

**SOLAR ROOF-TOP LICENSE AGREEMENT KEY TERMS**  
**(Non-Recordable)**

**FOR INSTALLATION AND OPERATION OF A SOLAR ROOF-TOP ELECTRIC  
GENERATING SYSTEM AT THE NATIONAL RENEWABLE ENERGY  
LABORATORY, RESEARCH SUPPORT FACILITY**

**United States of America  
Department of Energy  
Office of Energy Efficiency and Renewable Energy  
Golden Field Office**

**THIS LICENSE AGREEMENT** (License) is made as of the \_\_\_\_ day of August, 2009, by the UNITED STATES OF AMERICA, Department of Energy, Office of Energy Efficiency and Renewable Energy, Golden Field Office, hereinafter referred to as LICENSOR, and SunEdison Origination1, LLC, hereinafter referred to as LICENSEE.

**WHEREAS**, the LICENSOR owns certain buildings located at the National Renewable Energy Laboratory (NREL) and in particular, [\_\_\_\_\_] the address of which is [\_\_\_\_\_], hereinafter referred to as the "Premises" and described in Exhibit A, attached hereto and made a part hereof;

**WHEREAS**, the LICENSOR desires to receive solar electricity generated by a roof-top system installed on the Research Support Facility at NREL for the purpose of meeting federally-mandated renewable energy goals, as set forth in Section 203 and other sections of the Energy Policy Act of 2005, P.L. 109-58 and Executive Order 13423, "Strengthening Federal Environmental, Energy, and Transportation Management;"

**WHEREAS**, the LICENSOR desires to participate in Public Service Company of Colorado, d/b/a Xcel Energy, Inc.'s (Xcel) Solar Reward Program by providing a location for customer-sited solar electricity generation in order to further the purposes set forth in Colorado state law by the Renewable Energy Standard, C.R.S. 40-2-124;

**WHEREAS**, the LICENSOR contracts for the management and operation of NREL, which contract currently is held by the Alliance for Sustainable Energy, LLC, in its capacity as LICENSOR's Management and Operating Contractor (hereafter LICENSOR's M&O Contractor);

**WHEREAS**, the LICENSEE desires to use the Premises for the purpose of siting and operating a rooftop-mounted solar electric generating system to generate solar electricity for on-site use by NREL, and the LICENSOR agrees to grant a License to the LICENSEE to use the Premises described in Exhibit A for this purpose;

**WHEREAS**, the LICENSEE, in its capacity as project developer and system operator, is subject to all federal, state, and local environment, safety, and health requirements applicable to non-federal entities as defined by federal, state, and local law and will conduct system installation, operation and maintenance work in accordance with LICENSOR's M&O Contractor's environment, safety, and health performance standards;

**WHEREAS**, the LICENSOR, along with its M&O contractor, is responsible for stewardship of real-property holdings and assets on the Premises;

**WHEREAS**, the LICENSOR in its capacity as site owner and LICENSOR's M&O Contractor in its capacity as manager and operator of NREL are obligated to ensure that the Premises are managed to minimize the impact on its neighbors;

**WHEREAS**, the LICENSEE, in its capacity as project developer may enter into collateral agreements with third parties for installation, operation, and maintenance of a rooftop-mounted solar electric generating system;

**WHEREAS**, the LICENSOR, LICENSOR's M&O Contractor, and the LICENSEE desire to establish protocols to coordinate project activities and assure that access to the premises for the installation, operation, and maintenance of a rooftop-mounted solar electric generating system conforms to LICENSOR's standards;

**NOW, THEREFORE** in consideration of the mutual agreements and covenants hereinafter contained, the LICENSOR hereby grants to the LICENSEE and to its successors and assigns, a License to enter upon the Premises to install, construct, maintain, alter, repair, replace, reconstruct, operate and remove a rooftop-mounted solar electric generating system, hereinafter referred to as the "System," on the Premises.

All parties to this License expressly acknowledge that the License granted herein is effective only to the extent of the rights held by the LICENSOR in the Premises upon which the System is to be constructed and binding only as to the parties to this License.

The LICENSOR has determined that the granting of this License will not be adverse to the interests of the UNITED STATES and is compatible with the public interest; subject to the following covenants, conditions and restrictions:

## **GENERAL PROVISIONS**

### **1. Term and Termination**

A. This License shall be effective upon execution by LICENSOR and shall continue for a period of [ \_\_\_\_\_ ] from the effective date of this License. The term of this License may

be extended beyond [ \_\_\_\_\_ ], with the mutual consent of LICENSOR and LICENSEE expressed in writing.

B. Subject to the notice requirement in Paragraph C, this License may be terminated, in whole or in part, for any of the following reasons:

1. LICENSEE's noncompliance with the terms of the License;
2. Expiration of one (1) year of non-use of the License for the purpose or purposes granted;
3. Abandonment of the License by LICENSEE;
4. At any time by mutual consent of the LICENSOR and LICENSEE, expressed in writing;

C. In the event the LICENSOR initiates termination for noncompliance, the LICENSOR shall provide the LICENSEE, or its successors or assigns, written notice of its intent to terminate the License. LICENSEE shall have thirty (30) days, or such additional time as provided by the LICENSOR, after receipt of the notice of intent to terminate, to come into compliance with the terms hereof, to the reasonable satisfaction of the LICENSOR. If LICENSEE fails to come into compliance within the cure period, this License shall terminate at the expiration of the period provided for cure. In the event of a termination for any reason other than noncompliance, the LICENSOR shall provide a written termination notice to the LICENSEE or its successors or assigns and the termination shall be effective as of the date of such notice.

## **2. System Removal and Site Remediation**

A. Upon expiration or termination of the License, LICENSEE shall have a reasonable time, not to exceed sixty (60) days or such other time as provided by the LICENSOR, after the date of expiration or termination to remove all of its structures or improvements located on the Premises. If the LICENSEE fails to do so within the allotted time, the LICENSOR may do so at LICENSEE's expense.

B. Alternatively, LICENSOR may elect to exercise its purchase option and to purchase the System from LICENSEE in which event LICENSEE shall be relieved of its obligation to remove the System.

C. At its sole risk, cost and expense, LICENSEE shall, within 180 days of expiration or termination of this License, return the rooftop to its original condition, except for ordinary wear and tear not associated with the installation, operation, or removal of the System, or as reasonably specified by the LICENSOR. LICENSEE shall leave the Premises in neat and clean order. Any damage to the rooftop system or building structure resulting from installation, operation, or removal of the System shall be immediately repaired or replaced by LICENSEE, at LICENSEE's expense, to the reasonable satisfaction of LICENSOR.

### **3. Construction, Installation, Use, Operation and Maintenance**

A. All work incident to the design, construction, installation, use, maintenance and operation of the System on the Premises shall be performed by the LICENSEE without cost or expense to the LICENSOR and to the reasonable satisfaction of the LICENSOR. LICENSEE shall submit final plans and specifications of proposed construction to the LICENSOR and LICENSOR's M&O Contractor and obtain LICENSOR's approval prior to commencement of construction, which approval shall not be unreasonably withheld or delayed.

B. All work connected with the construction, installation, use, maintenance and operation of the System by the LICENSEE as contemplated by this License shall be performed in accordance with applicable federal, state, and local laws and regulations governing worker health and safety and in accordance with LICENSOR's M&O Contractor's environment, safety, and health performance standards.

C. The System will be owned and operated by LICENSEE at its sole cost and expense. Any repair or maintenance of the System will be completed by or for LICENSEE, at its sole cost and expense, for LICENSEE'S benefit as legal and beneficial owner or lessee of the System.

D. LICENSEE shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature (Liens) on or with respect to the Premises or any interest therein. LICENSEE also shall pay promptly before a fine or penalty may attach to the System or Premises any taxes, charges or fees of whatever type of any relevant Governmental Authority, relating to any work performed hereunder by LICENSEE or its agents and subcontractors on the System or Premises. If LICENSEE breaches its obligations under this Section, it shall (i) immediately notify LICENSOR in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to LICENSOR, and (iii) defend and indemnify LICENSOR against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

E. LICENSOR 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 LICENSOR breaches its obligations under this Section, it shall immediately notify LICENSEE in writing and shall promptly cause such Lien to be discharged and released of record without cost to LICENSEE.

F. LICENSOR, LICENSOR's M&O Contractor and LICENSEE each shall notify the others within twenty-four (24) hours following their discovery of any material malfunction in the operation of the System or of their discovery of an interruption or planned interruption in the supply of Energy Services. LICENSOR, LICENSOR's M&O Contractor and LICENSEE shall each designate personnel and establish procedures to provide notice of such conditions requiring LICENSEE's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. LICENSOR, LICENSOR's M&O Contractor and

LICENSEE each shall notify the others upon the discovery of an emergency condition in the System. If an emergency condition exists, LICENSEE shall immediately dispatch the appropriate personnel to perform the necessary repairs or corrective action in an expeditious and safe manner.

#### **4. Interconnection**

A. The LICENSEE shall be responsible for executing an Interconnection Agreement with utility pursuant to utility's requirements for non-utility generators

B. The LICENSOR shall have remote access to System performance data through a website provided by the LICENSEE. Use of data is for the exclusive purpose of administering this License, including verification and validation of production data. LICENSOR agrees that the data may be used for additional purposes in collaboration with LICENSEE. System performance data shall be real time, twenty-four hours a day/seven days a week ("24/7") access and include at a minimum solar irradiance, DC power, AC real power, AC current, AC voltage, ambient air temperature, PV Module Temperature and AC energy.

C. The LICENSEE shall be responsible for all costs related to interconnection between the distribution system and the System, except as provided in 4.A. of this section, including compliance with all applicable metering requirements. The System shall not affect the current loads on the existing transformer.

D. The LICENSOR and/or LICENSOR's M&O Contractor shall provide advance notice to LICENSEE of any planned utility outages necessary for normal operations, facility modifications, testing, and maintenance at the site.

#### **5. Solar Access License**

A. LICENSOR hereby grants to the LICENSEE a non-recordable solar access License providing unobstructed access to the sun from the Premises. This non-recordable solar access License is subject to all existing buildings, structures, flora, and experiments which shall not be considered as interfering with LICENSEE'S access to the sun. LICENSOR agrees to use commercially reasonable efforts to prevent other buildings, structures or flora within its control from overshadowing or otherwise blocking access of the sunlight to the System and subsequent reduction in System electricity production.

B. LICENSEE, with LICENSOR's reasonable assistance, is responsible for obtaining solar access rights from any other landowners adjacent to the Premises.

#### **6. Licensee's Indemnity**

LICENSEE agrees that it shall indemnify and hold harmless LICENSOR and LICENSOR's M&O Contractor (collectively, the "LICENSOR's Indemnified Parties") from and against any and all Losses incurred by the LICENSOR's Indemnified Parties to the extent arising from or out of the following:

(a) any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of LICENSEE'S negligence or willful misconduct, or

(b) any infringement of patents or the improper use of other proprietary rights by LICENSEE or its employees or representatives that may occur in connection with the performance of the Installation Work, Energy Services, System Operations and the ownership and use of the System.

LICENSEE shall not, however, be required to reimburse or indemnify any LICENSOR Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any LICENSOR Indemnified Party. The indemnification procedures for this provision are specified in section 15.2 Indemnification Procedure, of the SPSA.

## **7. Licensee Performance**

The failure of the LICENSOR to insist in any one or more instances upon strict performance of any of the terms, covenants or conditions of this License shall not be construed as a waiver or relinquishment of the LICENSOR's right to the future performance of any such terms, covenants, or conditions and the LICENSEE's obligations with respect to such future performance shall continue in full force and effect.

## **8. Licensor Reservations**

A right is reserved by the LICENSOR, its agents, employees, or representatives (including LICENSOR's M&O Contractor) to enter upon the Premises for the purpose of inspection and when otherwise deemed necessary for the protection of the interests of the LICENSOR, provided that the LICENSOR will provide LICENSEE with forty-eight (48) hours notice, except in event of emergency, in which case LICENSOR will give such notice as is practicable under the circumstances.

## **9. Inspection and Protection of Property**

A. The LICENSOR and LICENSEE have inspected and know the condition of the Premises, and it is understood that the property is granted without any representation or warranty by the LICENSOR whatsoever, other than representations made in section 16, Warranty of Authority and Representations of this License, and without obligation on the part of the LICENSOR to make any alterations, repairs, or additions.

B. All portions of the Premises shall at all times be maintained in good order and condition by and at the expense of the LICENSEE. Any property of the LICENSOR damaged or destroyed by the LICENSEE incident to the use and occupation of the Premises shall be promptly repaired or replaced by the LICENSEE to the reasonable satisfaction of the LICENSOR or in lieu of such repair or replacement the LICENSEE shall, if so required by the LICENSOR, pay to the LICENSOR money in an amount sufficient to compensate for the

loss sustained by the LICENSOR by reason of damages to or destruction of the LICENSOR's property.

C. LICENSOR and/or LICENSOR’s M&O Contractor shall have the right to issue warnings and bar from the Premises violators of construction, operation, environment, safety, and health, and security performance standards.

D. LICENSOR, LICENSOR’s M&O Contractor and LICENSEE will collaborate to conduct routine inspections of the System installation, operation, and maintenance activities to ensure construction, operation, environment, safety, and health performance standards are met and risks to employees, the public, and the environment are minimized. LICENSOR, LICENSOR’s M&O Contractor and LICENSEE shall each promptly provide the others all inspection reports and any findings and corrective actions.

**10. Covenant Against Contingent Fees**

The LICENSEE warrants that no Person or selling agency has been employed or retained to solicit or secure this License upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the LICENSEE for the purpose of securing business. For breach or violation of this warranty the LICENSOR shall have the right to annul this License without liability or, in its discretion, to require the LICENSEE to pay the full amount of such commission, percentage, brokerage, or contingent fee.

**11. Insurance**

All insurance required of the LICENSEE on the Premises shall be for the protection of the LICENSOR and the LICENSEE against their respective risks and liabilities in connection with the Premises. Insurance shall be in such form, for such periods of time, and with such insurers as the LICENSOR may reasonably require or approve. A certificate of insurance or a certified copy of each policy of insurance shall be furnished to the LICENSOR prior to use of the Premises. The LICENSEE agrees that not less than thirty (30) days prior to the expiration of any insurance required by this License, it will furnish to LICENSOR a certificate of insurance or a certified copy of each renewal policy to cover the same risks. During the term of this License, the LICENSEE shall ensure that its activities, as well as the activities of all contractors at whatever tier performing any construction, operation, maintenance, repair, or replacement on the Premises shall, prior to initiating such work, provide proof of and maintain the following insurance in such companies and on such terms satisfactory to the LICENSOR.

TYPE OF INSURANCE	MINIMUM COVERAGE		
	Per Person	Per Accident	Property
1. Comprehensive General Liability	\$3,000,000	\$3,000,000	\$1,000,000
2. Automobile Liability	\$500,000	\$500,000	\$100,000
3. Workman’s Compensation	-----As set by Statute in Colorado-----		
4. Employer’s Liability (sometimes referred to as “1(b)” coverage”)	\$500,000	\$500,000	

All policies for insurance shall provide by appropriate language that the United States of America and the LICENSOR's M&O Contractor for NREL (currently the Alliance for Sustainable Energy, LLC) are additional insureds; and that all rights of the insured for contribution from other insurers of the United States Government and the M&O Contractor for NREL are waived.

## **12. Transfers and Assignments**

The conditions of this License shall extend to and be binding upon and shall inure to the heirs, representatives, successors, and assigns of the LICENSEE. The LICENSEE shall neither transfer nor assign this License or any property on the Premises, nor sublet the Premises or any part of the property, nor grant any interest, privilege, or License whatsoever in connection with this License without the express written permission of the LICENSOR which permission shall not be unreasonably withheld.

## **13. Force Majeure**

If a force majeure event has occurred which excuses the performance of the Parties to the SPSA, then performance of the LICENSOR's and LICENSEE's obligations specified herein shall also be excused.

## **14. Amendment**

This License may not be amended or superseded except by an agreement in writing executed by the LICENSOR and the LICENSEE. Provided, however, if minor technical adjustments or revisions to the legal descriptions or depictions of the Premises are necessary after the execution of this License and provided the LICENSOR and LICENSEE hereto mutually agree in writing as to such revisions, then revised legal descriptions and depictions may be attached to this License as new exhibits, and in such event formal amendment of this License shall not be necessary.

## **15. Recordation**

This License shall not be recorded.

## **16. Warranty of Authority and Representations**

The signatories warrant that they have full right and authority to enter into this License. LICENSOR represents that there are no existing encumbrances related to the Premises. LICENSOR represents that the Premises are free of Hazardous Materials and further acknowledges its responsibility to mitigate the impacts associated with pre-existing Hazardous Materials.

## **17. Liability for Voiding Any Roof Warranty**



The Department of Energy's \_\_\_\_\_ Facility at the National Renewable Energy Laboratory was constructed in \_\_\_\_\_. The roofing system on the \_\_\_\_\_ is covered by a Limited Warranty for a period of ten years, beginning on \_\_\_\_\_. \_\_\_\_\_ is the company which holds the Roofing System Limited Warranty. Contact information for \_\_\_\_\_ is as follows:

In the event the activities of LICENSEE, including its employees, contractors or agents, related to installing, constructing, maintaining, altering, repairing, replacing, operating and removing the System on the Premises void or diminish the Roofing System Limited Warranty provided by \_\_\_\_\_ to the building owner, LICENSEE shall provide LICENSOR with the same Roofing System Limited Warranty as provided by \_\_\_\_\_.

**18. Governing Law**

This License, its validity, construction and all rights hereunder shall to the extent possible, be governed by Federal law and regulation. In the event of a dispute, LICENSOR and LICENSEE agree that before filing any action in court, they shall put forth a reasonable good faith effort and attempt to resolve any dispute arising out of or relating to the License through negotiation between representatives of the LICENSOR and LICENSEE who have authority to settle the controversy. LICENSOR and LICENSEE agree to venue in the appropriate Federal Court.

**19. Availability of Funds**

Implementation and performance under this License by the LICENSOR is subject to the requirements of the Anti-Deficiency Act, 31 USC Section 1512, et seq. The performance by LICENSOR of any of the terms, covenants, or conditions in this License shall be subject to the availability of funds appropriated and allotted by the United States Congress for operation of the National Renewable Energy Laboratory. Nothing shall be construed as implying that Congress will, at a later date, appropriate sufficient funds.

**SITE ACCESS PROVISIONS**

**20. Licensor's Delegation of Certain Project Oversight and Management Responsibilities.**

LICENSOR delegates responsibility for certain project oversight and management activities to LICENSOR's M&O Contractor, currently the Alliance for Sustainable Energy, LLC. LICENSEE acknowledges and accepts LICENSOR's delegation to LICENSOR's M&O Contractor, acting on behalf of LICENSOR. Such delegated oversight and management responsibilities include, but are not limited to, oversight of project activities; environment,

safety and health; security; and access control. The details of LICENSOR's M&O Contractor's performance standards for these oversight and management responsibilities shall be established through the collaborative development and implementation of applicable project oversight and management documents. The LICENSOR's M&O Contractor's responsibilities shall be within the scope of the delegation and subject to review and approval by LICENSOR's Contracting Officer.

## **21. Project Planning and Execution**

A. LICENSEE shall collaborate with LICENSOR and LICENSOR's M&O Contractor to define and execute a comprehensive and efficient project management and execution plan. The plan will address the construction, installation, commissioning, interconnection, readiness verification, operations, and maintenance phases including a risk-graded approach to address hazards, hazard mitigation and inspections.

B. LICENSOR's M&O Contractor shall make available to LICENSEE all relevant technical schematics, drawings, and specifications necessary for interconnection of the System to the existing electrical system.

C. LICENSEE shall take all reasonable steps necessary to reduce the impact on LICENSOR's neighbors and LICENSOR's M&O Contractor's on-going operations during construction and operation.

D. LICENSOR must approve the final project management and execution plan prior to the start of construction and LICENSOR must approve the final interconnection of the system to LICENSOR's electrical infrastructure, approval not to be unreasonably withheld.

E. LICENSEE is responsible for all work performed on the Premises and the delivery, storage, security, and disposition of all materials delivered to the Premises until completion of the installation and during maintenance and operation of the System in accordance with LICENSOR's M&O Contractor's environment, safety, and health and security and access control performance standards.

## **23. Environment, Safety and Health Management**

A. LICENSEE shall assure LICENSOR and LICENSOR's M&O Contractor that its designated on-site environment, safety and health (ES&H) manager is knowledgeable in applicable federal, state and local ES&H requirements. LICENSEE shall assure LICENSOR and LICENSOR's M&O Contractor that its contractors and employees are trained in, familiar with, and comply with LICENSOR's ES&H policies, procedures and standards.

B. LICENSEE shall notify LICENSOR and LICENSOR's M&O Contractor within two (2) hours of any employee injuries/illnesses at the Premises requiring medical attention in excess of first aid, or incidents at the Premises that result in damage to equipment or facilities, or threats or impacts to the environment.

C. LICENSEE shall suspend operations at the Premises and immediately notify LICENSOR and LICENSOR's M&O Contractor if unanticipated conditions are encountered that present a possible ES&H exposure (e.g., imminent danger, suspected hazardous materials, accidental release of hazardous material, possible archaeological sites). LICENSEE must inform all its workers and contractors that they have stop work authority when these conditions are encountered. A hazard assessment must be completed and appropriate controls identified to mitigate the identified hazard(s) prior to beginning work.

D. LICENSEE shall conduct activities on the Premises within the scope of any environmental assessments and determinations made by LICENSOR pursuant to the National Environmental Policy Act (NEPA). LICENSEE shall not initiate any construction or take any other irreversible actions until LICENSOR issues a NEPA clearance. If changes are anticipated to the scope of activities as described in the applicable NEPA documents and determinations, or if the scope of activities is desired to be expanded, LICENSEE has a continuing notification obligation, and shall notify LICENSOR and LICENSOR's M&O Contractor of any proposed changes. Requirements for additional NEPA documents or determinations shall be determined on a case-by-case basis. LICENSEE shall provide information as requested to support any future NEPA determinations.

E. LICENSEE shall conduct activities on the Premises within the scope of any Fire Protection Practices in accordance with LICENSOR's M&O Contractor's environment, safety, and health performance standards.

F. LICENSEE shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Energy Services, and System Operations that shall comply with all applicable laws pertaining to the health and safety of persons and real and personal property in accordance with LICENSOR's M&O Contractor's performance standards. LICENSEE shall comply with applicable State and local standards for public health and safety, environmental protection and siting, construction, operation and maintenance, if these State and local standards are more stringent than Federal standards for similar projects.

G. LICENSEE shall provide an easily accessible bulletin board or other suitable information center on the Premises, ensuring that employees know its location, and posting the following as a minimum:

1. Emergency telephone numbers.
2. LICENSEE's project management and execution plan or a location where it may be accessed.
3. Any other posting required by law.

## **24. Alterations**

No additions to or alterations of the Premises other than those specifically provided for under the terms of this License shall be made without the prior written consent of the LICENSOR, to be given or withheld in LICENSOR's sole discretion.

## **25. Permits and Responsibilities**

LICENSEE, without expense to LICENSOR, shall be responsible for obtaining any necessary licenses and permits.

## **26. Notices of Violation or Alleged Violations, Fines, and Penalties**

A. LICENSEE shall immediately notify LICENSOR, with a copy to LICENSOR's M&O Contractor, of any notice it may receive regarding Notice of Violations (NOV) or Notice of Alleged Violations (NOAV) issued by federal, state, or local regulators associated with LICENSEE's installation, operation, and maintenance of the System.

B. LICENSEE shall at its own expense immediately correct the conditions that resulted in the NOV/NOAV consistent with the issuing authority's regulations and to the reasonable satisfaction of LICENSOR. LICENSEE shall at its own expense, support and provide assistance to LICENSOR concerning any matter arising under an NOV/NOAV.

C. LICENSEE shall accept all responsibility, including payment, for valid fines and penalties issued by federal, state, or local regulators resulting from the actions of LICENSEE, its agents, representatives, or invitees for acts or failures to act after the effective date of this License.

## **23. Introduction, Management, and Disposal of Fuels, Hazardous or Toxic Materials, and Wastes**

A. LICENSEE shall limit the introduction of fuels and hazardous or toxic materials to that required for daily on-site use. LICENSOR and LICENSOR's M&O Contractor shall be provided with written notification prior to these materials being brought onto the Premises. The notification shall include the materials, quantities, intended use and material safety data sheets. Written approval must be obtained from the LICENSOR prior to these materials being brought onto the Premises. All such materials will be stored in approved containers in compliance with federal, state, and local regulatory requirements. Any spills of hazardous, toxic or petroleum-based materials shall be reported immediately to LICENSOR and LICENSOR's M&O Contractor. LICENSEE is responsible for clean-up, disposal and appropriate remediation actions resulting from any spills, leaks or accidental discharges, resulting from its acts or failure to act. These activities must be coordinated with the LICENSOR and LICENSOR's M&O Contractor.

B. LICENSEE shall minimize all wastes produced and shall remove these wastes from the site promptly at its own expense, in compliance with federal, state, and local regulatory requirements.

## **24. Site Access, Access Control, and Security**

- A. It is expressly understood that LICENSOR and LICENSOR's M&O Contractor may limit or restrict the right of access herein granted in any manner considered necessary for national security emergencies, site emergency, or other emergency situations and in accordance with LICENSOR's M&O Contractor's emergency preparedness, notification, and response performance standards. In the event of such emergencies LICENSOR or LICENSOR's M&O Contractor will notify LICENSEE immediately and will provide LICENSEE access to the Premises as soon as possible as dictated by such emergency and emergency response. At all other times, LICENSOR will ensure LICENSEE's unrestricted access to the site in accordance with LICENSOR's M&O Contractor's security and access control performance standards.
- B. For routine maintenance work and/or inspections, LICENSEE shall provide reasonable notice (24hours) to LICENSOR or LICENSOR's M&O Contractor prior to entering the Premises to perform maintenance, repairs, or periodic inspections. This notice will ensure that access to roof areas containing LICENSEE equipment is available (i.e, no locked access doors) and security staff at the site entrance building have been properly notified.
- C. LICENSOR's M&O Contractor shall ensure the security of the System in accordance with its standard security procedures and operations on the Premises.
- D. LICENSEE shall ensure any system design and operation reduces nuisance to the lowest level achievable within safety and security considerations. Any temporary lighting installed will be properly directed.
- E. LICENSEE shall adhere to access control procedures required by LICENSOR and LICENSOR's M&O Contractor's security and access control performance standards, in accordance with Departmental policies regarding access by U.S. Citizens and Foreign Nationals.

**25. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements**

LICENSEE shall employ reasonable methods to protect from damage existing vegetation, structures, utilities, and improvements:

- 1. At or near the Premises, and
- 2. On adjacent property, including property of a third-party, the locations of which are made known to or should be known by LICENSEE.

**26. Operations and Storage Areas**

- A. LICENSEE shall confine all operations (including storage of materials) on the Premises to areas authorized or approved by LICENSOR and LICENSOR's M&O Contractor, which site shall be reasonably accommodating for staging purposes.

- B. Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by LICENSEE only with the approval of LICENSOR and LICENSOR's M&O Contractor (whose approval shall not be unreasonably withheld) and shall be built with labor and materials furnished by LICENSEE without expense to LICENSOR or LICENSOR's M&O Contractor. The temporary buildings and utilities shall remain the property of LICENSEE and shall be removed by LICENSEE at its expense upon completion of System installation.
- B. LICENSEE shall use only established roadways. When it is necessary to cross curbs or sidewalks, LICENSEE shall protect them from damage. LICENSEE shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

**27. Cleaning Up**

- A. LICENSEE shall at all times keep the Premises, including storage areas, free from accumulations of waste materials. Before completing the Installation Work, LICENSEE shall remove from the Premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of LICENSOR and leave the area in a clean, neat, and orderly condition, satisfactory to the LICENSOR.
- B. During the maintenance and operation of the System, LICENSEE shall keep the Premises and storage areas in a clean, neat, and orderly condition, to the reasonable satisfaction of LICENSOR and LICENSOR's M&O Contractor.

**28. LICENSOR's and LICENSOR's M&O Contractor's Right to Stop Work**

- A. Employees, officials, and agents of LICENSOR and/or LICENSOR's M&O Contractor shall have the right, at any time, to require LICENSEE and its employees, officials, agents, and contractors to stop all, or any part, of the installation, operation and maintenance of the System on the Premises when, in their sole judgment, an imminent hazard to employees, the public, or the environment exists.
- B. Upon verbal direction or receipt of a stop work order, LICENSEE shall immediately comply with its terms. LICENSOR's Contracting Officer will contact LICENSEE to resolve the stop work order.
- C. LICENSEE shall not be entitled to and neither LICENSOR nor LICENSOR's M&O Contractor shall be liable for any damages, losses, or claims of any nature arising from or associated with such stop work order.
- D. LICENSOR and LICENSOR's M&O Contractor will work with LICENSEE to promptly address and mitigate the hazard, and to resume System installation, operation, or maintenance activities.

**29. Nondiscrimination**

In the construction, operation, maintenance, and termination of the System authorized by this License, the LICENSEE shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin. All subcontracts shall include an identical provision.

**32. Miscellaneous**

- A. Incorporation By Reference. Certain provisions of the SPSA are incorporated by reference herein, specifically, Force Majeure, Confidentiality, Limitation of Liability and Indemnification Procedures. For purposes of incorporation by reference, where the terms Provider, Purchaser, and Host are used in the SPSA, Provider shall mean LICENSEE; and Host and Purchaser shall mean LICENSOR. The terms Party and Parties as used in the SPSA shall mean Provider (Licensee), Purchaser (Western) or Host (Licensor) as appropriate under the circumstances.
  
- B. Definitions. Any capitalized terms used herein and not expressly defined herein shall be given the meanings specified in SPSA:
  - 1. **Hazardous Materials** shall mean any substance or chemical which is a "health hazard" or "physical hazard," including: chemicals which are carcinogens, toxic agents, irritants, corrosives, sensitizers; agents which act on the hematopoietic system; agents which damage the lungs, skin, eyes, or mucous membranes; chemicals which are combustible, explosive, flammable, oxidizers, pyrophorics, unstable-reactive or water-reactive; chemicals which in the course of normal handling, use, or storage may produce or release dusts, gases, fumes, vapors, mists or smoke which may have any of the previously mentioned characteristics; and any item or chemical which can cause harm to people, plants, or animals when released by spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment.

Attachments to License

Exhibit A            Description of the Premises

## **Authorized Representatives and Points of Contact**

### **Authorized Representatives**

The LICENSOR's Representative shall be:

The LICENSEE'S Representative shall be:

720.962.7272

LICENSOR, LICENSOR's M&O Contractor and LICENSEE each will assign a single project manager/point-of-contact for the installation, operation, and maintenance of the System to ensure coordinated and efficient communication.

LICENSOR's Federal Project Manager shall be:

LICENSOR's Contracting Officer shall be:



LICENSOR's M&O Contractor's Project Manager shall be:

LICENSEE'S Project Manager shall be:

LICENSOR, LICENSOR's M&O Contractor and LICENSEE shall promptly notify each other with any change to the individuals identified above or their contact information. Such changes shall be effective upon receipt of written notice.

Upon receipt of written notice, such change shall be incorporated into this License and no formal modification shall be required.

**Notices**

No notice, order, clarification, direction, determination, requirement, consent, agreement, or approval under this License shall be of any effect unless provided in writing by certified return receipt mail to the authorized representatives at the address set out above.

IN WITNESS WHEREOF, this License is executed on the day and year first written above by:

**UNITED STATES OF AMERICA, Department of Energy  
LICENSOR**

\_\_\_\_\_  
LICENSOR

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**NOTARY SEAL:**

**LICENSEE**

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LICENSEE

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**NOTARY SEAL:**