

**DRAFT – Unofficial Until Approved**  
**Meeting Minutes 5/4/2012**

The Governing Board of the Tanque Verde Unified School District #13, Pima County, Tucson, Arizona held a Study Session on May 4, 2012 in the Board Room, at the Tanque Verde Unified School District Administrative Office, 2300 N. Tanque Verde Loop Rd., Bldg #1, and Tucson, Arizona 85749. The meeting was called to order at 11:46 a.m.

**1. ROLL CALL**

Board Members present:

Mr. Jeffrey Neff, President (via phone)

Mrs. Claire Place, Clerk

Mr. Steven Auslander, Board Member (absent)

Mr. Peter Livingston, Board Member

Dr. Wayne Peate, Board Member (absent)

Annie Kosky, Student Board Member (absent)

Administrative Staff:

Dr. Doug Price, Superintendent

Mr. Marty O'Shea, Business Manager

**2. APPROVAL OF AGENDA**

**MOTION:** Mr. Livingston made a motion to approve the Agenda. Mr. Neff seconded; the motion carried unanimously.

**3. ACTION ITEM**

**A. Solar Services Agreements – Consideration of approval of Solar Services Agreements Between the District and SOLON Corporation for the provision of approximately 1.15 Megawatts of electric power.**

**MOTION:** Mr. Livingston made a motion to authorize approval of the Administration to enter into four separate Solar Agreements with SOLON Corporation, Inc. for the provision of solar power at each of the four District campuses, aggregating a total of approximately 1.15 Megawatts per year at a rate of 6.1 cents per kilowatt hour, for a term of 25 years, with a degradation rate of 0.5% per year.

It is further resolved that the Administration is authorized to execute the four Solar Service Agreements in the form attached hereto as Exhibit A and to execute such other documents, including a Facility Upgrade Agreement providing \$100,000 in capital improvements and leases authorizing use of portions of the campuses for construction and operation of the solar plants, subject to Administration approval of all exhibits, system location and panel layout. Mr. Neff seconded, Mrs. Place called for a discussion, there wasn't any; the motion carried unanimously.

**4. ADJOURNMENT**

Mr. Livingston made a motion to adjourn. Mr. Neff seconded; the motion carried unanimously. The meeting adjourned at 11:50 a.m.

Respectfully submitted by,  
Judy Bower, Board Secretary

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Jeffrey Neff, Board President

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Peter Livingston, Board Member

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Claire Place, Board Clerk

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***ABSENT***  
Dr. Wayne Peate, Board Member

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***ABSENT***  
Steven Auslander, Board Member

## TANQUE VERDE UNIFIED SCHOOL DISTRICT SOLAR SERVICES AGREEMENT

THIS SOLAR SERVICES AGREEMENT (this "**SSA**" or "**Agreement**") is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2012 (the "**Effective Date**"), by and between SOLON Corporation, an Arizona corporation ("**Provider**") and Tanque Verde Unified School District No. 13, a political subdivision of the State of Arizona ("**Recipient**"). Provider and Recipient are sometimes hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

WHEREAS, concurrently herewith, Recipient and Provider are entering that certain Site Lease Agreement (the "**Lease**") pursuant to which Provider agrees to lease a portion of the Facilities (as defined in the Lease) as more particularly described in Exhibit A attached hereto (the "**Premises**").

WHEREAS, in connection with this Agreement, Provider shall, with Recipient's cooperation, design, construct, install, maintain, finance and operate the System, as more particularly described in Exhibit B hereto.

WHEREAS, Provider desires to provide to Recipient, and Recipient desires to purchase from Provider, all of the Solar Services, during the Initial Term in accordance with the terms and conditions of this SSA.

WHEREAS, Recipient has statutory authority to enter into this agreement pursuant to A.R.S. § 15-213.01.

WHEREAS, Recipient has determined that the total amount it will pay Provider for Provider's Solar Services provided herein and calculated on a per kWh basis will be less than the total amount Recipient would otherwise have had to pay without this Agreement to Recipient's Electric Utility Provider for the Premises calculated on a per kWh basis over the expected life of the system or 25 years, whichever is shorter, after the Commercial Operation Date pursuant to A.R.S. §15-213.01(B).

NOW THEREFORE, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

### ARTICLE I DEFINED TERMS; RULES OF INTERPRETATION

1.1 Defined Terms. Capitalized terms, not otherwise defined in the body of the SSA, shall have the meanings ascribed to them in Exhibit C attached hereto.

1.2 Rules of Interpretation. The Rules of Interpretation contained in Exhibit C attached hereto shall apply to this SSA unless expressly provided otherwise in the body hereof.

ARTICLE II  
TERM

2.1 Term. Subject to Section 11.5, the terms and conditions of this SSA shall be effective and enforceable as of the Effective Date; provided, however, the 25 year initial term of this SSA shall commence on the Commercial Operation Date and shall terminate on the 25th anniversary of the Commercial Operation Date (the "Initial Term"). Following the expiration of the Initial Term the Parties may enter into an extension term upon mutual agreement in writing.

2.2 Conditions Precedent. The obligations of the Provider under this SSA are expressly conditioned upon the satisfaction in full (or written waiver) of all of the following conditions:

(a) Recipient and Provider shall have entered into the Lease;

(b) Recipient shall have entered into an interconnection agreement related to the System with Tucson Electric Power Company (TEP) upon terms and conditions reasonably satisfactory to Provider;

(c) Provider shall have entered into all applicable contracts required for the System to be placed in service;

(d) Provider shall have secured project financing sufficient in Provider's sole discretion, to finance the cost of installation of the System and perform the other Solar Services, and, to the extent required pursuant to the applicable financing documentation, Provider shall have reached written agreement with the financing institution pursuant to which Provider assigns some or all of its rights and obligations hereunder to said financing institution (or its designated corporate affiliate) under this SSA;

(e) It shall have been determined that Provider is not subject to regulation by the ACC as a result of entering into this SSA, or, in Provider's sole discretion, the ACC shall have approved this SSA, including the Solar Services Payment Rate, in form and substance, and shall have sufficiently defined the regulation applicable to Provider as a result of this SSA;

(f) Recipient shall have; (i) entered into an agreement with TEP under the Program, in the form attached at Exhibit H, entitling Provider to a REC Financial Incentive in connection with the System's Energy (the "REC Purchase Agreement") in an amount equal to \$0.125 per kWh delivered and the System's installed generating capacity; and (ii) Recipient shall have assigned all REC Financial Incentives to Provider;

(g) The Provider shall have obtain all necessary permits, licenses and other approvals required by Applicable Law to design and construct the System; and

(h) Each of the Parties shall have obtained the insurance required under the terms of this SSA or the Lease and provided to the other Party proof of such insurance, pursuant to the terms of this Agreement.

If any one of the conditions precedent above is not satisfied by \_\_\_\_\_, 2012, Provider may terminate this Agreement without penalty and without triggering the default provisions of Article 9 or incurring any liability under this Agreement whatsoever. Notwithstanding the foregoing, Provider shall not have any liability to Recipient for a delay in the Commercial Operation Date unless such delay is caused by the negligence, gross negligence, or intentional misconduct of Provider or its agents or subcontractors, in which case Recipient may terminate this Agreement without penalty and without triggering the default provisions of Article 9 or incurring any liability under this Agreement whatsoever.

2.3 Notice of Commercial Operation. Provider shall notify Recipient when the System is capable of Commercial Operation, and shall in such Notice specify to Recipient the Commercial Operation Date. Such notice provided pursuant to this Section 2.3, shall be delivered not less than three (3) Business Days prior to the Commercial Operation Date.

2.4 Removal of System at End of Term. Except as otherwise provided herein, Provider shall remove, within ninety (90) days following the end of the Term, and at Provider's sole cost and expense, the System from the Premises. Provider and its agents, consultants, and representatives shall have access at all reasonable times to the Premises and the System for purposes of such removal. The Provider shall repair any and all damage caused by Provider and its agents in connection with the removal of the System.

2.5 Survival. Effective as of any termination of this SSA, the Parties will no longer be bound by the terms and conditions of this SSA, except (a) to the extent necessary to enforce any rights and obligations of the Parties, including payment obligations, arising under this SSA prior to termination of this SSA, (b) as provided in Section 2.4, and Section 12.4 that the obligations of the Parties under this SSA with respect to indemnification will survive the termination of this SSA and will continue (but only with respect to claims for indemnification based upon events or circumstances occurring or arising on or before the termination of this SSA) for a period of three (3) years following any termination of this SSA.

### ARTICLE III PURCHASE AND SALE; DELIVERY; GOVERNMENTAL CHARGES

3.1 Purchase and Sale of Solar Services. Subject to certain limitations hereunder and the terms and conditions hereunder, Recipient engages Provider to provide the Solar Services to Recipient and Provider agrees to provide the Solar Services to Recipient. Commencing on the Commercial Operation Date and continuing throughout the remainder of the Term, Provider shall make available to Recipient, and Recipient shall take delivery of, at the Delivery Point, all of the Energy Output (100%)

produced by the System. Neither Party shall seek to change any of the rates or terms of this Agreement by making a filing or application with any local, state or federal agency with jurisdiction over such rates or terms or exercise any rights a Party may have, if any, to seek changes to such rates or terms during the Term of this Agreement. Neither Party may claim that this SSA is intended to subject Provider to regulation under the ACC or construe the Provider as a "public service corporation" under Arizona law.

3.2 Price. Recipient shall pay Provider for the Solar Services at the applicable Solar Services Payment Rate as set forth on Exhibit D. While the Solar Services are calculated and billed on the basis of KWh of Energy as set forth in Exhibit D, Recipient acknowledges and agrees that such Solar Services represent a package of services as reflected in the definition of "Solar Services" in Exhibit C. For the sake of clarity, the price per KWh of Energy payment rate herein referred to as the Solar Services Payment Rate has been calculated to, over the term of this SSA, include all the Solar Services performed by Provider under this SSA and does not represent the actual value of the KWh of Energy Output.

3.3 Test Energy. Prior to the Commercial Operation Date, Recipient shall have the right, upon request, to have its representatives present during the testing process. Such representatives shall be subject to the reasonable written rules and procedures as may be established by Provider. Recipient shall pay Provider during the testing phase at a rate equal to the Solar Services Payment Rate that would otherwise be applicable on the Commercial Operation Date.

3.4 Title and Risk of Loss. Title to and risk of loss of the Energy Output will pass from Provider to Recipient at the Delivery Point and Recipient will be deemed to be in exclusive control of the Energy at and from the Delivery Point. Risk of loss related to Energy will transfer from Provider to Recipient at the Delivery Point.

### 3.5 Governmental Charges.

(a) Recipient shall be responsible for and pay all Governmental Charges imposed directly on it or imposed directly on Provider in connection with or relating to the delivery and sale of Solar Services by Provider to Recipient, whether imposed before, upon or after the delivery of Energy Output to Recipient at the Delivery Point.

(b) Both Parties shall use reasonable efforts to administer this SSA and implement its provisions so as to minimize Governmental Charges. Provider may invoice Recipient for the Governmental Charges described in Section 3.5(a).

(c) In the event any of the sales of Energy or Environmental Attributes hereunder are to be exempted from or not subject to one or more Governmental Charges, promptly upon Provider's request therefore, Recipient shall provide Provider with all necessary documentation to evidence such exemption or exclusion.

(d) Outages. Recipient shall be permitted one (1) offline period (each an "Authorized Offline Period") each calendar year during which period Recipient

shall not be obligated to accept or pay for Solar Services; provided, however, that Recipient shall provide Provider not less than ten (10) Business Days prior Notice of any such Authorized Offline Period and shall use commercially reasonable efforts to schedule and coordinate such Authorized Offline Period(s) with Provider so as to minimize the loss of Energy Output. An Authorized Offline Period shall not exceed twenty four (24) hours. If, for reasons other than a Force Majeure or an Authorized Offline Period, Recipient causes, directly or indirectly, the temporary suspension or shutdown of the System or the cessation or reduction in the Energy that Provider would have otherwise delivered to the Delivery Point (an "**Unauthorized Shutdown**") then Recipient shall pay "in lieu" fees to Provider ("**Temporary Shutdown Fees**") equal to the product of (x) the difference between the Expected Monthly Output (reduced on a pro rata hourly basis for the number of hours in any Authorized Offline Period) for the month in which such Unauthorized Shutdown occurred and its actual Energy Output and (y) the applicable Solar Services Payment Rate. The calculation of any Temporary Shutdown Fees shall also include the value of any lost payments or forced refunds associated with the Environmental Attributes, including those related to the REC Financial Incentives or the Program, caused by or attributable to the Unauthorized Shutdown. The Temporary Shutdown Fees shall be made to Provider to offset foregone consideration under this SSA and shall not allow Recipient to reduce future payments under this SSA or entitle Recipient to future Energy Output at a later date. Provider shall provide and justify data that reasonably demonstrates the approximate loss of Energy Output that occurred due to the Unauthorized Shutdown. In the event that Recipient reasonably determines that additional information is necessary to support Provider's calculations, Recipient may submit a Notice to Provider, within thirty (30) days of receipt of Provider's calculations, that specifies what information it believes necessary to confirm the accuracy of such calculations. If Recipient does not deliver such Notice for additional information within such thirty-day period, then Recipient shall be deemed to agree to Provider's calculations, including any Temporary Shutdown Fees associated with the same. If Recipient delivers a Notice to Provider for additional information, then the Parties shall work in good-faith to timely agree to the calculations and the Temporary Shutdown Fees associated with the same. If the Parties cannot come to an agreement on such amounts within thirty (30) days of the delivery of Recipient's notice, then the matter shall be submitted to arbitration pursuant to Article 15.

(e) Notwithstanding anything to the contrary herein, Provider shall be entitled to suspend delivery of Energy to the Premises for the purpose of maintaining and repairing any System and such suspension of service by Provider or UES shall not constitute a breach of this SSA or an Unauthorized Shutdown, provided that Provider shall use commercially reasonable efforts to minimize any interruption in service to the Recipient.

3.6 Guaranteed Energy Savings Contract. The parties hereto agree that at all times they will act in accordance with the provisions of A.R.S. §15-213.01. The Provider guarantees that the total amount Recipient will pay Provider for Provider's Solar Services provided herein on a per kWh basis will be less than the total amount Recipient would otherwise have had to pay without this Agreement to Recipient's

Electric Utility Provider for the Premises, calculated on a per kWh basis over the expected life of the system or 25 years, whichever is shorter, after the Commercial Operation Date. Provider and Recipient hereby agree that when calculating the cost savings under this Agreement, the energy baseline shall be adjusted pursuant to A.R.S. § 15-213.01(F). The calculation of savings performed pursuant to the provisions of this section shall comply with A.R.S. § 15-213.01(J). Provider shall reimburse Recipient for any shortfall of guaranteed energy cost savings on an annual basis. The forgoing notwithstanding, if the provisions of House Bill 2830 creating A.R.S. § 15-213.03, as passed during the second regular session of the State of Arizona's 50<sup>th</sup> Legislature ("HB2830"), creating guaranteed energy production contracts becomes law and if such guaranteed energy production contracts are permitted, through the passage of subsequent legislation, to have a term of twenty-five (25) years, then this Agreement shall be treated as a guaranteed energy production contract and not as a guaranteed energy savings contract as set forth above and the following provisions shall apply. In accordance with the requirements of HB2830, **Exhibit K** includes the Provider's guaranteed energy production of the System as measured on an annual basis over the life of the Agreement and the Provider agrees to reimburse Recipient for any guaranteed energy production shortfall as set forth in HB2830.

#### ARTICLE IV ENVIRONMENTAL ATTRIBUTES

4.1 Title to Environmental Attributes. Notwithstanding the purchase and sale of Solar Services pursuant to Section 3.1, Provider owns all right, title, and interest in and to any and all Environmental Attributes that relate to the Energy Output during the Term; provided, however, it is understood by the parties that the Electric Utility Provider requires Recipient to enter into the REC Purchase Agreement and the Parties agree that for the purpose of facilitating payment of the REC Financial Incentives to Provider for the Environmental Attributes (during the term of the REC Purchase Agreement) that Recipient is hereby expressly authorized by Provider to assign and transfer all applicable Environmental Attributes generated by the System to the Electric Utility Provider consistent with the REC Purchase Agreement. In addition, the Recipient will enter into the REC Purchase Agreement under which Recipient will convey title and ownership to the Environmental Attributes to the Electric Utility Provider for the term of such REC Purchase Agreement in consideration for the REC Financial Incentives and by the terms and conditions of the REC Purchase Agreement Provider shall receive directly any REC Financial Incentive payments paid by the Electric Utility Provider under in the REC Purchase Agreement. In the event that Recipient receives any REC Financial Incentive payments from the Electric Utility Provider, Recipient agrees that it shall distribute such REC Financial Incentive payments to Provider along with proper Notice thereof and in no event shall it take longer than seven (7) Business Days to do so. If the REC Purchase Agreement terminates prior to the termination of this SSA then Provider shall, at its sole discretion, have all rights, title and interest to sell or transfer the Environmental Attributes relating to the System or the Energy Output and to enter into any agreement to so consummate.



ARTICLE V  
CONSTRUCTION AND INSTALLATION OF THE SYSTEM

5.1 Installation. Subject to Section 5.2, Provider will cause the System to be designed, engineered, installed and constructed substantially in accordance with the terms of this Agreement, the Lease and Applicable Law. Recipient shall be given the opportunity to review and approve all construction plans, including the location of all System equipment and the determination of the extent of the use of the roofs of Recipient's buildings for mounting of panels. The parties agree that the presumptive location of all panels is on shade structures located in parking lots or play areas. Recipient's review and approval shall not be unreasonably withheld or delayed. If Recipient fails to approve or reject such construction plans within ten (10) Business Days of receipt, such plans shall be deemed to be approved by Recipient. Provider shall procure all materials and equipment for the installation of the System and maintain the same at the Premises. Subject to the terms of the Lease and to the extent commercially practical, Provider shall perform the installation of the System in a manner that minimizes inconvenience to and interference with Recipient. Notwithstanding the foregoing, in the event that Provider determines in its sole discretion that it is unable to install or interconnect the System at the Premises as contemplated hereunder or under the Lease, it shall be under no obligation to do so, and this Agreement shall terminate and be of no further force and effect upon Notice from Provider to Recipient to that effect. All plans and specifications for construction and installation of the System shall be by design professionals registered in the State of Arizona. Provider shall use contractors and subcontractors appropriately licensed in the State of Arizona to perform its obligations under this Agreement. Provider shall continue to be responsible for the quality of the work performed by its contractors and subcontractors. All contractors and subcontractors shall be subject to Recipient's prior written consent, which may not be unreasonably withheld. Prior to commencement of construction, Provider shall require of all contractors working on the project, and shall provide to Recipient, copies of payment and performance bonds covering the cost of all construction work performed at Recipient's Facilities in accordance with the provisions of A.R.S. §34-222.

5.2 Payment of Contractors and Suppliers. Provider shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Provider under this Agreement and shall keep the Facilities free and clear of any liens related to such charges. Provider shall indemnify Recipient for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Facilities or the Premises in connection with such charges; provided, however, that Provider shall have the right to contest any such lien so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Facilities and the Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Facilities and the Premises.

5.3 Utility Approvals. Provider shall be responsible for and bear all costs associated with applying for and obtaining all permits, licenses and approvals required for the installation, operation, and maintenance of the Systems. Notwithstanding the foregoing, Recipient agrees to assist Provider in obtaining all necessary permits,

licenses and approvals in connection with the installation, operation and maintenance of the Systems, including but not limited to the preparation of applications for interconnection of the Systems with the Electric Utility Provider and applications for the resale of excess power to the Electric Utility Provider. Recipient shall not make any material changes to its electrical equipment at the Premises after the date on which the interconnection application is submitted unless any such changes, individually or in the aggregate, would not adversely affect the approval by the Electric Utility Provider of such interconnection. Should TEP or its representatives or agents, or any of state or local inspector fail to approve the interconnection of the Systems with respect to the Premises or require equipment in addition to the equipment set forth in Exhibit B in connection with the Premises, Provider may terminate this Agreement immediately subsequent to notification from the Electric Utility Provider. The Parties shall not be obligated to proceed with the installation or operation of the Systems if the Electric Utility Provider or other regulatory approvals are conditioned upon material upgrades to the existing electrical infrastructure and neither Party elects to provide for such upgrades.

5.4 Energy Delivery. Provider may commence delivering Energy upon the Commercial Operation Date, provided that Recipient is under no obligation to accept Energy delivered to the Premises unless and until the following have occurred:

(a) Provider shall have obtained, and provided Recipient satisfactory evidence with respect to, insurance coverage for the System consistent with the terms and conditions hereof; and

(b) Provider shall have provided Notice to Recipient that the Commercial Operate Date has occurred.

5.5 Recipient Cooperation and Responsibilities. Recipient will cooperate with Provider and any third parties with whom Provider contracts by providing access to the Premises during working hours without unreasonable restrictions. The Parties shall cooperate in obtaining and maintaining all permits and licenses required for Commercial Operations as further described in Section 5.3.

## ARTICLE VI OWNERSHIP; MAINTENANCE OF SYSTEM

6.1 Ownership of System by Provider. Provider shall own the System, and shall be entitled to own, claim and retain any and all Tax Benefits and REC Financial Incentives. Recipient acknowledges that Provider or its assignee will be seeking to obtain the receipt of Tax Benefits and REC Financial Incentives, and Recipient agrees to cooperate with Provider in any manner requested by Provider with respect to pursuing such items. Recipient expressly disclaims any rights, interest or title to federal, state or local tax, grants or subsidies associated with the System or any other right, title and interests associated with ownership of the System, other than the rights granted hereunder to enter into, and convey Environmental Attributes to TEP pursuant to the REC Purchase Agreement.

6.2 Lease of Premises. Pursuant to the terms and conditions of the Lease being entered into concurrently herewith, the Parties acknowledge and agree that Provider is leasing the Premises upon which the Systems are located and such Lease is necessary for the performance of the Solar Services. The Parties expressly agree that the Lease and the SSA are coterminous and a termination of the Lease shall terminate this SSA.

6.3 Maintenance and Operation of System by Provider.

(a) Provider shall maintain the System in good condition and repair in accordance with applicable contractor, subcontractor and vendor warranties and guarantees and manufacturer's instructions and specifications, all Applicable Laws and applicable standards, and the applicable requirements of the insurance policies maintained by Recipient (copies of which to be provided to Provider) with respect to the System, and the terms of this SSA.

(b) Provider and its agents, consultants, and representatives shall have access at all reasonable times (including under emergency conditions) to the Premises and the System, all System operations, and any documents, materials and records and accounts relating thereto for purposes of inspection and maintenance of the System. During any inspection or maintenance of the System, Provider, and its agents, consultants and representatives shall comply with Recipient's reasonable safety and security procedures, and Provider and its agents, consultants and representatives shall conduct all operation, inspection and maintenance (including repair and replacement activities) in such a manner as to cause minimum interference with Recipient's activities and the activities of Recipient's tenants.

ARTICLE VII  
METERING DEVICE AND METERING

7.1 Metering Equipment. Provider shall provide, install, own, operate and maintain a Metering Device for the System.

7.2 Measurements. Readings of the Metering Device shall be conclusive as to the amount of Energy Output; provided that if the Metering Device is out of service, is discovered to be inaccurate pursuant to Section 7.3, or otherwise registers inaccurately, measurement of the Energy Output shall be determined in the following sequence: (a) by estimating by reference to quantities measured during periods of similar conditions when the Metering Device was registering accurately; or (b) if no reliable information exists as to the period of time during which such Metering Device was registering inaccurately, it shall be assumed for correction purposes hereunder that the period of such inaccuracy was equal to one-half of the period from the date of the last previous test of such Metering Device through the date of the adjustments, provided, however, that the period covered by the correction under this Section 7.3 shall not exceed six (6) months.

7.3 Testing and Correction Recipient's Right to Conduct Tests.

(a) Provider shall cause the Metering Device to be tested annually, commencing as of the first anniversary of the Commercial Operation Date. Recipient and its consultants and representatives shall have the right to witness any Metering Device test to verify the accuracy of the measurements and recordings of the Metering Device. Provider shall provide at least twenty (20) calendar days' Notice to Recipient of the date upon which any such test is to occur. Provider shall prepare a written report setting forth the results of each such test, and shall, at the request of Recipient, provide Recipient with copies of such written report not later than thirty (30) calendar days after completion of such test. Provider shall bear the cost of the annual testing of the Metering Device and the preparation of the Metering Device test reports.

(b) Standard of Metering Device Accuracy; Resolution of Disputes as to Accuracy. The following steps shall be taken to resolve any disputes regarding the accuracy of the Metering Device:

(i) If either Party disputes the accuracy or condition of the Metering Device, such Party shall provide the other Party Notice.

(ii) Provider shall, within fifteen (15) calendar days after receiving such Notice from Recipient or issuing such Notice to Recipient, advise Recipient in writing as to Provider's position concerning the accuracy of such Metering Device and Provider's reasons for taking such position.

(iii) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may request a test of the Metering Device.

(iv) If the Metering Device is found to be inaccurate by not more than two percent (2%), any previous recordings of the Metering Device shall be deemed accurate, and the Party disputing the accuracy or condition of the Metering Device under Section 7.3(b)(i) shall bear the cost of inspection and testing of the Metering Device.

(v) If the Metering Device is found to be inaccurate by more than two percent (2%) or if such Metering Device is for any reason out of service or fails to register, then (a) Provider shall bear the cost of inspection and testing of the Metering Device and shall promptly cause any Metering Device found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, and (b) the Parties shall estimate the correct amounts of Energy delivered during the periods affected by such inaccuracy, service outage or failure to register as provided in Section 7.2. If as a result of such adjustment the Energy Output for any period is reduced (the amount of such reduction being, the "**Energy Deficiency Quantity**") then Provider shall provide Recipient a credit on its next monthly invoice, for the amount paid by Recipient in consideration for such Energy Deficiency Quantity; provided further that if the amount paid

by Recipient in consideration for the Energy Deficiency Quantity exceeds the amount otherwise payable by Recipient with respect to such invoice, such excess shall be carried forward and applied as a credit against the amount otherwise payable by Recipient with respect to the next succeeding invoice. If as a result of such adjustment the Energy Output for any period is increased (such increase being the "Energy Surplus Quantity"), Provider shall invoice Recipient for the Energy Surplus Quantity at the Solar Services Payment Rate applicable to each of the month(s) in which such Energy Surplus Quantity was delivered on its next monthly invoice and Recipient shall pay such amount as set forth in Article 10.

#### ARTICLE VIII

#### LOSS, DAMAGE OR DESTRUCTION OF SYSTEM; INSURANCE; FORCE MAJEURE

8.1 System Loss. Subject to Section 12.1 and Section 12.5 of this Agreement, Provider shall bear the risk of any System Loss.

(a) In the event of any System Loss that, in the reasonable judgment of Provider, results in less than total damage, destruction or loss of the System, this SSA will remain in full force and effect and Provider shall have option, at Provider's absolute and sole discretion and sole cost and expense, to repair or replace the System as quickly as practicable. Provider shall be entitled to all proceeds of insurance with respect to the System.

(b) In the event of any System Loss that, in the reasonable judgment of Provider, results in total damage, destruction or loss of the System, Provider shall, within twenty (20) Business Days following the occurrence of such System Loss, notify Recipient whether Provider is willing, notwithstanding such System Loss, to repair or replace the System. In the event that Provider notifies Recipient that Provider is not willing to repair or replace the System, this SSA will terminate automatically effective upon the delivery of such Notice, and Provider shall be entitled to all proceeds of insurance with respect to the System.

#### 8.2 Insurance.

(a) Provider shall maintain without interruption insurance policies of the types and in the amounts and for the duration set forth in Exhibit F hereto.

(b) Recipient shall maintain without interruption insurance policies of the types and in the amounts and for the duration set forth in Exhibit G hereto.

(c) Each Party shall furnish the other Party certification of insurance reasonably acceptable to such other Party prior to the date on which such insurance is required pursuant to Exhibit F or Exhibit G, as applicable. Such certification shall certify that unless otherwise permitted under this SSA or the Lease, coverages obtained under such policies will not be cancelled or allowed to expire by the applicable Party furnishing the certification without prior thirty (30) days Notice to the other Party, except that there

shall be ten (10) days Notice provided in the event that such policies are canceled due to non-payment of premiums.

(d) The provisions of this SSA shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies. The respective liability of each Party as agreed to pursuant to the terms and conditions of this SSA shall not be limited by the amount of insurance coverage required to be obtained by each Party.

8.3 Performance Excused by Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this SSA and such Party (the "**Claiming Party**") gives Notice to the other Party as soon as practicable (and in any event within five (5) Business Days after the Force Majeure first prevents performance by the Claiming Party), such Notice to include the details of the Force Majeure and the steps the Claiming Party is taking to mitigate the effects thereof, then the Claiming Party will be excused from the performance of its obligations under this SSA (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure, and except as otherwise provided in Section 8.1). The Claiming Party will use commercially reasonable efforts to mitigate, eliminate or avoid the effects of the Force Majeure and resume performing its obligations; provided, however, that neither Party shall be required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion. Except as otherwise provided in Section 8.1, the non-Claiming Party will not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

8.4 Recipient's Covenants. As a material inducement to Provider's execution of this SSA, Recipient covenants and agrees as follows:

(a) Health and Safety. Recipient shall at all times maintain the areas of the Premises consistent with all Applicable Laws pertaining to the health and safety of persons and property.

(b) Security. Recipient shall be responsible for maintaining the physical security of its Facilities in accordance with Recipient's customary practices. Provider understands that each Facility contains a school and that damage resulting from vandalism and recreational and other equipment used in school activities (e.g., balls) may occur at any time on its Facilities despite such security efforts. Therefore, so long as Recipient maintains its customary practices in securing its Facilities, Provider shall bear all costs to repair the Systems arising from damages resulting from vandalism or school activities.

(c) Damages. Recipient shall promptly notify Provider of any matters it is aware of pertaining to any damage to or loss of the use of any System or that could reasonably be expected to adversely affect the System.

(d) Liens. Recipient 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 System or any interest therein. Recipient also shall pay promptly before a fine or penalty may attach to any System any taxes, charges or fees of whatever type of any relevant Governmental Authority for which Recipient is responsible. If Recipient breaches its covenant under this Section, it shall immediately notify Provider in writing, shall promptly cause such Lien to be discharged and released of record without cost to Provider, and shall indemnify Provider 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) Consents and Approvals. Recipient shall obtain and maintain, and secure and deliver to Provider copies of, all consents, approvals, permits, licenses, and authorizations relating to the performance of Recipient's obligations and the rights granted by Recipient hereunder, and that are required by the terms, conditions or provisions of any restriction or any agreement or instrument to which Recipient is a party or by which Recipient is bound, including completing applications for interconnection with TEP.

(f) Maintenance of Interconnection. Recipient shall ensure that the Premises and the System shall remain interconnected to the electrical grid during the entire Term, except as specifically permitted under this Agreement. Recipient and its agents or representatives shall not interfere with the operation of the System, other than in circumstances where the continued operation of the System would pose an imminent threat of bodily injury or property damage.

(g) Recipient Maintenance Removal. If for any reason Recipient determines that all or a portion of the System must be removed from the roof for maintenance of the roof or any appurtenances thereto at any time during the term of this Agreement then such removal of the system ("Recipient Maintenance Removal") will be governed by the provisions of Section 3.6 of this Agreement unless modified in this Section. Recipient shall provide Provider not less than ten (10) Business Days prior Notice of any Recipient Maintenance Removal and shall use commercially reasonable efforts to schedule and coordinate any Recipient Maintenance Removal with Provider so as to minimize the loss of Energy Output. Recipient shall not engage party other than Provider to perform any Recipient Maintenance Removal without the express written consent of Provider. All of the costs of any Recipient Maintenance Removal and re-installation are the sole responsibility of the Recipient.

(h) Insolation. Reference is made to Section 6(f) of the Lease.

(i) Recipient Records. Recipient shall keep complete and accurate records of its operations or obligations hereunder. Provider shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs, expense or other obligations relating to transactions hereunder.

ARTICLE IX  
EVENTS OF DEFAULT; REMEDIES

9.1 Events of Default. An "**Event of Default**" means, with respect to a Party (a "**Defaulting Party**"), the occurrence of any of the following:

(a) the failure to make, when due, any payment required under this SSA if such failure is not remedied within five (5) Business Days;

(b) the failure to perform any material covenant or obligation set forth in this SSA (except to the extent constituting a separate Event of Default), if such failure is not remedied within sixty (60) days after receipt of Notice; provided, however, that if such material covenant or obligation may be cured, but not within such sixty (60) day period, and the Defaulting Party has commenced curing such default and is at all times diligently pursuing the cure thereof, such further period as may be necessary to effect such cure shall be provided for hereunder;

(c) such Party becomes Bankrupt;

(d) such Party fails to provide or maintain in full force and effect any required insurance coverage, if such failure is not remedied within fifteen (15) Business Days after receipt of Notice from the Non-Defaulting Party to the Defaulting Party; provided however that if Defaulting Party can provide evidence that all substantial actions within the Provider's direct control have taken place to remedy such lapse in coverage within the ten (10) Business Day cure period then an Event of Default under this provision shall not have occurred until thirty (30) Business Days have transpired since the receipt of Notice without the requisite coverage being implemented; or

(e) any Event of Default under, or termination of, the Lease.

9.2 Remedies for Event of Default. If an Event of Default has occurred (and has not been cured if provided for under Section 9.1), the non-defaulting Party (the "**Non-Defaulting Party**") will, without limiting any other rights or remedies available to the Non-Defaulting Party under this SSA or Applicable Law, have the right:

(a) by Notice to the Defaulting Party, to designate a date of early termination of this SSA ("**Early Termination Date**"), with such Early Termination Date to occur not earlier than five (5) Business Days from the date of such Notice, other than in the case of an Event of Default under Section 9.1(c), in which case the termination may be immediate.

(b) to withhold any payments due to the Defaulting Party with respect to obligations performed from and after the date that an Event of Default has occurred; and

(c) to suspend any of its performance or obligations under this SSA (other than payments due to Defaulting Party for obligations performed prior to the date of an Event of Default).



In the event that the Non-Defaulting Party designates an Early Termination Date pursuant to Section 9.2(a) above, this SSA will terminate as of the Early Termination Date. The Parties hereby agree that except for a termination of the Lease which will automatically terminate this SSA, an Event of Default will not automatically terminate this SSA absent a Non-Defaulting Party Notice of such Party's intention to set an Early Termination Date.

9.3 Recipient Rights Upon Termination for Default. In the event that Recipient is the Non-Defaulting Party, and Recipient elects to terminate this SSA as provided in Section 9.2, Recipient will be entitled, in its sole and absolute discretion, either to:

(a) require that Provider remove the System (or to remove the System if Provider fails to remove the System within thirty (30) Business Days after the Early Termination Date, in which case the Recipient must use commercially reasonable efforts to store the System with due care and Provider is obligated to reimburse Recipient for all reasonable costs and expenses related to removing and/or storing the System), or

(b) exercise the Purchase Option provided in Section 13.1.

9.4 Provider Rights Upon Termination for Default. In the event that Provider is the Non-Defaulting Party, and that Provider elects to terminate this SSA as provided in Section 9.2, Provider will be entitled to, in its sole and absolute discretion, either to:

(a) demand payment from the Recipient in an amount equal to the greater of (i) the applicable Termination Payment for the System, as reflected in Exhibit E, or (ii) the Fair Market Value of the System Assets on the date of such demand by Provider, with such payment to be made immediately by Recipient upon demand by Provider in readily available funds (upon payment of which Provider will transfer all of its right, title and interest in the System Assets to Recipient, free and clear of all liens); or

(b) remove the System from the Premises, and demand payment from Recipient of (i) the costs to remove the System from the Premises and install the System at one or more new locations, (ii) the product of the Expected Monthly Output for a period of nine (9) months and the applicable Solar Services Payment Rate, (3) the amount of any refund of the REC Financial Incentives due to UES under the terms of the Program and (4) all other amounts otherwise due and payable to Provider hereunder as of the Early Termination Date. Termination of this SSA, removal of the System and payment of the amounts due pursuant to this Section 9.4(b) shall take place within forty-five (45) Business Days after Provider's Notice to Recipient of its election to exercise its option to remove the System.

9.5 Remedies Cumulative. The rights and remedies contained in this Article 9 are cumulative with the other rights and remedies available under this SSA or at law or in equity and an election of remedy provided in either Section 9.3 or Section 9.4 does not prevent the Non-Defaulting Party from seeking any other damages and remedies at law or in equity.

9.6 Unpaid Obligations. The Non-Defaulting Party shall be under no obligation to prioritize the order with respect to which it exercises anyone or more rights and remedies available under this SSA. Notwithstanding anything to the contrary herein, the Defaulting Party shall in all events remain liable to the Non-Defaulting Party for any amount payable by the Defaulting Party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

#### ARTICLE X INVOICING AND PAYMENT

10.1 Invoicing and Payment. Billing shall be conducted consistent with Provider's usual and customary practices, as may change from time to time. All invoices under this SSA will be due and payable not later than thirty (30) days after receipt of the applicable invoice ("**Due Date**"). All payments hereunder shall be made without setoff or deduction. Recipient will make payment by mutually agreeable methods, which may include delivery of Pima County Treasurer's Warrant, to the account designated by Provider. Any amounts not paid by the applicable Due Date will accrue interest at the Interest Rate until paid in full.

10.2 Disputed Amounts. Recipient may in good faith dispute the correctness of any invoice (or any adjustment to any invoice) under this SSA at any time within fifteen (15) days following the delivery of the invoice (or invoice adjustment). In the event that Recipient disputes any invoice or invoice adjustment, Recipient will nonetheless be required to pay the full amount of the applicable invoice or invoice adjustment (except any portions thereof that are manifestly inaccurate or are not reasonably supported by documentation, payment of which amounts may be withheld subject to adjustment as hereinafter set forth) on the applicable payment Due Date, except as expressly provided otherwise elsewhere in this SSA, and to give Notice of the objection to the Provider. If Provider notifies Recipient in writing within fifteen (15) days of receipt of such Notice that Provider disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within ten (10) days of Provider's response for the purpose of attempting to resolve the dispute. If the Parties are unable to resolve the dispute within thirty (30) days after such initial meeting, such dispute shall be submitted to arbitration as set forth in Article XV. Any required payment after such arbitration will be made within five (5) Business Days after resolution of the applicable dispute, together with interest accrued at the Interest Rate from the due date to the date paid.

10.3 Provider Records and Audits. Provider shall retain all records relating to this Agreement for five (5) years after termination of this Agreement, and all such records shall be subject at all reasonable times to inspection and audit by Recipient for five (5) years after termination of this Agreement.

10.4 Adjustments to Contract Price. In the event there is any change in Applicable Law, the result of which is to materially increase Provider's costs to provide the Solar Services, Provider will promptly submit to Recipient a written notice setting forth (a) a description of the change in Applicable Law, (b) the manner in which such

change in Applicable Law has changed or will materially change Provider's costs to provide the Solar Services, including reasonable computations in connection therewith and (c) Provider's proposed adjustment to the Solar Services Payment Rate payable by Recipient to reflect such expected material changes in Provider's costs. Recipient agrees to pay an adjustment in the Solar Services Payment Rate such that the new rate compensates Provider for the total cost increase (factoring in no additional profit) related to the change in Applicable Law, which adjustment shall remain in effect over the remaining years of the Term of this SSA or until the Applicable Law that caused the increase in costs is altered, repealed, or made inapplicable to the provision of the Solar Services. The Parties further acknowledge that changes may occur in TEP's billing procedures or rates, or the application or availability of credits, offsets, reductions, discounts or other benefits other than those directly related to the Energy Output. Except as otherwise conveyed to TEP in consideration for the payment of the REC, any and all credits, reductions, discounts, historical pricing or other type of benefit made available by TEP, Governmental Authority or from any other source, whether arising directly or indirectly from the System or the Energy Output belong to Provider and Recipient shall immediately pay over to Provider any such amounts that may have been received by Recipient and in no event shall it take longer than seven (7) Business Days to do so.

10.5 Effect of Termination of Agreement. Upon the termination or expiration of this SSA, any amounts then owing by a Party to the other Party shall become immediately due and payable and the then future obligations of each Party under this SSA shall be terminated (other than the indemnity obligations set forth in Section 13). Such termination shall not relieve either Party from obligations accrued prior to the effective date of termination or expiration.

#### ARTICLE XI REPRESENTATIONS AND WARRANTIES; RECIPIENT ACKNOWLEDGEMENT

11.1 Representations and Warranties. Each Party represents and warrants to the other Party that:

(a) the execution, delivery and performance of this SSA are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in (i) its governing documents, (ii) material contracts to which it is a party or (iii) to such Party's knowledge, any law, rule, regulation, order or the like applicable to it;

(b) subject to all conditions precedent described herein, this SSA and each other document executed and delivered in accordance with this SSA constitutes its legally valid and binding obligation enforceable against it in accordance with its terms (subject to any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies); and

(c) it (i) understands and accepts, the terms, conditions and risks of this SSA, (ii) is not relying upon the advice or recommendations of the other Party in

entering into this SSA and agrees that the other Party is not acting as a fiduciary for or an adviser to it or its Affiliates and (iii) has been advised by its own independent legal counsel in connection with the negotiation of this SSA.

11.2 Acknowledgements Regarding Bankruptcy Code. Recipient acknowledges and agrees that, for purposes of this SSA, Provider is not a "utility" as such term is used in Section 366 of the Bankruptcy Code, and Recipient agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Recipient is a debtor. The Parties acknowledge and agree that the transactions contemplated under this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

11.3 Use of Energy. Recipient represents and warrants that none of the electricity to be generated by the System will be used to generate energy for the purpose of heating a swimming pool.

11.4 Budgeting. To the extent permitted by law Recipient agrees to include the payments required to fulfill its obligations under this Agreement in any annual (or other) budget submitted for approval by the appropriate governing body and to take all reasonable and necessary action to assure funds are available at all necessary times to satisfy its obligations hereunder.

11.5 Feasibility Study. Prior to commencement of the System design, Provider shall provide to Recipient an in-depth feasibility study pursuant to the provisions of A.R.S. §15-213.01(E) to establish the exact scope of the guaranteed energy cost savings contract, the cost savings guarantee amount and the methodology for determining the actual savings. This report shall be reviewed and approved by Recipient before the commencement of design of the System. Provider shall transmit a copy of the approved in-depth feasibility study to the School Facilities Board and the Governor's Office of Energy. Failure to provide a study acceptable to Recipient shall entitle Recipient to terminate this Agreement with no further obligations hereunder. The feasibility study shall include an analysis of the actual cost of power used by Recipient over the most recent twelve (12) month period compared to the projected cost to Recipient of solar power produced by the Systems plus an estimate of all continuing costs charged by TEP. Prior to commencement of design of the System, Recipient shall verify that TEP has an active net metering program and that this program is acceptable to Recipient.

11.6 The Parties believe that this SSA meets the requirements for a guaranteed energy cost savings contract under A.R.S. § 15-213.01. Should the Attorney General of Arizona or a court of competent jurisdiction determine that this SSA is not a valid guaranteed energy cost savings contract under A.R.S. § 15-213.01, or that the administration of this SSA does not comply with A.R.S. § 15-213.01, or that it does not alternatively comply with the provisions of A.R.S. § 15-213.03 as described in Section 3.6 herein, then the Parties agree as follows:

(a) Notwithstanding Section 2.1 (Term), the term of this SSA shall become five (5) years, commencing on the Commercial Operation Date and terminating on the 5th anniversary of the Commercial Operation Date.

(b) Not less than one hundred and eighty (180) days prior to the expiration of the five-year term of this SSA or any additional SSA entered pursuant to this Section 11.5, Recipient may elect, by written notice to Provider, to enter into a new, sole source procurement SSA with Provider having terms identical to the terms of this SSA, or such other terms mutually agreed by the Parties, for a term of five (5) years, with the cumulative term length of all SSAs entered into in respect of the System not to exceed twenty (20) years from the Commercial Operation Date of the System. Upon a notice of election by Recipient pursuant to this subsection (b), the Parties shall promptly enter into such new SSA, the term of which will commence on the day following expiration of the then current SSA.

(c) If Recipient elects not to enter into a new, sole source procurement SSA, it shall notify Provider in writing on or before the date that is one hundred and eighty (180) days prior to the expiration of the then current SSA, and Recipient agrees to purchase the System pursuant to Article XIII of the SSA. Recipient's notice delivered pursuant to this subsection (c) shall be deemed to be a "Purchase Option Notice" provided in accordance with Section 13.1.

## ARTICLE XII INDEMNITY; LIMITATIONS; AND TAX BENEFITS

12.1 Indemnity. To the extent allowable by law, each Party (the "**Indemnitor**") hereby indemnifies and agrees to defend and hold harmless the other Party (the "**Indemnitee**") from and against any and all Indemnity Claims, whether or not involving a third-party claim, caused by, resulting from, relating to or arising out of (i) any material breach of this SSA or the Lease by the Indemnitor or any of its directors, officers, employees or agents or (ii) any gross negligence or intentional misconduct on the part of the Indemnitor or any of its directors, officers, employees or agents; provided, however, that the Indemnitor will not have any obligation to indemnify the Indemnitee from or against any Indemnity Claims to the extent caused by, resulting from, relating to or arising out of the negligence or intentional misconduct of the Indemnitee or any of its directors, officers, employees or agents. Notwithstanding the foregoing, Provider's total liability hereunder for indemnity shall in all respects be limited to the amounts paid to it hereunder during the most recent twenty four (24) month period and Recipient's total liability hereunder for indemnity shall in all respects be limited to the maximum Termination Payment payable under this SSA. For the sake of clarity, the Parties indemnification limitations in the foregoing sentence do not in anyway limit (in amount or coverage) each Party's ability to avail itself of the other Party's insurance coverage obtained in connection with this SSA.

12.2 No Consequential Damages. Nothing in this SSA or the Lease is intended to cause either Party to be, and neither Party shall be, liable to the other Party for any lost business, lost profits or revenues from others or other special or consequential

damages, all claims for which are hereby irrevocably waived by the Parties. Notwithstanding the foregoing, neither the payments for the provision of Solar Services, nor any Temporary Shutdown Fees or Terminations Payment, nor any payment pursuant to Section 12.15 hereof shall be deemed consequential damages.

12.3 Notice of Claims. Where Recipient seeks indemnification hereunder (the "Indemnified Party") the Recipient shall deliver to the Provider (the "Indemnifying Party") a Notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a "Claim Notice"). Such Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice as aforesaid shall not relieve the Indemnifying Party of its obligations under this SSA, except to the extent that such Indemnifying Party has been materially prejudiced by such failure. Where Provider seeks indemnification from Recipient hereunder, the provisions of A.R.S. § 12-821.01 apply.

12.4 Indemnity Survival. To the extent that this provision does not conflict with A.R.S. § 12-821.01 or other applicable law, the provisions of this Article XII shall survive the expiration or termination of this SSA for a period of three (3) years from such termination date.

12.5 Tax Benefits. In the event that (i) Recipient has terminated this SSA prior to the end of the Initial Term for any reason other than an Event of Default by Provider, (ii) Recipient fails to act in good faith in completing documentation or taking actions reasonably requested by Provider, and such failure is the primary reason for the loss of Tax Benefits, or (iii) Provider has terminated this SSA prior to the end of the Initial Term as a result of an Event of Default by Recipient, then (A) Recipient shall pay Provider for any loss or recapture (including the imposition of any interest and penalties) of Tax Benefits actually realized or to be realized by Provider or any assignee of Provider including any direct or indirect equity holders of Provider or such assignee resulting from such termination, as determined by Provider's tax advisor (using a standard of more likely than not); and (B) To the extent allowable by law, Recipient shall indemnify, defend, and hold harmless Provider and any assignee (and any direct or indirect equity holders of Provider or any assignee) from any loss or recapture set forth in this Section 12.5 including any penalties and interest as a result of such termination of the SSA. Notwithstanding the foregoing, in the event that Recipient pays the Termination Payment in connection with a termination of this SSA and such portion of the payment that is allocated to the Tax Benefits recapture or loss offsets all applicable recapture or loss of amounts associated with the Tax Benefits then such payment will be deemed to satisfy Recipient's obligations hereunder.

### ARTICLE XIII SYSTEM PURCHASE AND SALE OPTIONS

13.1 Grant of Purchase Option. Recipient may elect to purchase the System Assets (the "Purchase Option") at the end of the fifteenth (15)<sup>th</sup> contract year and on the expiration of the Initial Term (the "Purchase Option Date"), provided a Event of

Default of Recipient shall have not occurred and be continuing (the "**Purchase Option**"). Recipient shall provide an irrevocable Notice to Provider not less than one-hundred and eighty (180) days prior to the Purchase Option Date to exercise its Purchase Option (a "**Purchase Option Notice**"). If Recipient elects a Purchase Option, the purchase price shall be the greater of the (i) then Fair Market Value of the System Assets on the Purchase Option Date, or (ii) the then applicable Termination Payment (the "**Purchase Option Price**"). The "**Fair Market Value**" of the System Assets shall be the value determined by (i) the mutual agreement of Recipient and Provider within thirty (30) Business Days of the date of the Purchase Option Notice, or (ii) absent such mutual agreement, an Independent Appraiser in accordance with the procedure set forth in this Article.

13.2 Selection of Independent Appraiser. Absent mutual agreement of the Parties within thirty (30) Business Days of the date of the Purchase Option Notice of the Fair Market Value, the Parties shall as soon as reasonably practicable formally convene a meeting to select an Independent Appraiser to determine the Fair Market Value of the System Assets. If Provider and Recipient are unable to agree upon the appointment of an Independent Appraiser within fifteen (15) Business Day of the formal meeting to select such Independent Appraiser, then the Provider shall select the Independent Appraiser from a list prepared by Recipient of four (4) nationally recognized independent appraisers 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.

13.3 Transfer of System Assets. The Independent Appraiser shall, within twenty (20) Business Days of appointment, make a determination of the Fair Market Value of the System Assets and such determination shall be binding on both Parties (the "**Final Determination**"). Upon the Purchase Option Date, Recipient shall pay Provider the Purchase Option Price (together with all other amounts owed by Recipient under this SSA or the Lease) in the form of certified check, bank draft or wire transfer. Upon receipt by Provider of the Purchase Option Price, title to the System Assets shall transfer to Recipient "as-is, where-is" and free and clear of all liens and Recipient shall assume all liabilities arising from or related to the System Assets from and after the date of transfer of the System Assets.

13.4 Costs and Expenses of Independent Appraiser. Provider and Recipient shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser and shall also each be responsible for any of their own costs and expenses incurred in connection with the exercise of the Purchase Option.

ARTICLE XIV  
CONFIDENTIALITY

14.1 Confidentiality. Subject to Arizona's public records law, Recipient agrees not to disclose information designated by Provider as Confidential Information to any third party except for Recipient's officers, employees, or legal counsel.

Notwithstanding the foregoing, Recipient may disclose Confidential Information to comply with the requirements of any Applicable Law or in connection with any judicial or regulatory proceeding or request by a governmental authority. Recipient shall determine in its sole discretion whether any document or information provided to Recipient by Provider, including information designated by Provider as Confidential Information, constitutes a public record or other matter that must be disclosed under Arizona's public records law. Provider understands and agrees that this Agreement is a public record under Arizona law.

ARTICLE XV  
MARKETING AND PROMOTION

15.1 Marketing and Promotion. Notwithstanding the foregoing, Provider shall have the right to promote the installation, operation, existence and usage of the system (and its and Recipient's involvement therein) through any means, including press releases, case studies, published material, Internet websites and sales literature, subject to the provisions set forth in the Section 15 and the criteria of the Program, provided, however that any marketing materials regarding the System shall be subject to recipient's prior written consent, such consent not to be unreasonably withheld or delayed.

ARTICLE XVI  
NOTICES

16.1 Notices. Any notices, requests, statements or payments ("**Notices**") will be made to the addresses and persons specified below. All Notices will be made in writing except where this SSA expressly provides that notice may be made orally. Notices required to be in writing may be delivered by hand delivery, overnight delivery, facsimile, or e-mail (so long as a copy of such e-mail notice is provided immediately thereafter in accordance with the requirements of this section by hand delivery, overnight delivery, or facsimile). Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile. When Notice is permitted to be provided orally, notice by telephone will be permitted and will be deemed to have been received at the time the call is received. A Party may change its



address by providing notice of the same in accordance with the provisions of this section.

If to Recipient:

Tanque Verde Unified School District No. 13  
Attn:  
2300 N. Tanque Verde Loop Road, Building 1  
Tucson, AZ 89749

If to Provider:

SOLON Corporation  
Attn:  
6950 S Country Club Rd  
Tucson, AZ 85756  
Phone: (520) 807-1300 Facsimile: (520) 807-4046

With a copy to:

Court S. Rich  
Rose Law Group pc  
6613 N. Scottsdale Rd.; Ste 200  
Scottsdale, AZ 85250

#### ARTICLE XVII ASSIGNMENT; BINDING EFFECT

17.1 Assignment; Binding Effect. Recipient shall not assign this SSA or the Lease without the prior written consent of Provider and any such attempted assignment shall be *void ab initio*. Provider shall be permitted to assign this SSA and the related Lease upon not less than five (5) Business Days prior Notice thereof to Recipient. Any permitted assignee must assume and agree to be bound by all of the obligations, liabilities and duties of the assigning Party under this SSA and the related Lease.

17.2 Cooperation with Financing. Recipient acknowledges that Provider will be financing the acquisition, installation and/or operation of the System through a lessor, lender, investors or with financing accommodations (including a sale/leaseback or third party investment or purchase) from one or more financial or banking institutions ("**Financiers**") and that the Provider may lease, sell or assign the System and their rights under this SSA and the Lease and/or may secure the Licensee's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. Notwithstanding any instructions to the contrary from Provider, Recipient will recognize Financiers, or any third party to whom Financiers has reassigned their rights to and any Financier (or its assignee) is fully entitled to receive the rights and benefits hereunder and under the Lease so long as such party performs the obligations of Provider hereunder. Recipient agrees that it shall cooperate with Provider and Financiers in connection with such financing of the System, including

(a) the furnishing of such information, (b) the giving of such certificates, and (c) providing such opinions of counsel and other matters as Provider and its financing parties may reasonably request. In addition, at Provider's request, Recipient shall amend this SSA or the Lease to include any provision that may reasonably be requested by an existing or proposed Financier, and shall execute such additional documents as may reasonably be required to evidence such Financier's rights hereunder; provided, however, that such amendment is not contrary to any applicable law and shall not materially impair the rights or materially increase the burdens or obligations of Recipient under this SSA or the Lease, or extend the term of this SSA beyond the Initial Term. In addition, reference is made to Section 14 of the Lease which sets forth other provisions benefiting Financiers.

In addition to the foregoing, Recipient consents to the filing by Provider, on behalf of Recipient, of a lessor's UCC fixture filing (which filing shall not impose a lien on the Premises) or a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises. Upon Provider's notice to Recipient of the identity and address of the Financier that will provide financing to Provider in respect of the System, such Financier shall become an intended third-party beneficiary of this Section 17.2 and Section 14 of the Lease, and Recipient agrees to enter into an acknowledgement and agreement with such Financier in the form as attached hereto as Exhibit I.

17.3 Assignment of Warranties or Supply Contracts. In the event Recipient exercises the Purchase Option pursuant to Article 13, to the extent transferable under the applicable warranty, Provider will transfer the remaining period, if any, on all warranties for the System (and any component parts thereof) to Recipient at Recipient's sole expense. In addition, Provider shall also assign any equipment, maintenance, operations or supply contracts pertaining to the System Assets or the System operation.

#### ARTICLE XVIII MISCELLANEOUS

18.1 Governing Law/Venue. This SSA and the Lease will be governed by the laws of the State of Arizona without giving effect to principles of conflicts of laws. Venue for any litigation arising from this Agreement or the Lease shall only be proper in a competent court located in Tucson, Arizona.

18.2 Entire Agreement; Amendments. This SSA, the Lease and the Lease (including the exhibits, any written schedules, supplements or amendments thereto) constitute the entire understanding between the Parties, and shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof. Any amendment, modification or change to this SSA will be void unless in writing and signed by both Parties.

18.3 Non-Waiver. No failure or delay by either Party in exercising any right, power, privilege, or remedy hereunder will operate as a waiver thereof. Any waiver must be in a writing signed by the Party making such waiver.

18.4 Severability. If any part, term, or provision of this SSA is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this SSA, and shall not render this SSA unenforceable or invalid as a whole. Rather the part of this SSA that is found invalid or unenforceable will be amended, changed, or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision, within the limits of Applicable Law or applicable court decisions, and the remainder of this SSA will remain in full force.

18.5 No Third Party Beneficiaries. Nothing in this SSA will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind.

18.6 No Recourse to Affiliates. This SSA is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.

18.7 Relationships of Parties. This SSA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party.

18.8 Counterparts. This SSA may be executed in several counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this SSA received by either Party by facsimile is binding upon the other Party as an original. Both Parties agree that a photocopy of such facsimile may also be treated by the Parties as a duplicate original.

18.9 Further Assurances. The Parties shall do such further acts, perform such further actions, execute and deliver such further or additional documents and instruments as may be reasonably required or appropriate to consummate, evidence, or confirm the agreements and understandings contained herein and to carry out the intent and purposes of this SSA.

18.10 Service Contract. It is the intention of the Parties that the provisions in this SSA and the Transactions, taken as a whole, shall meet all of the requirements set forth in Section 7701(e)(4) of the Internal Revenue Code of 1986, as amended (the "**Code**"), and any related Treasury Regulations and IRS administrative pronouncements, so that the SSA and the Transactions, taken as a whole, are deemed to be treated as a "service contract" and not as a "lease" pursuant to Code Section 7701(e). In the event that the provision of this SSA fail to comply with the requirements set forth in Code Section 7701(e)(4), then any such provision shall be of no force or effect and shall be subject to modification by Provider, in its sole discretion, to comply with Code Section

7701(e)(4); provided, however, that no such modifications shall serve to increase the Solar Services Payment Rate or any other amount payable by Recipient hereunder or under the Lease or otherwise increase in any material respect Recipient's other obligations under the Transactions.

18.11 Construction of Agreement. This Agreement and any ambiguities or uncertainties contained herein shall be equally and fairly interpreted for the benefit of and against the Parties and shall further be construed and interpreted without reference to the identity of the party or parties preparing this document, it being expressly understood and agreed that the parties hereto participated equally in the negotiation and preparation of this Agreement or have had equal opportunity to do so. Accordingly, the parties hereby waive the legal presumption that the language of the contract should be interpreted most strongly against the party who caused the uncertainty to exist. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

18.12 Exhibits and Schedules. Any and all exhibits and schedules referenced herein and/or attached hereto are hereby incorporated into this Agreement by reference.

18.13 Termination. This agreement is subject to termination for conflict of interest pursuant to A.R.S. § 38-511.

18.14 Fingerprinting. Provider shall comply with the requirements of A.R.S. §15-512(H) regarding the fingerprinting of employees of Provider, its contractors, subcontractors of every tier and vendors who are likely to have unsupervised contact with pupils as determined by Recipient, in its sole discretion. Provider shall be responsible for payment of all costs associated with compliance with A.R.S. §15-512(H).

18.15 Immigration Law Compliance. Provider warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other federal and state immigration laws and regulations related to the immigration status of its employees. Provider shall obtain statements from its contractors and subcontractors of every tier certifying compliance and shall furnish the statements to Recipient upon request. These warranties shall remain in effect through the term of the Agreement, and the Provider and its contractors and subcontractors of every tier shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act for all employees performing work pursuant to this Agreement. I-9 forms are available for download at USCIS.GOV.

The Recipient may request, and the Provider agrees to furnish, verification of compliance from the Provider or its subcontractors of any tier performing work pursuant to this Agreement. Should the Recipient reasonably believe or discover that the Provider, its contractors or subcontractors of any tier are not in compliance, Recipient may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Agreement for default, and suspension and/or

debarment of the Provider, its contractors or subcontractors. All costs necessary to verify compliance are the responsibility of Provider.

18.16 Compliance with A.R.S. §§35-391.06 and 35-393.06.

Pursuant to A.R.S. §§35-391.06 and 393.06, Provider shall certify that it does not have a scrutinized business operation in either Sudan or Iran.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

RECIPIENT

Tanque Verde Unified School District No.13  
a political subdivision of the State of Arizona

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

PROVIDER

SOLON Corporation  
an Arizona corporation

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

**EXHIBIT A**

**DESCRIPTION OF PREMISES**

A. Systems shall be installed at:

1. Tanque Verde Elementary School  
2600 N. Fenimore Avenue  
Tucson, AZ
2. Aqua Caliente Elementary School  
11420 E. Limberlost  
Tucson, AZ
3. Emily Gray Junior High School  
2300 N. Tanque Verde Loop Road  
Tucson, AZ
4. Tanque Verde High School  
4201 N. Melpomene Way  
Tucson, AZ

The extent of the Premises is described in the Lease between Provider and Recipient.

**Comment [c1]:** To be broken out with separate SSA for each system per phone call on May 3, 2012.

[INSERT PHOTOS]

**EXHIBIT B**

**DETAILED DESCRIPTION OF THE SYSTEMS**

## EXHIBIT C

### SCHEDULE OF DEFINITIONS AND RULES OF INTERPRETATION

1. Definitions. The definitions provided below and elsewhere in this SSA will apply to the defined terms used in this SSA:

“1603 Cash Grant” means Treasury grant made pursuant to Section 1603 of the American Recovery and Reinvestment Act *and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation*

“AAA Rules” has the meaning ascribed to such term in Section 15.2.

“ACC” means the Arizona Corporation Commission.

“Affiliate” means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity.

“Agreement” has the meaning ascribed to such term in the first sentence of this Solar Services Agreement.

“Applicable Law” means, with respect to any governmental authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such governmental authority, enforceable at law or in equity, along with the interpretation and administration thereof by any governmental authority.

“Authorized Offline Period” has the meaning ascribed such term in Section 3.6.

“Bankrupt” means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within 30 days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its



assets; (viii) causes or is subject to any event with respect to it which, under the Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“Bankruptcy Code” means the United States Bankruptcy Code.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

“Claiming Party” has the meaning ascribed to such term in Section 8.3.

“Commercial Operation” means that the System is ready for regular, daily operation, has been connected to the Premises electrical system upon approval by TEP, and is capable of producing Energy Output.

“Commercial Operation Date” means the date, determined by Provider and set forth in writing to Recipient, upon which (i) TEP has provided its authorization to interconnect the System and operate it in parallel with the local grid and (ii) the System commences delivery of Energy to the Delivery Point.

“Confidential Information” means any non-public confidential or proprietary information (whether conveyed orally, electronically or in hard copy) of a Party or its Affiliates or any of its or their Representatives relating to this SSA, the Lease, the System revealed to the other Party or its Affiliates or any of its or their Representatives during the Term and conspicuously identified as confidential and not a public record under the Arizona public records laws.

“Costs” means any fees, expenses and/or obligations incurred by either Party in connection with this Agreement or breach thereof by the other Party.

“Degradation Factor” means a [0.50%] annual degradation factor applied commencing on the first anniversary of the Commercial Operation Date.

“Delivery Point” means the point where the System is interconnected to Recipient’s electrical intertie and at and from this point exclusive control of the Energy shall shift to Recipient with risk of loss related to Energy also transferring from Provider to Recipient.

“Due Date” has the meaning ascribed to such term in Section 10.1.

“Early Termination Date” has the meaning ascribed to such term in Section 9.2.

“Electric Utility Provider” includes Tucson Electric Power Company and such other or further Public Service Corporations (as that term is defined in Arizona Const. Art. 15 Sec. 2) that may provide the Recipient with Energy from time to time except that under no circumstances shall Electric Utility Provider be interpreted to include other providers of Energy that is generated on Recipient’s premises.

“Energy” means electrical energy (three-phase, 60-cycle alternating current, expressed in kWh) generated by the System.

“Energy Deficiency Quantity” has the meaning ascribed to such term in Section 7.3(b)(v).

“Energy Output” means the amount of Energy generated by the System and delivered to Recipient at the Delivery Point, as metered in whole kilowatt-hours (kWh) at the Metering Device.

“Energy Surplus Quantity” has the meaning ascribed to such term in Section 7.3(b)(v).

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the System, and its displacement of conventional energy generation. Environmental Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) nitrous oxide, hydrofluoro carbons, perfluoro carbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on MWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include: (i) any energy, capacity, reliability or other power attributes from the System; (ii) Tax Benefits, including production or investment tax credits associated with the construction or operation of the energy projects; or (iii) emission reduction credits encumbered or used by the System for compliance with local, state, or federal operating and/or air quality permits.

“Event of Default” has the meaning ascribed to such term in Section 9.1

“Expected Monthly Output” means, with respect to any calendar month, the average Energy Output that the System has produced in such month in all prior years of operation, reduced by the Degradation Factor (and if the System has not been in operation for twelve (12) consecutive months prior to such month, then Provider’s reasonable estimation of what the Energy Output would have been absent the Unauthorized Shutdown or shading).

“Fair Market Value” has the meaning ascribed such term in Section 13.1.

"Financiers" has the meaning ascribed to such term Section 17.2.

"Force Majeure" means, when used in connection with the performance of a Party's obligations under this SSA, any of the following events to the extent not caused by such Party or its agents or employees: (i) war, riot, acts of a public enemy or other civil disturbance; (ii) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, range or forest fires, and objects striking the earth from space (such as meteorites), sabotage or destruction by a third party (other than any contractor retained by or on behalf of the Party) of facilities and equipment relating to the performance by the affected Party of its obligations under this SSA; and (iii) strikes, walkouts, lockouts or similar industrial or labor actions or disputes. Force Majeure will not be based on (i) Recipient's inability economically to use Energy purchased hereunder, or (ii) Provider's ability to sell Energy at a price greater than the price of Energy under this SSA. Economic hardship of either Party shall not constitute Force Majeure.

"Governmental Charges" means all applicable federal, state and local taxes (other than taxes based on income or net worth), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a governmental authority, independent system operator, utility, transmission and distribution provider or other similar entity, on or with respect to the Energy or this SSA, but excluding use, transaction privilege, sales or similar taxes on labor, materials or services related to construction or maintenance of the System.

"Indemnity Claims" means all losses, liabilities, damages, costs, expenses and attorneys' fees, whether incurred by settlement or otherwise.

"Independent Appraiser" means an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, experience and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the System. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or have been) a director, officer or an employee of, or directly or indirectly retained as consultant or adviser to, Provider or Recipient or any Affiliate of Provider or Recipient, other than in the capacity as an independent appraiser under this SSA.

"Initial Term" has the meaning ascribed to such term in Section 2.1(a).

"Interest Rate" means, for any date, the lesser of (i) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or, if not published on such day, on the most recent preceding day on which published), plus two percent (2%) and (ii) the maximum rate permitted by Applicable Law.

"kWh" means kilowatt-hour and is the unit of measurement for Energy.

"Lease" has the meaning ascribed such term in the Lease attached hereto as Exhibit J.

"Metering Device" means any and all meters at or before the Delivery Point needed for the registration, recording, and transmission of information regarding the Energy generated by the System and delivered to the Delivery Point.

"Non-Defaulting Party" has the meaning ascribed to such term in Section 9.2.

"Notice" has the meaning ascribed to such term in Section 16.1.

"Party" or "Parties" has the meaning ascribed to such term in the first paragraph of this Agreement.

"Person" means an individual, general or limited partnership, corporation, municipal, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, limited liability company, or any other entity of whatever nature.

"Premises" has the meaning ascribed such term in the Lease.

"Program" means the TEP Renewable Energy Incentive Program, as approved by the ACC.

"Purchase Option" has the meaning ascribed to such term in Section 13.1.

"Purchase Option Date" has the meaning ascribed to such term in Section 13.1.

"Purchase Option Notice" has the meaning ascribed to such term in Section 13.1.

"Purchase Option Price" has the meaning ascribed to such term in Section 13.1.

"Purchase Price" has the meaning ascribed to such term in Section 13.5.

"Recipient Maintenance Removal" has the meaning ascribed to such term in Section 8.4(g)

"REC" means the REC Financial Incentive payments owed by TEP in connection with the REC Purchase Agreement

"REC Financial Incentives" means each of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future: (i) performance-based incentives under any federal state or local renewable energy program or initiative, (ii) any utility rebates or incentives, (iii) state-funded monetary assistance originating from state legislation or local other funding offered for the development of renewable energy or solar projects, and (iv) in each case, including all reporting rights with respect to any of the foregoing allowances.

"REC Purchase Agreement" has the meaning ascribed to such term in Section 2.2.

“Renewable Energy Credit” or “REC” means renewable energy credit(s) or certificates, emission reduction credits, emission allowances, green tags, tradable renewable credits, or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of renewable energy attributed to the Energy produced by the System under any reporting program adopted by a governmental authority (including state or local governmental authorities in Arizona), or for which a registry and a market exists or for which a market may exist at a future time.

“Representatives” has the meaning ascribed to such term in Section 14.1(a).

“Schedule of Definitions and Rules of Interpretation” has the meaning ascribed to such term in Section 1.1.

“Solar Services” means the design, construction, installation, maintenance (including repair and replacement) and operation of the System, the monetization of Tax Benefits associated with the Energy, the assistance with traditional energy demand reduction by delivery of all of the Energy produced by the System to the Delivery Point and other services associated with this SSA as Recipient may from time to time reasonably request from Provider, at no incremental cost and expense to Provider.

“Solar Services Payment Rate” has the meaning ascribed to such term in Exhibit D.

“System” or “Systems” means the solar, photovoltaic generating system(s) to be installed by Provider on the Premises for purposes of providing the Solar Services to Recipient, as more particularly described in Exhibit B.

“System Assets” means the Systems together with all such other tangible and intangible assets, permits, improvements, property rights and contract rights used for the construction, operation and maintenance (including repair or replacement) of the System.

“System Loss” means loss, theft, damage, destruction, condemnation or taking of the System or System Assets, or any other occurrence or event that prevents or limits the System from operating in whole or in part, resulting from or arising out of any cause (including casualty, condemnation or Force Majeure) other than (i) Provider’s negligence or intentional misconduct, (ii) Provider’s material breach of its maintenance obligations under the SSA, or (iii) normal wear and tear of the System.

“Tax Benefits” means any loss, deduction, depreciation, and/or credit for federal, state, or local income tax purposes and any federal, state, or local state tax incentives, including, but not limited to the 1603 Cash Grant (with such amount determined using the highest combined federal, state, and local tax rate applicable to Provider) available in connection with the ownership, operation or use of the System.

“Temporary Shutdown Fees” has the meaning ascribed to such term in Section 3.6.

“Term” means the Initial Term and any extension thereof.

"Termination Payment" means the amount payable in respect of any period as set forth in Exhibit E hereto.

"Transaction" means any transaction between the Parties under the terms of the SSA or the Lease or any other agreements, instruments, or undertakings between the Parties.

"Unauthorized Shutdown" has the meaning ascribed to such term in Section 3.6.

2. Rules of Interpretation. In this SSA, unless expressly provided otherwise:

- (a) the words "herein," "hereunder" and "hereof" refer to the provisions of this SSA and a reference to a recital, Article, Section, subsection or paragraph of this SSA or any other agreement, in which it is used unless otherwise stated;
- (b) references to this SSA, or any other agreement or instrument, includes any schedule, exhibit, annex or other attachment hereto or thereto, and references to this SSA include the SSA provisions;
- (c) a reference to a paragraph also refers to the subsection in which it is contained, and a reference to a subsection refers to the Section in which it is contained;
- (d) a reference to this SSA, any other agreement or an instrument or any provision of any of them includes any amendment, variation, restatement or replacement of this SSA or such other agreement, instrument or provision, as the case may be;
- (e) a reference to a statute or other law or a provision of any of them includes all regulations, rules, subordinate legislation and other instruments issued or promulgated thereunder as in effect from time to time and all consolidations, amendments, re-enactments, extensions or replacements of such statute, law or provision;
- (f) the singular includes the plural and vice versa;
- (g) a reference to a Person includes a reference to the Person's executors and administrators (in the case of a natural person) and successors, substitutes (including Persons taking by novation) and permitted assigns;
- (h) words of any gender shall include the corresponding words of the other gender;
- (i) "including" means "including, but not limited to," and other forms of the verb "to include" are to be interpreted similarly;
- (j) references to "or" shall be deemed to be disjunctive but not necessarily exclusive, (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or");

(k) where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day;

(l) a reference to a Business Day is a reference to a period of time commencing at 9:00 a.m. local time on a Business Day and ending at 5:00 p.m. local time on the same Business Day;

(m) if the time for performing an obligation under this SSA expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day;

(n) a reference to (i) a month is a reference to a calendar month and (ii) a year is a reference to a calendar year;

(o) where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings;

(p) a reference to time is a reference to the time in effect in Phoenix, Arizona on the relevant date;

(q) if a payment prescribed under this SSA to be made by a Party on or by a given Business Day is made after 5:00 pm on such Business Day, it is taken to be made on the next Business Day; and

(r) if any index used in this SSA at any time becomes unavailable, whether as a result of such index no longer being published or the material alteration of the basis for calculating such index, then Provider and Recipient shall agree upon a substitute index that most closely approximates the unavailable index as in effect prior to such unavailability. If the base date of any such index is at any time reset, then the change to the index resulting therefrom shall be adjusted accordingly for purposes of this SSA.

## EXHIBIT D

### Solar Services Payment Rate

The payment to be made by Recipient to Provider shall equal the Energy Output for the relevant period multiplied by the Solar Services Payment Rate for such period. The Parties agree that such payment of the Solar Services Payment Rate comprises a negotiated rate that reflects the provision of the full Solar Services.

1. Solar Services Price: \$0.061/kWh
2. Solar Services Price Escalator: 0% per annum

The parties hereby acknowledge the existence of the Tanque Verde Unified School District Facility Upgrade Agreement ("Upgrade Agreement") executed concurrently herewith that sets forth terms regarding certain System upgrades. The Parties specifically acknowledge that the Upgrade Agreement exists independently of this Agreement and this Agreement does not create any obligation or liability thereunder.



**EXHIBIT E**

**Termination Payment**

The following amounts are based upon numerous assumptions, including an assumed Commercial Operation Date and financial closing date of \_\_\_\_\_, 2012 and are subject to adjustment based upon the Actual Commercial Operation based on the actual terms and conditions of Provider's financing.

<u>On or Before</u>	<u>Termination Payment</u>
---------------------	--------------------------------

## EXHIBIT F

### Provider's Insurance Requirements

Provider shall, at all times, maintain; 1) "all risk" property insurance on the Systems for the full replacement cost thereof and name Provider as loss payee, 2) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate; 3) employer's liability insurance with coverage of at least \$1,000,000; and 4) worker's compensation insurance as required by law.

All insurance policies provided hereunder shall; 1) contain a provision whereby the insurer agrees to give the party not providing the insurance 30 days (10 days in the event of non-payment of premiums) written notice before the insurance is cancelled; 2) be written on an occurrence basis; 3) with respect to liability insurance policies, include the other Party as an additional insured as its interest may appear; 4) include waivers of subrogation; 5) provide for primary coverage without right of contribution from any insurance of the other Party; and 6) be maintained with companies either rated no less than A- as to Policy Holder's Rating in the edition of Best's Insurance Guide or otherwise reasonably acceptable to the other party.

## **EXHIBIT G**

### **Recipient's Insurance Requirements**

Recipient shall, at all times, maintain; 1) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate; 2) employer's liability insurance with coverage of at least \$1,000,000; and 3) worker's compensation insurance as required by law.

All insurance policies provided hereunder shall; 1) contain a provision whereby the insurer agrees to give the party not providing the insurance 30 days (10 days in the event of non-payment of premiums) written notice before the insurance is cancelled; 2) be written on an occurrence basis; 3) with respect to property insurance policies, name Provider as a loss payee thereunder; 4) with respect to liability insurance policies, include the other Party as an additional insured as its interest may appear; 5) include waivers of subrogation; 6) provide for primary coverage without right of contribution from any insurance of the other Party; and 7) be maintained with companies either rated no less than A- as to Policy Holder's Rating in the edition of Best's Insurance Guide or otherwise reasonably acceptable to the other party.

**EXHIBIT H**

**[the REC purchase agreement with the Electric Utility Provider]**

**EXHIBIT I**  
**Certain Agreements for the Benefit of Financier**

Reference is made to that certain Solar Services Agreement dated as of \_\_\_\_\_, 2012 (the "SSA") between TANQUE VERDE UNIFIED SCHOOL DISTRICT NO. 13, a political subdivision of the State of Arizona ("Recipient") and SOLON Corporation ("Provider"). Unless otherwise indicated, capitalized terms used herein shall have the meanings specified in the SSA.

In connection with Provider's financing of the System, Recipient has been advised that the name of the Financier is [name of financial institution]. In order to facilitate such financing, Recipient hereby acknowledges and agrees as follows:

1. Assignment and Security Interest. As security for the due and punctual performance and payment of all of Provider's obligations under the documentation for such financing (the "Financing Documents"). Provider has assigned or will assign to Financier as collateral security all of its right, title and interest in, to and under the SSA and the lease (together, the "Assigned Agreements"), as well as its right to receive payments under the REC Purchase Agreement (all such assigned rights, the "Assigned Rights"), upon the terms set forth in that certain Security Agreement (or other similarly named agreement) entered into or to be entered into between Provider and such Financier (the "Security Agreement").
2. Acknowledgement and Agreement.
  - (a) Recipient hereby acknowledges that the assignment specified in Section 1 above and any subsequent assignments by Financier upon and after the Financier's exercise of its rights and remedies under the Security Agreement may be made without the consent of the Recipient (provided that the assigning party shall notify Recipient as soon as practicable and in advance of any subsequent assignment).
  - (b) Recipient acknowledges that Financier has the right under certain conditions, including a default by Provider under the Financing Documents, to take possession of and succeed to all of Provider's right, title and interest under the Assigned Agreements, including the right to continue to perform in place of the Provider, the right to require the counterparty to perform under such agreements, and the right to rely upon all representations, warranties, indemnities and agreements made by the Recipient under or pursuant to the Assigned Agreements.
  - (c) Recipient (i) acknowledges that it has been advised that Financier is the title owner of the System, (ii) acknowledges and agrees that the System shall remain personal property of Financier regardless of the manner or mode of its attachment to the Premises and shall not become or be deemed to be fixtures, (iii) agrees that it has no claim of ownership to the System absent of exercising its purchase option in Section 13.1 of the SSA, (iv) agrees to provide Financier, its assignee and agents access to the Premises in the same manner as it agreed to provide in the SSA, and (v) agrees that any encumbrance on the Premises will not result in an encumbrance of any nature on the System, in the same manner as it agreed in Section 8.4(d) (Liens) of the SSA.

3. Default and Cure.
- (a) If Provider defaults under an Assigned Agreement, Recipient shall, before terminating such Assigned Agreement or exercising any other remedy, give written notice to the Financier specifying the default and the steps necessary to cure the same and Financier shall have ninety (90) days after the later of (i) receipt of such notice and (ii) the date on which such default has become a default under such Financing Document (or such longer period of time as may be necessary under the circumstances, provided Financier is diligently pursuing such cure) to cure such default or to cause it to be cured. If Financier fails to cure or cause to be cured any such default within the appropriate period set forth above, the Recipient shall have all of its rights and remedies with respect to such default as set forth in the relevant Assigned Agreement and at law or in equity.
  - (b) In the event that an Assigned Agreement is terminated by rejection, or otherwise, during a case in which Provider is the debtor under Title II, United States Code, or other similar federal or state statute, then the Recipient shall, at the option of Financier, enter into a new agreement with Financier or (at the direction of Financier) its nominee or designee having terms identical to the relevant Assigned Agreement pursuant to which Financier or its nominee or designee shall have all of the rights and obligations of Financier under such Assigned Agreement.
  - (c) If Financier notifies the Recipient in writing that Provider has defaulted under the Financing Documents and requests that the Recipient continue performance under the Assigned Agreements and the REC Purchase Agreement, the Recipient shall thereafter perform under the Assigned Agreements and the REC Purchase Agreement in accordance with their terms, so long as all existing defaults by Provider under the Assigned Agreements that are susceptible to cure are cured by Financier or its nominee or designee and the obligations of Provider thereunder shall continue to be performed by Provider, Financier or Financier's nominee or designee.
4. Payments. Pursuant to the Reservation Application attached to the REC Purchase Agreement, Recipient agreed that any payment to which it is entitled thereunder shall be assigned to Solon Corporation. Recipient shall (a) make all payments due to Provider under the Assigned Agreements, and (b) instruct TEP to make all payments under the REC Purchase Agreement directly to Provider or such account as Financier may from time to time hereafter specify in writing. Recipient further agrees to take such actions as may reasonably be requested by Financier to enforce the REC Purchase Agreement against TEP in the event that TEP fails to make payments to Provider or the account specified by Financier in accordance with the provisions of the REC Purchase Agreement and Recipient's instructions as to payment. Recipient further agrees to use its commercially reasonable efforts to deliver, or allow Provider to deliver on Recipient's behalf, invoices rendered to TEP under the REC Purchase Agreement in a timely manner as provided therein and in any case prior to the date after which the right of Recipient to receive a payment thereunder is waived.
5. Delivery of Notices. Recipient agrees that it will promptly (a) deliver to Financier a copy of the instruction referenced in Section 4 above as countersigned by TEP indicating its

agreement to make payment as instructed therein, (b) notify Financier of any breach by Provider of any of the terms of the Assigned Agreements, and (c) notify Financier of any breach by TEP of the payment terms of the REC Purchase Agreement.

6. Liability of Financier. Recipient acknowledges and agrees that Financier has not assumed and does not have any obligation or liability under or pursuant to the Assigned Agreements, and that the exercise by Financier of its rights and remedies under the Assigned Agreements shall not constitute an assumption of Provider's obligations under the Assigned Agreements (except to the extent any such obligations shall be expressly assumed by an instrument in writing executed by Financier or as otherwise provided herein).
7. Amendment or Termination of Assigned Agreements, REC Purchase Agreement. Recipient covenants and agrees that without the prior written consent of Financier, the Recipient will not amend, modify or terminate (prior to the expiration of the cure period in Section 3(a) above) the Assigned Agreements or the REC Purchase Agreement.
8. Notices. All communications to be given to Financier shall be given to the address for Financier provided below. All communications to be given to Recipient or Provider shall be given to the addresses set forth in Section 16.1 of the SSA.
9. Governing Law. This agreement will be governed by the laws of the State of Arizona, and the agreement shall only be proper in a competent court located in Tucson, Arizona.

IN WITNESS WHEREOF, each of the undersigned has duly executed this agreement as of the date first above written.

TANQUE VERDE UNIFIED SCHOOL DISTRICT NO. 13, a political subdivision of the State of Arizona

By: \_\_\_\_\_  
Name:  
Title:

Accepted:  
[name of Financier]  
By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT J  
FORM OF LEASE

I:\FILES\DOCS\ITANQ01\880738\AGREEMJ0058.DOC



# Exhibit K

X10000041.xls

Output (kWh)	Total (kWh)
<b>System Capacity (kW)</b>	<b>1149.12</b>
Year 1 (0.5% degradation)	2,046,282
Year 2 (0.5% degradation)	2,036,051
Year 3 (0.5% degradation)	2,025,870
Year 4 (0.5% degradation)	2,015,741
Year 5 (0.5% degradation)	2,005,662
Year 6 (0.5% degradation)	1,995,634
Year 7 (0.5% degradation)	1,985,656
Year 8 (0.5% degradation)	1,975,728
Year 9 (0.5% degradation)	1,965,849
Year 10 (0.5% degradation)	1,956,020
Year 11 (0.5% degradation)	1,946,240
Year 12 (0.5% degradation)	1,936,508
Year 13 (0.5% degradation)	1,926,826
Year 14 (0.5% degradation)	1,917,192
Year 15 (0.5% degradation)	1,907,606
Year 16 (0.5% degradation)	1,898,068
Year 17 (0.5% degradation)	1,888,577
Year 18 (0.5% degradation)	1,879,134
Year 19 (0.5% degradation)	1,869,739
Year 20 (0.5% degradation)	1,860,390
Year 21 (0.5% degradation)	1,851,088
Year 22 (0.5% degradation)	1,841,833
Year 23 (0.5% degradation)	1,832,624
Year 24 (0.5% degradation)	1,823,460
Year 25 (0.5% degradation)	1,814,343
<b>TOTAL</b>	<b>48,202,119</b>

## **Tanque Verde Unified School District No. 13 Solar Facility Lease**

This Solar Facility Lease ("**Lease**"), dated as of \_\_\_\_\_, 2012, is by and between SOLON Corporation, LLC, an Arizona corporation ("**Lessee**"), and Tanque Verde Unified School District No. 13, a political subdivision of the State of Arizona ("**Lessor**") (each a "**Party**" and collectively, the ("**Parties**"). Capitalized terms used herein but not defined herein (including in the recitals hereto) shall have the respective meanings ascribed thereto in the SSA.

### WITNESSETH

WHEREAS, concurrently herewith, Lessee and Lessor are entering into that certain Solar Services Agreement, dated as of the date hereof (the "**SSA**"), pursuant to which Lessee has agreed to provide for the engineering, construction, installation, maintenance and operation of the System and provide Lessor with the Solar Services;

WHEREAS, in order to construct and install the System and provide the Solar Services, Lessee and its agents and contractors require access to certain property owned or leased by Lessor as identified in Exhibit A (the "**Facility**");

WHEREAS, in connection with the foregoing, Lessee desires to lease a portion of the Facility from Lessor in order to install and operate the System in furtherance of Lessee's obligations under the SSA and Lessor is willing to grant such lease to Lessee; and

WHEREAS, the Recipient has statutory authority to enter into this agreement pursuant to A.R.S. § 15-213.01; and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Lessee and Lessor hereby agree as follows:

1. **Leased Premises and Related Rights.** Lessor hereby leases to Lessee, in accordance with the terms and conditions hereinafter set forth, the real property listed in Exhibit B where the System will be installed (the "**Premises**"). Lessor hereby also grants to Lessee, for a period co-terminus with the Lease, a right-of-way to access the Premises across or through the Facility, including any structures or fixtures appurtenant to the Facility, passage through which is necessary or convenient to install or gain access to the System or the Premises.

2. **Rents.** Lessee shall pay Lessor one U.S. dollar (\$1.00) on the Commercial Operation Date (or such other date mutually agreeable to the parties) as and for rent of the Premises for the full term of this Lease.

3. **System Construction, Installation and Operation.**

(a) Lessor hereby consents to the construction of the System by Lessee on the Premises, including, without limitation, solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, metering equipment and utility interconnections. Lessor acknowledges that the portion of the System on the roofs of the building(s) may weigh in the aggregate more than [20 pounds] per square foot, consents to such specifications and warrants that the physical integrity of all structures, buildings and fixtures upon which the System will be constructed is sufficient to bear the weight of the System and

allow for safe installation of the same. Lessee may request written acknowledgement from Lessor pertaining to the final structural analysis related to the System.

(b) Lessee shall also have the right from time to time during the term hereof:

(i) to install and operate the System on the Premises;

(ii) to maintain, clean, repair, replace and dispose of part or all of the System;

(iii) to add or remove the System or any part thereof;

(iv) to access the Premises with guests for promotional purposes during normal open hours and at other times as are acceptable to the Lessor in its reasonable business judgment; and

(v) to perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Lessee, to carry out and provide the Solar Services.

(c) Lessor acknowledges that the installation of all or a portion of the System will require installation to the ground and may require physically mounting and adhering the System to the buildings, structures and fixtures appurtenant to the Premises and consents to such mounting or adhering, as applicable.

**4. Access to Premises.** Lessor shall provide Lessee with access, at all times, to the Premises to allow Lessee to perform the Solar Services as contemplated in the SSA and as required under the interconnection agreement with UES, including ingress and egress rights to the Premises for Lessee and its employees, contractors and sub-contractors and access to solar panels and conduits to interconnect the System with the Facility's electrical systems. Lessor shall use commercially reasonable efforts to provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the furnishing, installation, testing, commissioning, deconstruction, disassembly, decommissioning and removal of the System and access for rigging and material handling. Lessor shall provide Lessee a reasonable area for construction laydown. Lessor and its authorized representatives shall at all times have access to and the right to observe the construction of the System and other Solar Services, subject to compliance with Lessee's safety rules, but shall not interfere with Solar Services or handle any Lessee equipment or the System without written authorization from Lessee. In addition, Lessor shall grant Lessee access, at all times, to the Premises as reasonably necessary to allow Lessee to perform the Solar Services, including ingress and egress rights to the Premises for Lessee and its employees, contractors and subcontractors and UES personnel. Lessor shall provide necessary space for storing parts and supplies. Lessee shall use commercially reasonable efforts to perform the Solar Services in a manner that minimizes inconvenience to and interference with Lessor.

**5. System and Output Ownership.** Lessor acknowledges and agrees that Lessee or one of its affiliates is the exclusive owner and operator of the System, that all equipment comprising the System shall remain the personal property of Lessee and shall not become fixtures, notwithstanding the manner in which the System is or may be attached to any real

property of Lessor and Lessor shall have no right, title or interest in the System or any component thereof, notwithstanding that any such System may be physically mounted or adhered to the Premises or structures, buildings and fixtures on the Premises.

**6. Representations and Warranties, Covenants of Lessor.**

(a) Authorization. Lessor represents and warrants that Lessor (i) has been duly authorized to enter into this Lease by all necessary action (ii) does not and will not require any further consent or approval of any other person, authority or entity to consummate the obligations contemplated by this Lease, and (iii) will not be in default under any material agreement to which it is a party (including any lease in respect of the Premises as to which Lessor is the tenant). This Lease constitutes a legal and valid obligation of Lessor, enforceable against Lessor in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency, bank moratorium or laws relating to or affecting creditors' rights generally and general principles of equity whether such enforceability is considered in a proceeding in equity or at law.

(b) Lessor's Title to Premises. Lessor represents, warrants and covenants that Lessor has lawful title to (or a valid leasehold interest in) the Facility and the Premises and that Lessee shall have quiet and peaceful possession of the Premises free from any claim of any entity or person of superior title thereto without hindrance to or interference with or molestation of Lessee's quiet enjoyment thereof, throughout the term of this Lease. To the extent Lessor's interest in all or any of the Facility is a leasehold interest, Lessor have caused each landlord (each, a "Lessor's Landlord") of each such portion of the Premises to execute and deliver an amendment to the Lessor's lease agreement or such other documentation as is reasonably acceptable to Lessee pursuant to which such Lessor's Landlord shall acknowledge and agree that Lessee's rights in the Premises granted hereunder shall run with such Premises throughout the term of this Lease (or until otherwise terminated pursuant to Section 8), notwithstanding any sale, lease, transfer, assignment, mortgage, pledge or other alienation or encumbrance by such Lessor's Landlord of the Premises. To the extent the Lessor is the fee simple owner of the Premises, Lessor shall not sell, lease, assign, mortgage, pledge or otherwise alienate or encumber the Premises unless Lessor shall have given Lessee at least 15 days' prior written notice thereof, which notice shall identify the transferee, the Premises to be so transferred and the proposed date of transfer. Lessor agrees that this Lease and the right of way granted in Section 1 of this Lease shall run with the Premises and survive any transfer of any of the Premises. Lessor agrees and acknowledges that it has no interest in the System and shall not gain any interest in the System by virtue of this Lease.

(c) No Interference With and Protection of System. Lessor will not conduct activities on, in or about the Facility or the Premises that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Lessor shall take all reasonable steps to limit access to the Premises to Lessor and Lessor's employees, invitees, agents and representatives. Lessor shall implement and maintain reasonable and appropriate security measures on the Premises to prevent Lessor's employees, invitees, agents and representatives, and other unrelated third-parties, from having access to the Premises or the System, and to prevent from occurring any theft, vandalism or other actions that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Lessor covenants that it will obtain a non-disturbance agreement ("NDA") from any third party, purchaser, lessee, assignee, mortgagee, pledge or other party who now has or may in the future obtain an interest in the Premises or to whom a lien has been granted, including, without limitation, any Financiers to Lessor, Lessor's Landlord or the owner of the Premises,

which NDA shall (a) acknowledge and consent to the Provider's rights contained in this Lease, (b) acknowledge that the third party has no interest or lien in the System and shall not gain any interest in the System by virtue of the Parties' performance or breach of this Lease and (c) subordinates any lien the third party may have related to the Facility to those rights and privileges granted to Lessee pursuant to this Lease with respect to the Facility and Premises.

(d) Maintenance of Facility. Lessor shall keep areas of the Facility and Premises that are under its control neat, clean and in good order and condition. Lessor shall give Lessee prompt notice of any damage to or defective condition in any part or appurtenance of the Facility and Premises (including mechanical, electrical, plumbing, heating, ventilating, air conditioning and other equipment facilities and systems located within or serving the Premises). Lessor shall give Lessee prompt notice of any damage to or defective condition in the System that it becomes aware of. Lessor shall exercise reasonable care to keep and make the Premises safe and to warn those lawfully on the Premises of existing dangers.

(e) Utilities. Lessor shall provide Lessee with Station Power during the term of this Lease. For purposes of this Lease "Station Power" shall mean electric energy consumed in the start-up and operation of the System, which is distinct from the alternating current output of the System. Lessor shall also provide Lessee access to a telephone line and/or an internet connection.

(f) Insolation. Lessor acknowledges and agrees that access to sunlight ("insolation") is essential to the value to Lessee of the leasehold interest granted hereunder and is a material inducement to Lessee in entering into this Lease. Accordingly, Lessor shall not permit any interference with insolation on and at the Premises, including interference related to Pests. Without limiting the foregoing, Lessor shall not construct or permit to be constructed any structure on the Premises that could adversely affect insolation levels, permit the growth of foliage that could adversely affect insolation levels, or emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to insolation. If Lessor becomes aware of any potential development or other activity on adjacent or nearby properties that could diminish the insolation to the Premises, Lessor shall advise Lessee of such information and reasonably cooperate with Lessee in measures to preserve existing levels of insolation at the Premises. Notwithstanding any other provision of this Lease, the Parties agree that (i) Lessee would be irreparably harmed by a breach of the provisions of this Section 6(f), (ii) an award of damages would be inadequate to remedy such a breach, and (iii) Lessee shall be entitled to equitable relief, including specific performance, to compel compliance with the provisions of this Section 6(f).

(g) Hazardous Materials. To the best of Lessor's knowledge, there are no substances, chemicals or wastes, identified as hazardous, toxic or dangerous materials in any applicable law or regulation, present on, in or under the Premises in violation of any applicable law or regulation. Lessor shall not introduce or use any hazardous, toxic or dangerous materials on, in or under the Premises in violation of any applicable law or regulation. If Lessor becomes aware of any such hazardous, toxic or dangerous materials, Lessor shall promptly notify Lessee of the type and location of such materials in writing. Lessor agrees to assume full responsibility for any liability or cleanup obligations for any contamination or pollution or breach of environmental laws related to the Premises, unless directly attributable to the actions of Lessee.

(h) Premises Conditions. Lessor represents and warrants to Lessee that Lessor is unaware of any site conditions or construction requirements (a) that would materially

increase the cost of installing the System at the planned locations on the Premises or would materially increase the cost of maintaining the System at the Premises over the cost that would be typical or customary for solar photovoltaic systems substantially similar to the System or (b) that would adversely affect the ability of the System as designed to produce Energy once installed.

(i) Interconnection Point. Lessor will maintain, at all times, a suitable electrical interconnection point of sufficient capacity to accommodate the System on the Premises as such interconnection point as detailed in Exhibit B hereto.

## **7. Representations and Warranties, Covenants of Lessee.**

(a) Authorization. Lessee represents and warrants that it (i) has been duly authorized to enter into this Lease by all necessary action, (ii) does not and will not require any further consent or approval of any person, authority or entity to consummate the obligations under this Lease, and (iii) will not be in default under any material agreement to which it is a party. This Lease constitutes a legal and valid obligation of Lessee, enforceable against Lessee in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency, bank moratorium or laws relating to or affecting creditors' rights generally and general principles of equity whether such enforceability is considered in a proceeding in equity or at law.

(b) Hazardous Materials. Lessee shall not introduce or use any hazardous, toxic or dangerous materials on, in or under the Premises in violation of any applicable law or regulation. If Lessee becomes aware of any such hazardous, toxic or dangerous materials, Lessee shall promptly notify Lessor of the type and location of such materials in writing. Lessee agrees to assume full responsibility for (and protect, indemnify and defend Lessor against) any liability or cleanup obligations for any contamination or pollution or breach of environmental laws related to the use of any hazardous, toxic or dangerous materials on the Premises that are directly attributable to the actions of Lessee.

**8. Term and Termination**. The term of this Lease is coterminous with the SSA and this Lease shall terminate upon the expiration or termination of the SSA; provided, however, for a continuous period of one hundred eighty (180) days following the termination of this Lease, Lessor shall continue to provide Lessee (and its affiliates and subcontractors) with reasonable access to the Premises, consistent with the terms of this Lease, without payment of further rent or consideration in the event that the Lessee is permitted or required to remove the System pursuant to the terms of the SSA. Lessee may terminate this Lease at Lessee's sole discretion at any time by providing Lessor three (3) months' prior written notice.

**9. Insurance**. Each of Lessee and Lessor shall obtain and maintain the insurance coverages required under the SSA.

**10. Taxes**. Lessee shall pay all personal property taxes, possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees or charges of any kind which are assessed, levied, charged, confirmed, or imposed by any public authority due to Lessee's occupancy and use of the Premises (or any portion or component thereof). Lessor shall pay all (i) real and personal property taxes relating to the real property on which the Premises is situated, (ii) inheritance or estate taxes imposed upon or assessed against the Premises, or any part thereof or interest therein, (iii) taxes computed upon the basis of the net

income or payments derived from the Premises by Lessor or the owner of any interest therein, and (iv) taxes, fees, service payments, excises, assessments, bonds, levies, fees or charges of any kind which are adopted by any public authority after the date hereof.

11. **Indemnity.** Unless otherwise expressly indicated herein, the indemnification obligations of each Party are set forth in the SSA along with certain limitations on liability for both the SSA and this Lease.

12. **Casualty or Condemnation.** In the event the Premises shall be so damaged or destroyed so as to make the use of the Premises impractical as determined by Lessee, then either Lessee may elect to terminate this Lease on not less than twenty (20) days' prior notice to Lessor effective as of a date specified in such notice, and on the date so specified, this Lease shall expire as fully as if such date were the date set forth above for the expiration this Lease. If Lessee does not elect to terminate this Lease pursuant to the previous sentence, Lessor shall exercise commercially reasonable efforts to repair the damage to the Premises and return the Premises to its condition prior to such damage or destruction, and except that Lessor shall in no event be required to repair, replace or restore any property of Lessee comprising part of the System, which replacement or restoration shall be Lessee's responsibility. In the event of an award related to eminent domain or condemnation of all or part of the Premises, each Party shall be entitled to take from such an award that portion as allowed by law for its respective property interest appropriated as well as any damages suffered thereby.

13. **Assignment.** Each Party shall have the right to assign any of its rights duties or obligations under this Lease as permitted (or not permitted) under Article XVII of the SSA. Any proper assignee of the rights and duties of Lessee under the SSA shall also be deemed to be a proper assignee of Lessee' rights and duties under this Lease so long as such successor in interest agrees to assume the obligations of Lessee and abide by the terms and conditions hereunder.

14. **Provisions Benefiting Financier.**

(a) **Financier's Right to Possession, Right to Acquire and Right to Assign.** A Financier shall have the absolute right to do one, some or all of the following things: (a) assign its Lien; (b) enforce its Lien; (c) acquire title (whether by foreclosure, assignment in lieu of foreclosure or other means) to the leasehold estate created by this Lease (the "**Leasehold Estate**") and the rights created under the SSA; (d) take possession of and operate the System or any portion thereof and perform any obligations to be performed by Lessee hereunder and under the SSA, or cause a receiver to be appointed to do so; (e) assign or transfer the Leasehold Estate to a third party; or (f) exercise any rights of Lessee hereunder or under the SSA. Lessor's consent shall not be required for any of the foregoing; and, upon acquisition of the Leasehold Estate by a Financier or any other third party who acquires the same from or on behalf of the Financier or any purchaser who purchases at a foreclosure sale, Lessor shall recognize the Financier or such other party (as the case may be) as Lessee's proper successor, and the Lease and the SSA shall remain in full force and effect.

(b) **Notice of Default.** As a precondition to exercising any rights or remedies under this Lease or under the SSA as a result of any default or alleged default by Lessee, Lessor shall deliver a duplicate copy of the applicable notice of default (a "**Notice of Default**") to each Financier concurrently with delivery of such notice to Lessee, as applicable, specifying in detail the alleged Event of Default and the required remedy, provided Lessor was given notice of such Financier as provided hereunder.

(c) Cure. A Financier shall have the same period after receipt of a Notice of Default to remedy an Event of Default, or cause the same to be remedied, as is given to Lessee after Lessee's receipt of a Notice of Default hereunder, plus, in each instance, the following additional time periods: (a) ten (10) Business Days in the event of any monetary Event of Default; and (b) sixty (60) days in the event of any non-monetary Event of Default; provided, however, that (a) such sixty (60)-day period shall be extended for the time reasonably required by the Financier to complete such cure, including the time required for the Financier to obtain possession of the System (including possession by a receiver), institute foreclosure proceedings or otherwise perfect its right to effect such cure and (b) the Financier shall not be required to cure those Events of Default which are not reasonably susceptible of being cured or performed by such Party ("Non-Curable Defaults"). The Financier shall have the absolute right, but not the obligation, to substitute itself or an affiliate for Lessee and perform the duties of Lessee hereunder for purposes of curing such Event of Default. Lessor expressly consents to such substitution, agrees to accept such performance, and authorizes the Financier, its affiliate (or either of their employees, agents, representatives or contractors) to enter upon the Premises to complete such performance with all of the rights and privileges of Lessee hereunder. Lessor shall not terminate this Lease or the SSA prior to expiration of the cure periods available to a Financier as set forth above.

(d) Deemed Cure; Extension. If any Event of Default by Lessee under this Lease or the SSA cannot be cured without obtaining possession of all or part of (a) the System, or (b) the Leasehold Estate, then any such Event of Default shall nonetheless be deemed remedied if: (i) within sixty (60) days after receiving notice from Lessor as set forth in Section 14 (b), a Financier acquires possession thereof, or commences appropriate judicial or nonjudicial proceedings to obtain the same; (ii) the Financier is prosecuting any such proceedings to completion with commercially reasonable diligence; and (iii) after gaining possession thereof, the Financier performs all other obligations as and when the same are due in accordance with the terms of this Lease and the SSA. If a Financier is prohibited by any process or injunction issued by any court or by reason of any action of any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee, from commencing or prosecuting the proceedings described above, then the sixty (60)-day period specified above for commencing such proceedings shall be extended for the period of such prohibition.

(e) Liability. A Financier that does not directly hold an interest in this Lease and the SSA, or that holds a Lien, shall not have any obligation under this Lease or the SSA prior to the time that such Financier succeeds to absolute title to such interest. Any such Financier shall be liable to perform obligations under this Lease or the SSA only for and during the period of time that such Financier directly holds such absolute title. Further, in the event that a Financier elects to (a) perform Lessee's obligations under this Lease or the SSA, (b) continue Solar Services on the Premises, (c) acquire any portion of Lessee's right, title, or interest in the System, in this Lease or in the SSA or (d) enter into a new lease as provided in Section 14 (f) then such Financier shall not have any personal liability to Lessor in connection therewith, and Lessor's sole recourse in the event of default by such Financier shall be to execute against such Financier's interest in the System. Moreover, any Financier or other party who acquires the Leasehold Estate pursuant to foreclosure or an assignment in lieu of foreclosure shall not be liable to perform any obligations thereunder to the extent the same are incurred or accrue after such Financier or other party no longer has ownership of the Leasehold Estate.



(f) New Lease to Financier. In the event that this Lease or the SSA (a) terminates because of Lessee's uncured Event of Default or (b) is rejected or disaffirmed pursuant to bankruptcy law or any other law affecting creditors' rights, then, so long as a Financier has cured any such monetary Event of Default and is making commercially reasonable efforts to cure any such non-monetary Event of Default as provided herein, Lessor shall, immediately upon written request from such Financier received within ninety (90) days after any such event, without demanding additional consideration therefor, enter into a new lease in favor of such Financier, which new lease shall (i) contain the same covenants, agreements, terms, provisions and limitations as this Lease (except for any requirements that have been fulfilled by Lessee prior to such termination, foreclosure, rejection or disaffirmance), (ii) be for a term commencing on the date of such termination, foreclosure, rejection or disaffirmance, and continuing for the remaining term of this Lease before giving effect to such termination, foreclosure, rejection or disaffirmance, (iii) contain a lease (or other subordinate interest) of the Premises or such portion thereof as to which such Financier held a Lien on the date of such termination, foreclosure, rejection or disaffirmance, (iv) contain a grant to the Financier of access, transmission, communications, utility and other easements covering such portion or portions of the Premises as such Financier may reasonably designate and (v) enjoy the same priority as this Lease over any lien, encumbrance or other interest created by Lessor; and, until such time as such new lease is executed and delivered, the Financier may enter, use and enjoy the Premises and perform the Solar Services thereon as if the Lease and the SSA were still in effect. At the option of the Financier, the new lease may be executed by a designee of such Financier, without the Financier assuming the burdens and obligations of Lessee thereunder. If more than one Financier makes a written request for a new lease pursuant hereto, then the same shall be delivered to the Financier whose Lien is senior in priority.

(g) Financier's Consent. Notwithstanding any provision of this Lease to the contrary, (a) Lessor shall not agree to a modification or amendment of this Lease if the same could reasonably be expected to materially reduce the rights or remedies of a Financier or impair or reduce the security for its Lien and (b) Lessor shall not accept a surrender of the System or any part thereof or a termination of this Lease or the SSA; in each such case without the prior written consent of each Financier.

(h) Collateral. Lessor hereby agrees that it may not institute, create or hold any lien (including, without limitation, any lien under A.R.S. § 33-362) in and to the System and other property of Lessee that is or may from time to time hereafter be located at the Premises, and to which Lessee has granted or will grant a security interest to Financier (all such property and the records relating thereto shall be hereafter called the "**Collateral**") to the lien of Financier. Lessor recognizes and acknowledges that any claim or claims ("**Claims**") that Financier has or may have against such Collateral by virtue of any lien or security interest, are superior to any claim of any nature that Lessor now has or may hereafter have to such Collateral by statute, agreement or otherwise. The Financier's rights provided for herein shall be effective until the discharge of the Claims. Lessor further agrees to notify any purchaser of the Premises or Facility, and any subsequent mortgagee or other encumbrance holder, of the existence of the foregoing waiver of Lessor's lien, which shall be binding upon the executors, administrators, successors and transferees of Lessor, and shall inure to the benefit of the successors and assigns of Financier.

(i) No Lien. Lessor consents to Financier's security interest in the Collateral and waives all right of levy for rent and all claims and demands of every kind against the Collateral, such waiver to continue so long as any sum remains owing from Lessee to the

Financier. Lessor agrees that the Collateral shall not be subject to distraint or execution by, or to any claim of, Lessor.

(j) No Prevention of Lessor. Lessor hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent Financier from the Facility for the purpose of inspecting the Collateral.

**15. Defaults and Remedies.**

(a) Default. If a Party (the "**Defaulting Party**") fails to perform its obligations hereunder (an "**Event of Default**"), then it shall not be in default hereunder unless it fails to cure such Event of Default within ten (10) Business Days after receiving notice from the other Party (the "**Non-Defaulting Party**") for any monetary Event of Default or within sixty (60) days after receiving written notice from the Non-Defaulting Party stating with particularity the nature and extent of such Event of Default and specifying the method of cure (a "**Notice of Default**"); provided, however, that if the nature or extent of the obligation or obligations is such that more than sixty (60) days are required, in the exercise of commercially reasonable diligence, for performance of such obligation(s), then the Defaulting Party shall not be in default if it commences such performance within such sixty (60) day period and thereafter pursues the same to completion with commercially reasonable diligence.

(b) Payment Under Protest. The Defaulting Party may cure any monetary Event of Default by depositing the amount in controversy (not including claimed consequential, special, exemplary or punitive damages) in escrow with any reputable third party escrow, or by interpleading the same, which amount shall remain undistributed until final decision by a court of competent jurisdiction or upon agreement by the Parties. No such deposit shall constitute a waiver of the Defaulting Party's right to institute legal action for recovery of such amounts

(c) Remedies. The Non-Defaulting Party shall have and shall be entitled to exercise any and all remedies available to it at law or in equity, including the right to terminate the Lease pursuant to applicable Law, all of which remedies shall be cumulative. Such remedies shall include the right in the Non-Defaulting Party to pay or perform any obligations of the Defaulting Party that have not been paid or performed as required hereunder, and to obtain (i) subrogation rights therefor and (ii) immediate reimbursement from the Defaulting Party for the actual, reasonable and verifiable out-of-pocket costs of such payment or performance. Lease may be amended only in writing signed by Lessee and Lessor or their respective successors in interest.

**16. Notices.** All notices, requests, statements or payments will be made to the addresses and persons specified below. All notices will be made in writing except where this Lease expressly provides that notice may be made orally. Notices required to be in writing will be delivered by hand delivery, overnight delivery, facsimile, or e-mail (so long as a copy of such e-mail notice is provided immediately thereafter in accordance with the requirements of this section by hand delivery, overnight delivery, or facsimile). Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile. When Notice is permitted to be provided orally, notice

by telephone will be permitted and will be deemed to have been received at the time the call is received. A Party may change its address by providing notice of the same in accordance with the provisions of this section.

If to Lessor:

Tanque Verde Unified School District No 13  
Attn: \_\_\_\_\_  
2300 N. Tanque Verde Loop Road, Building No. 1  
Tucson, AZ 85749

If to Lessee:

SOLON Corporation  
Attn:  
6950 S Country Club Rd  
Tucson, AZ 85756  
Phone: (520) 807-1300 Facsimile: (520) 807-4046

With a copy to:

Court S. Rich  
Rose Law Group pc  
6613 N. Scottsdale Rd.; Ste 200  
Scottsdale, AZ 85250

**17. Waiver.** The waiver by either party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein.

**18. Notice of Malfunction.** Each Party shall notify the other Party as promptly as reasonably possible but in any event within twenty-four (24) hours following the discovery by it of any material malfunction of the System or interruption in the supply of Energy from the System. Each Party shall designate and advise the other Party of personnel to be notified in the event of such an emergency if different from the person identified in Section 16 directly above. Lessee shall correct, or cause to be corrected, any conditions related to the System that caused the emergency as soon as reasonably possible in light of the circumstances following notice of such emergency. Lessor shall correct, or cause to be corrected, any conditions under its control or responsibility that caused such emergency as soon as reasonably possible in light of the circumstances following notice of such emergency.

**19. Remedies Cumulative.** No remedy herein conferred upon or reserved to Lessee or Lessor shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

**20. Headings.** The headings in this Lease are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Lease.

21. **Choice of Law.** This Lease shall be construed in accordance with the laws of the State of Arizona (without regard to its conflict of laws principles).

22. **Binding Effect.** This Lease and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the parties hereto, together with their respective successors and permitted assigns.

23. **Counterparts.** This Lease may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile or "pdf" signatures shall have the same effect as original signatures and each party consents to the admission in evidence of a facsimile or photocopy of this Lease in any court or arbitration proceedings between the parties.

24. **Entire Lease.** This Lease, the EPC and the SSA (including the exhibits, any written schedules, supplements or amendments thereto) represent the full and complete understanding between the parties hereto with respect to the subject matter contained herein and therein and supersede all prior written or oral agreements between said parties with respect to said subject matter. In the event of any conflict between the provisions of this Lease, the EPC and the provisions of the SSA then the provisions of the SSA shall govern and control.

25. **Further Assurances.** Upon the receipt of a written request from the other party, each party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary to carry out the terms and intent hereof. Neither party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this section. At the request of Lessee, Lessor agrees to execute and deliver in recordable form, a memorandum of this Lease for recording in the title records of the county where the Premises are located or other applicable government office.

26. **Service Contract.** It is the intention of the Parties that the Transactions, taken as a whole, shall meet all of the requirements set forth in Section 7701(e)(4) of the Internal Revenue Code of 1986, as amended (the "**Code**"), and any related Treasury Regulations and IRS administrative pronouncements, so that the Transactions, taken as a whole, are deemed to be treated as a "service contract" and not as a "lease" pursuant to Code Section 7701(e). In the event that the provision of the Transactions, taken as a whole, fail to comply with the requirements set forth in Code Section 7701(e)(4), then any such provision shall be of no force or effect and shall be subject to modification by Provider, in its sole discretion, to comply with Code Section 7701(e)(4); provided, however, that no such modifications shall serve to increase the Solar Services Payment Rate or any other amount payable by Recipient hereunder or under the SSA or otherwise increase in any material respect Recipient's other obligations under the Transactions.

27. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person, firm or corporation specified by such requesting party:

(a) That this Lease is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;

(b) Whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms,

covenants and conditions of this Lease and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and

(c) Such other information as may be reasonably requested by a Party hereto.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

**28. Lessee Records and Audits.** Lessee shall retain all records relating to this Agreement for five (5) years after termination of this Agreement, and all such records shall be subject at all reasonable times to inspection and audit by Lessor for five (5) years after termination of this Agreement.

**29.** This agreement is subject to termination for conflict of interest pursuant to A.R. S. § 38-511.

*[signature page to follow]*

**IN WITNESS WHEREOF**, the parties have executed this Lease on the day and year first above written.

**SOLON Corporation**

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

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

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

**TANQUE VERDE UNIFIED SCHOOL DISTRICT NO. 3**

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

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

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

**EXHIBIT A**

**Description of the Facility**

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**EXHIBIT B**

A - 1

**Description of the Premises**

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**TANQUE VERDE UNIFIED SCHOOL DISTRICT**  
**FACILITY UPGRADE AGREEMENT**

THIS FACILITY UPGRADE AGREEMENT (this "**Agreement**") is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2012 (the "**Effective Date**"), by and between SOLON Corporation, an Arizona corporation ("**Provider**") and Tanque Verde Unified School District No. 13, a political subdivision of the State of Arizona ("**Recipient**"). Provider and Recipient are sometimes hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

WHEREAS, concurrently herewith, Recipient and Provider are entering into; 1) certain Solar Services Agreements, dated as of the date hereof (the "**SSAs**"), pursuant to which Provider has agreed to provide for the engineering, construction, installation, maintenance and operation of the System(s) and provide Recipient with the Solar Services; and 2) certain Site Lease Agreements (the "**Leases**") pursuant to which Provider agrees to lease portions of the Facilities (as defined in the Lease).

WHEREAS, the Provider wishes to provide a budget in an amount equal to \$100,000 to improve upon the aesthetics and integration of the completed Systems relating to the existing campuses (the "**Facility Upgrade Budget**").

NOW THEREFORE, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I  
DEFINED TERMS; RULES OF INTERPRETATION

1.1 Defined Terms. Capitalized terms, not otherwise defined in the body of this Agreement, shall have the meanings ascribed to them in Exhibit C of the SSAs.

1.2 Rules of Interpretation. The Rules of Interpretation contained in the SSAs shall apply to this Agreement unless expressly provided otherwise in the body hereof.

ARTICLE II  
BEAUTIFICATION BUDGET

2.1 The Facility Upgrade Budget. Provider will provide Recipient with \$100,000 worth of upgrades to the Systems or to the Premises aimed at improving the appearance and integration of the Systems on the campuses.

2.2 Allocation of Budget. Prior to the commencement of construction of each System, the Parties shall agree on certain improvements or upgrades to be made to each System or the Premises that are in addition to the scope depicted in the construction plans provided in accordance with Section 5.1 of the SSAs. Upon agreement on the particular upgrades, Provider shall provide proposal to Recipient setting forth the price of the particular upgrades and shall update the construction plans

or other plans as appropriate, to reflect the inclusion of the upgrades in the completed Systems and the Facility Upgrade Budget shall be reduced by the amount of the upgrade. Provider shall obtain Recipient's approval of the plans and price of the upgrades prior to commencement of construction. Provider shall furnish Recipient with invoices reflecting expenditures of the Upgrade Budget. Upgrades can be allocated to the different Systems in any manner agreed upon between the Parties until such time as the Facility Upgrade Budget has been reduced to zero (\$0.00) dollars.

2.3 Unexpended Budget. Not more than thirty (30) days after the completion of the construction of the final System, any remaining unexpended amounts in the Facility Upgrade Budget shall be distributed to Recipient. In no event shall Recipient receive more than ten-thousand dollars (\$10,000) through the distribution set forth in this Section 2.3.

2.4 Incorporated Provisions. This Agreement hereby incorporates the following provisions of the SSAs as though fully set forth herein: paragraphs 5.1, 5.2, 5.5, 6.2, 8.2, 8.3, 10.3, 12.1, 12.2, 12.3, 12.4, 16.1, 18.1, 18.7, 18.8, 18.13, 18.14, 18.15 and 18.16.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

RECIPIENT:

Tanque Verde Unified School District No.13

A political subdivision of the State of Arizona

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

Its: \_\_\_\_\_

PROVIDER:

SOLON Corporation

An Arizona corporation

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

Its: \_\_\_\_\_