, and a revised estimate taking those concerns into account shall then constitute the final restoration cost estimate. Licensee shall then either provide a performance bond covering such final restoration cost estimate or establish a cash escrow account with an acceptable financial institution subject to approval of Trustees of the escrow instructions for accessing the funds into which a portion of payments under the Agreement necessary to equal the estimate of the cost to remove the System and restore the Site and Licensed Area in accordance with the Section 13.1 during the remainder of the Term shall be deposited by Trustees for amounts otherwise due to Licensee for Electricity delivered to Trustees until the escrow reaches the final restoration cost estimate. The escrow account shall serve as the security for the restoration of the Site, and such funds shall be released to Licensee when the Site and Licensed Area restoration are accepted by Trustees. In event that Licensee fails to fulfill its obligations under Section 13.1, Trustees shall have the right to all the funds in the escrow account for purposes of removing the System and restoring the Licensed Area and Site. Interest on the escrow account shall be retained in the escrow account for the benefit of whichever Party is entitled to the funds in the escrow account.
- 13.3. **End of Term.** Trustees shall have an option to purchase the System and any Alterations, materials, spares, tools, supplies, and equipment or any portions thereof at the end of the Term of this Agreement.

Trustees shall, within one hundred and eighty (180) calendar days before the expiration of the Term, advise Licensee as to whether it shall enter negotiations with Licensee to exercise Trustees' option to purchase the System and/or other components listed in the first sentence of this section. The purchase price shall be the fair market value of the System as determined by an independent third party appraiser mutually selected by the Parties. If either Party does not agree with the purchase price as determined by the independent third party appraiser by the scheduled expiration date of this Agreement, then the purchase option shall expire and Licensee shall fulfill its obligations under Section 13.1.

END OF ARTICLE

#### **14. [THIS ARTICLE INTENTIONALLY LEFT BLANK]**

END OF ARTICLE

#### **15. DEFAULT.**

15.1. **Events of Default.** A default includes any of the following:

15.1.1. the failure by a Party to make any payment required under this Agreement by the Due Date and if not cured by payment within fifteen (15) Business Days after receiving notice from the other Party that payment is past due

15.1.2. Any representation or warranty made by a Party to this Agreement proves to have been false or misleading in any material respect when made or ceases to remain true in all material respects during the Term of this Agreement, if not cured within ten (10) Business Days after written notice from the other Party; or

15.1.3. The failure by a Party to perform any obligation set forth in this Agreement (other than the events that are otherwise specifically covered as a separate event of default), and such failure is not cured within thirty (30) calendar days or other such period as specified in this Agreement after receipt of written notice of default from the non-defaulting Party; or in the event of a default which cannot be cured within such thirty (30) calendar day period, if the defaulting Party has not commenced and diligently prosecuted such cure within thirty (30) calendar days of written notice and thereafter and diligently prosecuted to cure such default within sixty (60) calendar days after receipt of written notice of default from the non-defaulting party.

15.1.4. A Party makes an assignment or any general arrangement for the benefit of creditors; files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it and such petition is not withdrawn or dismissed within twenty (20) Business Days after such filing; otherwise becomes bankrupt or insolvent (however evidenced); or is unable to pay its debts as they fall due.

15.2. **Notice of Default.** The non-defaulting Party shall provide the defaulting Party written notice of any alleged default hereunder, and such notice shall describe the alleged default. Provided that Licensee has notified Trustees in writing of any Lender and such Lender's name and address, a notice of default shall only be effective if and when the non-defaulting Party also gives such Lender a copy of such notice.

15.3. **Remedies for Default.** Either Party may terminate this Agreement if the other Party is in default of this Agreement and such default is not cured within the periods specified in Section 15.1. Except as expressly stated otherwise in this Agreement, the rights and remedies granted to the Parties pursuant to this

Agreement shall be the sole and exclusive remedies for a failure of a Party to perform its obligations hereunder.

**15.3.1. Trustees Remedies.** If Licensee's default continues uncured following notice of default as required by this Agreement, Trustees may at their sole discretion resort to any or all of the following remedies:

**15.3.1.1. Trustees Termination of Agreement.** Trustees, along with all other rights and remedies they may have, shall have the right to immediately terminate this Agreement in writing. Upon Trustees' written notice of termination, all of Licensee's rights in the Site and Licensed Area shall terminate except that Licensee shall have all rights in the Site and Licensed Area required for Licensee to fulfill its obligations pursuant to Section 13.1 and 13.2. Termination shall not relieve Licensee from the obligation to pay any sum then due to Trustees or from any claim for damages previously accrued or then accruing against Licensee. Upon any termination of this Agreement under this Subsection 15.3.1.1, Licensee shall execute such documents as Trustees may request to memorialize the termination and to release Trustees and the Site and Licensed Area from the terms and conditions of this Agreement.

**15.3.1.2. Recovery of Damages.** Trustees shall be entitled to damages equal to the amount necessary to compensate Trustees for all the detriment proximately caused by Licensee's failure to perform Licensee's obligations under this Agreement including any detriment which in the ordinary course of events would be likely to result from Licensee's failure.

**15.3.1.3. System Removal.** Promptly after notice of termination and subject to Sections 13.1 and 13.2, Licensee shall fulfill its obligations in accordance with Section 13.1 hereof.

**15.3.1.4. No Obligation to Pay Termination Fee.** Trustees shall have no obligation to pay Licensee a Termination Fee.

**15.3.1.5. Trustees Self-Help.** In the event of default by Licensee, Trustees may withhold payments due to Licensee for Electricity for the purpose of recovering costs or fees for Licensee's performance obligations, or that would otherwise be due to Trustees under the terms of this Agreement.

**15.4. Lender's Rights.** Subject to any modifications to this section included in the terms of any consent and estoppel entered into pursuant to Section 12.4, Trustees shall not take any action to terminate this Agreement because of any default or breach by Licensee if any Lender, within thirty (30) calendar days after service of written notice that Trustees (while not yet electing its remedies) believes it may terminate this Agreement for such default, gives Trustees written notice that Lender will:

**15.4.1.** Cure such default if the default can be cured by the payment or expenditure of money required to be paid under this Agreement.

**15.4.2.** In the case of a default that cannot be cured unless and until the Lender has obtained possession, diligently pursue actions to obtain possession of the System (including possession by receiver) and to cure such default; provided, however, that Lender shall not be required to continue such foreclosure proceedings if Licensee has in the meanwhile cured such default.

**15.4.3.** If such default is not curable under the foregoing Sections 15.4.1 and 15.4.2, the Lender shall institute and complete judicial or non-judicial foreclosure proceedings, or otherwise acquire Licensee's interest hereunder with due diligence, and keep and perform all of the covenants and conditions of

this Agreement, including those requiring the payment or expenditure of money by Licensee, until such time as the Lender shall have acquired Licensee's interest in the System and this Agreement.

15.4.4. The Lender shall have the right, but not the obligation, at any time prior to termination of this Agreement to pay any amounts due hereunder, to effect any insurance, to pay any taxes and assessments, to make any repairs, improvements or to do any other act required of Licensee hereunder to prevent termination of this Agreement. All payments so made and all things so done and performed by any Lender shall be as effective to prevent a termination of this Agreement as the same would have been if made, done and performed by Licensee instead of the Lender.

If any Lender is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Licensee or by an automatic stay thereunder from commencing or prosecuting foreclosure or any unlawful detainer action, the time specified in Section 15.4 for terminating this Agreement shall be extended for the period of such prohibition; provided that the Lender shall have fully cured any default of Licensee which it is obligated to cure under this Agreement. In the event that the Lender fails or refuses to comply with the conditions of this subsection, Trustees shall then and thereupon be released from the covenant of forbearance contained in this subsection.

15.4.5. Upon the Lender's acquisition or possession of the System by foreclosure or by transfer or assignment pursuant to or in lieu of foreclosure, Trustees shall enter into a new agreement with the Lender or Lender's nominee provided that in Trustees' sole reasonable judgment, the Lender or Lender's nominee, as the case may be, has satisfied all of the conditions and requirements applicable to the Lender or Lender's nominee under Section 12.5 of this Agreement. The new agreement shall be for the remainder of the Term hereof and shall be on the same terms and conditions contained in this Agreement.

If in Trustees' sole reasonable judgment, the Lender's nominee does not satisfy one or more of the requirements in Section 12.5, Trustees shall give the Lender written notice of such determination by Trustees which notice shall describe the deficiencies. The Lender shall have sixty (60) calendar days after the receipt of such notice from Trustees to cure the deficiencies noted by Trustees. In the event the Lender does not comply with the provisions of this subsection within such sixty (60) calendar day period, Trustees may terminate this Agreement without further obligation to Licensee or the Lender.

15.5. **Licensee's Remedies.** If any default by Trustees shall continue uncured following notice of default as required by this Agreement, Licensee's sole remedies are the following:

15.5.1. **Licensee's Termination of Agreement.** Except as specifically provided otherwise in this Agreement, if Trustees default under this Agreement, Licensee shall have the right to immediately terminate this Agreement. In that event, termination under this subsection shall not relieve Trustees from the obligation to pay any sum then due to the Licensee or from any claim for damages previously accrued or then accruing against Trustees. Upon any termination of this Agreement under Section 15.5, Trustees shall execute such documents as Licensee may request to memorialize the termination and to release Licensee from the terms and conditions of this Agreement.

15.5.2. **Termination Fee.** If Licensee elects to terminate the Agreement due to Trustees' default, Trustees shall, within thirty (30) days of the termination pay Licensee any Termination Fee due for the Contract Year in which the default that gave rise to the Termination occurred Licensee shall fulfill its obligation under Section 13.1 of this Agreement.

END OF ARTICLE

**16. EARLY TERMINATION**

16.1. **Termination Fee.** If a Termination Fee is due from Trustees to Licensee under this Agreement, Trustees shall pay to Licensee a Termination Fee corresponding to the applicable Contract Year in which the early termination occurs as set forth in the following table. Upon termination of this Agreement and subject to Section 13.2, Licensee shall remove the System at its cost and restore the Site to its original condition (less normal wear and tear) pursuant to Section 13.1 of this Agreement. Trustees shall pay Licensee the Termination Fee within thirty (30) calendar days of the early termination of this Agreement.

Contract Year	Termination Fee
1	\$X
2	\$X
3	\$X
4	\$X
5	\$X
6	\$X
7	\$X
8	\$X
9	\$X
10	\$X

16.2. **Trustees Early Termination Rights.** After the sixth (6th) Contract Year, Trustees may terminate this Agreement for any reason, upon sixty (60) calendar days’ written notice to Licensee with a copy to any Lender whose name and contact information has been provided by Licensee to Trustees. In the event that Trustees terminate this Agreement pursuant to this section, neither Party shall be in default solely as a result of Trustees’ election to terminate hereunder, and Licensee shall fulfill its obligations under Section 13.1 and Trustees shall within thirty (30) calendar days after the early termination of this Agreement pay Licensee the Termination Fee in accordance with Section 16.1.

16.3. **Trustees Purchase Option Prior to Expiration Date.** Trustees may elect to purchase the System on either the sixth (6th) anniversary of the Commercial Operation Date, the tenth (10th) anniversary of the Commercial Operation Date, or at the fifteenth (15th) anniversary of the Commercial Operation Date, provided that no Trustees’ Default shall have occurred and be continuing beyond any applicable period of cure. If Trustees elect to so purchase the System, the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of “Fair Market Value” set forth in Section 16.3.1), or the then-current Termination Fee as set forth in Section 16.1. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Trustees shall provide written notice to Licensee of Trustees’ exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the higher of the Fair Market Value or Termination Fee and all other amounts then owing by Trustees to Licensee, the Parties will execute all documents necessary to cause title to the System to pass to Trustees as-is, where-is; provided, however, that Licensee shall remove any encumbrances placed on the System by Licensee at Trustees’ expense.

16.3.1. The “Fair Market Value” of the System shall be the value determined by the mutual agreement of Trustees and Licensee within ten (10) days after receipt by Licensee of Trustees’ notice of Trustees’ election to purchase the System. If Trustees and Licensee cannot mutually agree to a Fair Market Value, then the Parties shall jointly select a nationally recognized independent appraiser with whom the parties have discussed methods and assumptions, with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by Trustees. To the extent transferable, the remaining period, if any, on all warranties for the System will be transferred from Licensee to Trustees at Trustees’ sole expense. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be jointly selected by the appraiser firm proposed by Trustees and the appraiser firm proposed by the Licensee.

**16.4. Licensee Early Termination Rights.** Licensee may terminate this Agreement at any time on thirty (30) calendar days’ written notice to Trustees, if, prior to the Licensee’s commencement of construction of the System, Licensee determines, in its sole discretion, that the System cannot be built as planned or that its construction and operation would not be economically viable for the Licensee. Notwithstanding anything in this Agreement to the contrary, Licensee’s prior inspection of the Site, including as provided in Sections 3.2 (No Warranties) and 8.10 (Licensee’s Access and Inspection), shall in no way limit Licensee’s right to terminate this Agreement pursuant to this Section 16.4. In the event that Licensee terminates this Agreement pursuant to this section, neither Party shall be in default solely as a result of Licensee’s election to terminate hereunder, Licensee shall fulfill its obligations under Section 13.1 (System Removal) Trustees shall not pay a Termination Fee, and Trustees shall not refund any Transaction Fee already received.

**16.5. Early Termination Due to Force Majeure Event.** If a Force Majeure Event occurs, the affected Party shall promptly provide written notice to the other Party describing the nature of the event; the length of time it is expected to continue; and efforts (planned or under way) to overcome the effects of the event. The Parties shall cooperate in good faith to overcome the effects of the Force Majeure Event. The obligations of each Party shall be suspended for the continuance of any inability to perform caused by a Force Majeure Event, but for no longer period. If a Force Majeure Event prevents a Party from performing its obligations under this Agreement and such event continues for more than 365 days, either Party may terminate this Agreement and neither Party shall be in default.

**16.6. Capacity Reduction.** If a Force Majeure Event occurs that reduces the EEP of the System and Licensee determines the System cannot, within the period allowed in Section 16.4 (Licensee Early Termination Rights), be restored to a capacity sufficient to satisfy its obligations under this Agreement, Licensee shall give Trustees written notice of such determination as soon as possible. If Licensee demonstrates to Trustees’ reasonable satisfaction that the System can, within the period provided in Section 16.4 of this Agreement, be repaired and restored such that the System can deliver at least fifty percent (50%) of the applicable EEP for the remaining Term, then Licensee may elect to prosecute such repairs as necessary to deliver at least 50% of the applicable EEP for the remaining Term. Licensee must notify Trustees of such election in writing, which notice must specify the procedures and dates for the planned repairs. If Licensee so notifies Trustees of such election, the Parties agree to amend the provisions in the Agreement relating to or derived directly from EEP and the Termination Fee to reflect the capacity of the System that remains operable after Licensee’s repairs pursuant to this section. No other terms or conditions in the Agreement shall be changed and the Term shall not be extended.

END OF ARTICLE

## 17. INDEMNIFICATION

17.1. **Licensee Indemnity** provisions can be found in Rider B-1 ESSLSA General Conditions section 36.07.

END OF ARTICLE

## 18. INSURANCE

18.1. **Licensee's Insurance.** Licensee shall not commence work until it has obtained all the insurance required in this Agreement, and such insurance has been approved by Trustees.

18.2. **Policies, Coverage and Amounts.** Licensee shall obtain and maintain for the term of the Contract the following insurance policies and coverage as specified in this Article 18. The insurance furnished by the Licensee under this Agreement shall provide coverage in amounts not less than the following:

18.3. **Comprehensive or Commercial Form General Liability Insurance.** On an occurrence basis, covering work done or to be done by or on behalf of the Licensee and providing insurance for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to this Agreement.

Limits of Liability

- \$4,000,000.00 General Aggregate
- \$2,000,000.00 Each Occurrence—combined single limit for bodily injury and property damage.

18.4. **Business Automobile Liability Insurance.** On an occurrence basis, covering owned, scheduled, hired, and non-owned automobiles used by or on behalf of the Licensee and providing insurance for bodily injury, property damage, and contractual liability. Such insurance shall include coverage for uninsured and underinsured motorists with limits per California law requirements. Limits of Liability:

- \$1,000,000.00 Each Accident—combined single limit for bodily injury and property damage.

18.5. **Workers' Compensation.** As required by law, including Employers Liability limits of \$1,000,000.00.

18.6. **Umbrella or Excess Liability Insurance.** Licensee may provide umbrella or excess liability insurance on an "occurrence" basis pursuant to an excess liability policy with limits of \$5,000,000.00 per occurrence and which follows an event otherwise covered by the commercial general liability policy, the employer's liability policy, and the automobile liability policy upon exhaustion of the limits set forth in these policies. Alternatively, Licensee may provide umbrella insurance on a "claims made" basis pursuant to a policy with limits of \$10,000,000.00, in which case Licensee agrees to the following conditions in return for Trustee's acceptance of Licensee's "claims-made" policy: (1) the Retroactive Date of the policy must coincide with, or precede, the Licensee's start of work (including subsequent policies purchased as renewals or replacements); (2) Licensee will maintain similar insurance for at least three (3) years following completion of the work and/or services contemplated by this Agreement; (3) if the policy is terminated for any reason, Licensee agrees to purchase an extended reporting period endorsement (tail coverage) of at least three (3) years to report claims arising from work that is being performed, or in the alternative, purchase "prior acts" coverage from the successor insurer with a Retroactive Date that precedes the date on which work and/or services were first provided by Licensee to Trustees; and (4) the policy allows for reporting of circumstances or incidents (incident reporting) that might give rise to future claims.

- 18.7. **All Risks Property Insurance.** Licensee will also provide and maintain “all-risk” property insurance covering the System during all periods (construction and operation) when Licensee or its assignee or its Lender is the beneficial owner of the System.
- 18.8. **Environmental Impairment Liability Insurance.** The Licensee also may be required to obtain or caused to be maintained the following policies and coverage:
- 18.8.1. Environmental Impairment Liability Insurance may be required should the Work involve hazardous materials, such as asbestos, lead, fuel storage tanks, and PCBs naming Licensee or its assignee as the loss payee and name Trustees as additional insured.
- 18.9. **Certificates.** Upon each anniversary of Coverage, the Licensee shall submit certificates of insurance and endorsements to the policies of insurance required by the Contract to Trustees as evidence of the insurance coverage. Renewal certificates and endorsements shall be timely filed by the Licensee for all coverage until the end of the Term.
- 18.10. **Insurance Provisions.** Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in Article 17. The insurance policies shall contain, or be endorsed to contain, the following provisions:
- 18.10.1. For the general and automobile liability policies, the State of California, Trustees of the California State University, the University, and their officers, employees, and volunteers shall be covered as additional insureds. Contractor shall use Insurance Service Office (ISO) Form Numbers CG 20 10 (ongoing operations) and CG 20 37 (completed operations), or equivalent forms, for general liability policies (blanket endorsement acceptable). For automobile liability policies, Contractor shall use ISO Form Number CA 20 48 (Designated Insured) or a similar blanket Additional Insured endorsement.
- 18.10.2. For any claims related to Licensee’s work or the System, the Licensee’s insurance coverage shall be the primary insurance with respect to the State of California, Trustees of the California State University, the University, and their officers, employees, and volunteers. Contractor shall provide a Waiver of Subrogation endorsement form in favor of the State of California, Trustees of the California State University, the University, and their officers, employees, and volunteers. Trustees agree that blanket policy endorsements are acceptable.
- 18.10.3. The Licensee shall upon receipt of any notice of cancellation or any notice of non-renewal of any insurance required by this Article, provide written notice of any such insurance cancellation or non-renewal to Trustees within thirty (30) days of receipt of any such notice.
- 18.10.4. The State of California, Trustees of the California State University, the University, and their officers, employees, and volunteers shall be in excess of the Licensee’s insurance and shall not contribute with it.
- 18.10.5. The State of California, Trustees of the California State University, the University, and their officers, employees, and volunteers shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.
- 18.11. **Acceptability of Insurers.** Insurers shall be authorized by the State of California to transact insurance and shall hold a current A.M. Best’s rating of no less than A-VII or equivalent carrier otherwise acceptable to Trustees.
- 18.12. **Earthquake.** Licensee is hereby notified that Trustees do not have coverage for earthquake damage. Trustees assume no responsibility or liability whatsoever for any damage to Licensee’s System or to any

property or persons under the control or direction of Licensee including any Lender and any subcontractors or agents of Licensee or Lender that may result from an earthquake.

#### 18.13. **Miscellaneous Insurance Provisions.**

18.13.1. Any deductible under any policy of insurance required in this Article 18 shall be Licensee's liability.

18.13.2. Acceptance of certificates of insurance by Trustees shall not limit the Licensee's liability under the Agreement nor does it create any waiver of subrogation by Trustees.

In the event the Licensee does not comply with these insurance requirements, Trustees may, at their option, provide insurance coverage to protect Trustees. The Licensee shall pay the cost of the insurance and, if prompt payment is not received by the insurance carrier from the Licensee, Trustees may pay for the insurance from Agreement sums otherwise due the Licensee.

18.13.3. The Licensee's obligations to obtain and maintain all required insurance are non-delegable duties under this Agreement.

END OF ARTICLE

### 19. **OTHER TERMS AND CONDITIONS**

19.1. **Approval.** This Agreement is of no force or effect until approved by The California State University, Office of the Chancellor and Office of General Counsel on behalf of Trustees with the consent of the University and signed by both Licensee and Trustees. Licensee may not commence performance until such approval has been obtained.

19.2. **Amendment.** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the Licensee and the California State University, Office of the Chancellor on behalf of Trustees with the consent of the University. No oral understanding or agreement not incorporated in the Agreement is binding on any of the Parties.

19.3. **Licensee Name Change.** An amendment is required to change the Licensee's name as listed on this Agreement. Upon receipt of legal documentation of the name change Trustees will process the amendment. Payment of invoices presented with a new name will not be paid prior to execution by both Parties of said amendment.

19.4. **Notification of Change in Parties.** Licensee shall notify Trustees in writing within five (5) calendar days after any change in name, ownership, or control of the Licensee.

19.5. **Survival of Obligations.** Notwithstanding expiration or earlier termination of this Agreement, the Parties shall continue to be bound by the provisions of this Agreement which by their nature survive such expiration or termination. Such provisions shall include, but are not be limited to, Section 3.13 ("No Infringement"), Article 4 ("Sale of Electricity"), Section 8.5 ("Liquidated Damages for Delay"), Section 9.9 ("Hazardous Material"), Article 13 ("Removal of System"), Article 15 ("Default"), and Article 17 ("Indemnification").

19.6. **Appropriation of Funds.** To the extent that Article XVI, Section 1 of the California Constitution is applicable to this Agreement, Trustees shall not be obligated to continued performance under this Agreement in the event the California State Legislature fails to make a budgetary appropriation to the general fund of California State University. It is mutually agreed that if the State Legislature does not make an appropriation, Trustees may terminate this Agreement.

19.6.1. In the event Trustees close the University, Trustees may elect to terminate this Agreement without any further cost or liability to Trustees. Trustees shall make such election in writing to Licensee not later than thirty (30) days following their decision to close the University.

19.6.2. In the event Trustees close the University, but not all Universities, the Parties may mutually agree to relocate the System to another University. In the event the Parties agree to relocate the System to another Trustees University, Trustees shall reimburse Licensee for reasonable costs to relocate the System.

19.6.3. Trustees will include in their budget request each year during the Term monies sufficient to fund the estimated cost for Electricity hereunder.

19.6.4. For the avoidance of doubt, the Parties agree that a delayed appropriation and any insufficient appropriation shall not be deemed to be a non-appropriation for purposes of this Section 19.6.

19.7. **Taxes.** Licensee, its successor and assigns, shall pay all lawful taxes, including possessory interest or other tax, assessments or charges that may at any time be levied upon any interest in System or this Agreement. Trustees are exempt from municipal energy and utility users' taxes and franchise fees on Electricity purchased from Licensee as a private on-site solar energy provider. To the extent any such taxes are levied on Trustees with respect to purchases of Electricity from Licensee, Trustees shall pay all such taxes.

19.8. **Audit.** Licensee agrees that Trustees, the Bureau of State Audits, and their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement, at such entity's sole cost. Trustees agrees that Licensee 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 and Trustees agree to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated by Trustees. Licensee agrees to 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 agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896). Trustees will provide information related to this Agreement as reasonably requested by Licensee upon Licensee's reasonable request, but in no event later than ten (10) Business Days after such request, including information regarding (1) the Local Electric Utility and/or Utility service account number(s) associated with the Site where the System installed; (2) twelve (12) months of billing data for the meter behind which the System will be installed; (3) a general description of Trustees operations at the Site; and (4) the energy or capacity reductions related to the System and consumption by Trustees at the Site.

19.9. **Notices.** Except as otherwise expressly provided in this Agreement, all notices and other communications to be given or made under this Agreement shall be in writing, shall be addressed as specified below, and shall either be personally delivered, by registered or certified mail, electronic mail with positive return receipt, or by facsimile during a Business Day. Initially, the respective Parties' addresses and fax numbers are:

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Licensee:

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Address:

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City: State: Zip:

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Attn:

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Title:

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Phone: Facsimile:

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Email:

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Lender:

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Address:

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City: State: Zip:

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Attn:

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Title:

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Phone: Facsimile:

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Email:

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CSU Office of the Chancellor:

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Address:

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City: State: Zip:

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Attn:

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Title:

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Phone: Facsimile:

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Email:

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Cal Poly Humboldt

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Address:

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City: State: Zip:

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Attn:

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Title:

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Phone:

Facsimile:

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Email:

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19.10. **Compliance with NLRB Orders.** In submitting a bid or signing this Agreement Licensee swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Licensee within the immediately preceding two-year period because of Licensee's failure to comply with an order of a federal court which orders the Licensee to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 10296.

19.11. **Non-Discrimination.** During the performance of this Agreement, Licensee and its subcontractors 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, nor deny family care leave. Licensee and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Licensee and subcontractors 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 there under (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. Licensee and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement. Licensee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

19.12. **Americans with Disabilities Act.** Licensee assures Trustees that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

19.13. **Domestic Partners.** Licensee certifies that it is in compliance with Public Contract Code Section 10295.3 with regard to benefits for domestic partners.

19.14. **Drug-Free Workplace.** Licensee will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

19.14.1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

19.14.2. Establish a Drug-Free Awareness Program to inform employees about: The dangers of drug abuse in the workplace; the person's or organization's policy of maintaining a drug-free workplace; any available counseling, rehabilitation and employee assistance programs; and, penalties that may be imposed upon employees for drug abuse violations. Every employee who works on the proposed System will: Receive a copy of the company's drug-free workplace policy statement; and, agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

19.14.3. Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Licensee may be ineligible for award of any

future State agreements if Trustees determine that any of the following have occurred: the Licensee has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Government Code 8350 et seq.)

**19.15. Corporate Qualifications to do Business in California.**

19.15.1. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

19.15.2. "Doing business" is defined in Revenue and Tax Code Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

19.15.3. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

**19.16. Conflict of Interest.** Licensee needs to be aware of the following provisions regarding current or former state employees. If Licensee has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

19.16.1. Current State Employees (Public Contract Code 10410):

19.16.1.1. No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

19.16.1.2. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

19.16.2. Former State Employees (PCC 10411):

19.16.2.1. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

19.16.2.2. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

19.16.3. If Licensee violates any provisions of above paragraphs, such action by Licensee shall render this Agreement void. (PCC 10420)

19.16.4. Members of boards and commissions are exempt from the conflict of interest provisions of this Section 19.16 if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430 (e))

**19.17. Labor Code/Workers Compensation.** Licensee needs to be aware of the provisions which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in

accordance with the provisions, and Licensee affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700).

19.18. **Expatriate Corporations.** Licensee hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

19.19. **Employment of Undocumented Aliens.** Licensee verifies and warrants that, in entering into this Agreement with Trustees, Licensee has not, in the preceding five years, been convicted of violating a state or federal law regarding the employment of undocumented aliens.

19.20. **Sweatfree Code of Conduct.**

19.20.1. All contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108.

19.20.2. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under Subsection 19.21.1.

19.21. **Child Support Compliance Act.** For any Agreement in excess of \$100,000, the Licensee acknowledges in accordance with Public Contract Code 7110, that:

19.21.1. The Licensee recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and

19.21.2. The Licensee, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

19.22. **Union Activities.** For all contracts, except fixed price contracts of \$50,000 or less, the Licensee acknowledges the applicability of Government Code Section 16645 through Section 16649 to this Agreement and agrees to the following:

19.22.1. Licensee will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.

19.22.2. No state funds received under this Agreement will be used to assist, promote or deter union organizing.

19.22.3. Licensee will not, for any business conducted under this Agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.

19.22.4. If Licensee incurs costs, or makes expenditures to assist, promote or deter union organizing, Licensee will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Licensee shall provide those records to the Attorney General upon request.

19.23. **Integration of Riders.** This Agreement, together with the Riders incorporated hereunder, constitute the entire Agreement and understanding between Trustees and Licensee with respect to the subject matter hereof and supersede all prior agreements relating to the subject matter hereof, which are of no further force or effect.

19.23.1. These Riders referred to herein are integral parts hereof and thereof and are made a part of this Agreement by reference. In the event of any conflict between the Agreement and any Exhibit, or between any Exhibits, the conflict shall be resolved in the following order of priority:

19.23.1.1. The Agreement shall prevail over all riders except Rider B;

19.24. **Limited Effect of Waiver.** The failure of either Trustees or Licensee to enforce any of the provisions of this Agreement, or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on that Party's part of any such provision, in any other instance or of any other provision in any instance.

19.25. **Relationship of Parties.** The relationship between Trustees and Licensee shall not be that of partners, agents or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes.

19.26. **Standby Capability.** Licensee will to the extent possible (physically, operationally and subject to any Distributed Energy Resources Market Product Agreements) provide standby capability from System in cooperation with other upgrades made by Trustees for Standby power and disaster recovery.

19.27. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Trustees will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.

19.28. **Dispute Resolution.** If a dispute arises between the Parties regarding this Agreement, the Parties shall attempt in good faith to expeditiously negotiate a resolution to the dispute for a period of not less than forty-five (45) days from notification of the dispute. The Parties agree:

19.28.1. All disputes prior to COD shall be follow the procedures in Article 39.01 of Rider B; and

19.28.2. All disputes after COD shall attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner; and

19.28.3. Conduct negotiations through a representative or representatives of each Party who is authorized to act for the Party and resolve the dispute without resorting to higher authority.

19.28.4. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantity of Electricity delivered at the Electrical Interconnection Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of three (3) years from the rendition thereof, and thereafter any objection shall be deemed waived.

19.29. **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.

19.30. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.

19.31. **Successors and Assigns.** This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns. Assignment of rights under this Agreement shall comply with Article 12 of this Agreement.

19.32. **Licensee Press Releases.** To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Licensee shall submit to Trustees for approval any press releases regarding Licensee's use of solar or renewable energy in connection with this Agreement and shall not submit for publication any such releases without the written approval of Trustees, which approval shall not be unreasonably withheld or delayed. Trustees and Licensee may by mutual written agreement set forth specific statements that may be used by Licensee in any press releases that address solar or renewable energy provided pursuant to this Agreement.

19.33. **Confidentiality of Data.** Any financial, statistical, personal, technical and other data and information relating to the either Party which are designated confidential by a disclosing party (the "Disclosing Party") and made available to the other party (the "Receiving Party") in order to carry out the Agreement shall be protected by the Receiving Party from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the Disclosing Party; provided that Licensee shall be permitted to provide confidential information to Local Electric Utilities (PG&E, SCE, SDG&E, SMUD, TID) the CPUC as may be reasonably required. The Disclosing Party shall identify all confidential data and information and shall provide Receiving Party in writing with the Disclosing Party's procedural requirements for protection of such data and information. A Receiving Party shall be permitted to disclose information designated as confidential by the Disclosing Party as follows:

19.33.1. to the Party's affiliates, the Party's or its affiliates' respective employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential;

19.33.2. in order to comply with any applicable Law (including, in the case of Trustees, the California Public Records Act, Government Code sections 6250 et seq., and the Bagley-Keene Act, Government Code sections 11120 et seq.), regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the Disclosing Party; or

19.33.3. in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the FERC.

If Trustees are required to disclose confidential information pursuant to Sections 19.33.2, it shall, to the extent permitted by Applicable Law, provide notice to Licensee. Trustees shall not be: (i) prohibited from complying with Applicable Law or (ii) liable to Licensee for monetary or other damages incurred in connection with the disclosure of the Confidential Information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

19.34. **Independent Status.** The Licensee, and the agents and employees of Licensee, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of Trustees. While Licensee may (or may not) be required under the terms of this Agreement to carry worker's compensation Insurance, Licensee is not entitled to unemployment or workers' compensation benefits from Trustees.

19.35. **Endorsement.** Nothing contained in this Agreement shall be construed as conferring on any Party hereto, any right to use the other Party's name as an endorsement of product/service or to advertise, promote or otherwise market any product or service without the prior written consent of the other Party. Furthermore, nothing in this Agreement shall be construed as endorsement of any commercial product or service by Trustees or Trustees' officers or employees.

19.36. **Covenant Against Gratuities.** The Licensee warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Licensee, or any agent or representative of the Licensee, to any officer or employee of Trustees with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement. For breach or violation of this warranty, Trustees shall have the right to terminate the Agreement, either in whole or in part, and any loss or damage sustained by Trustees in procuring on the open market any items which the Licensee agreed to supply shall be borne and paid for by the Licensee. The rights and remedies of Trustees provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement.

19.37. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Licensee avers that it will not enter into any arrangement with any third party which might abridge any rights of Trustees under this Agreement.

19.38. **Authority.** The signatories hereto represent and warrant that they are duly authorized on behalf of their respective entities to enter into and consummate this Agreement.

END OF ARTICLE

**IN WITNESS WHEREOF** and in confirmation of their consent to the terms and conditions contained in this Agreement and all riders hereto and intending to be legally bound hereby, Trustees and Licensee execute this Agreement as of the Effective Date by signing below.

“TRUSTEES”

California State POLYTECHNIC University HUMBOLDT

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

Name:

Title:

Date:

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

Name:

Title:

Date:

Trustees Office of General Counsel

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

Name:

Title:

Date:

“LICENSEE”

By:

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

Name:

Title:

Date: