

AGREEMENT NUMBER
REGISTRATION NUMBER

- This Agreement is entered into between the State DEPARTMENT and the Contractor named below:
 STATE DEPARTMENT'S NAME
Department of
 CONTRACTOR'S NAME
Fuel Cell Company, LLC
- The term of this **September 1, 2009** to **September 1, 2024** Agreement is:
- The maximum amount **Not applicable. See Exhibit B** of this Agreement is:
- The Parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement. All references to exhibits in this Agreement refer to exhibits of this Agreement unless otherwise specified.

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IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto.

CONTRACTOR		<i>California Department of General Services Use Only</i>
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) Fuel Cell Company, LLC		
BY (Authorized Signature) 	DATE SIGNED(Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		
STATE OF CALIFORNIA		
DEPARTMENT NAME Department of		
BY (Authorized Signature) 	DATE SIGNED(Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		

Exempt per:

EXHIBIT A
SCOPE OF WORK

1. Fuel Cell Company LLC (“CONTRACTOR” or “LICENSEE”) will provide to DEPARTMENT all Electricity supplied by the System at a price per kilowatt-hour to be below the otherwise applicable utility retail tariff for the Facility for the term of this PPA, as specified in Exhibit B and B-1.
2. LICENSEE will install, operate and maintain the System on the Facility in accordance with the Site License Agreement (SLA).
3. LICENSEE shall provide all of the following:
 - a. Billing System: LICENSEE will provide a system for billing DEPARTMENT as defined in Exhibits B, B-1 and B-2.
 - b. Customer Service: LICENSEE shall provide all of the following:
 - i. LICENSEE will produce and send bills to DEPARTMENT designee within fifteen (15) business days of the end of the billing cycle. Billing cycle is defined in Exhibit B, Section 3(c)(ii) of this PPA.
 - ii. LICENSEE will post meter reads to a password protected web site and make this web site available to DEPARTMENT.
 - iii. LICENSEE will post 15-minute interval data to password protected website and will make this data available to DEPARTMENT within 24 hours.
 - iv. LICENSEE will provide a Customer Service representative accessible to DEPARTMENT twenty-four (24) hours per day, seven (7) days per week in cases of emergency. Parties agree that, for purposes of this provision, “accessible” means that LICENSEE will provide a designated customer service telephone number with a voice mail system which records the time and date of the call. LICENSEE agrees that it will respond to DEPARTMENT’s messages on this designated customer service voice mail system within 24 hours of DEPARTMENT’S call.
 - v. In cases of emergency in which DEPARTMENT determines that the continued operation of the System on the Facility presents an imminent threat requiring immediate action to prevent or mitigate the loss or impairment of life, health, property or essential public services, the Parties agree that DEPARTMENT may disconnect the System from the Facility prior to notification of LICENSEE. DEPARTMENT will notify LICENSEE if DEPARTMENT disconnects the System pursuant to this provision no later than 8 hours after the System is disconnected. Parties agree that only LICENSEE or an agent designated by LICENSEE will be authorized to reconnect the System after the System is disconnected by DEPARTMENT pursuant to this emergency section.
 - c. Meters: LICENSEE shall measure the actual amount of Electricity delivered to the DEPARTMENT by the System at the Electrical Interconnection Point utilizing a commercially available revenue grade interval data recording meter. The meter shall be installed and maintained at LICENSEE’s expense. The meter provided and installed by the

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LICENSEE shall have standard industry telemetry capabilities that will provide the DEPARTMENT with the ability to connect the meter to the DEPARTMENT's Energy Management System for the purposes of incorporating System electrical output data into the DEPARTMENT's energy usage database. LICENSEE understands that this is a necessary capability in the event that the DEPARTMENT requires real time monitoring of the DEPARTMENT's total energy demand and usage for the purpose of complying with, for example, the requirements of a Utility administered demand response program in which the DEPARTMENT is a participant. Actual physical connection to the meter by the DEPARTMENT for the stated purpose shall be at DEPARTMENT's expense, with review and approval by the LICENSEE.

LICENSEE shall have the meter tested every two years at LICENSEE's expense by a certified independent third party approved by the DEPARTMENT. DEPARTMENT and the State shall be allowed to observe the meter test, and LICENSEE shall provide notice of the testing to the DEPARTMENT and the State at least ten (10) business days prior to the test date. LICENSEE shall provide signed copies of the results of the meter test to the DEPARTMENT. In addition to the triennial test, LICENSEE shall test the meter at any reasonable time upon the request of the DEPARTMENT. DEPARTMENT shall reimburse LICENSEE for the cost of any test requested by the DEPARTMENT, unless such testing demonstrates that the meter was operating outside of industry standard tolerance allowances or as such defined by the California Public Utilities Commission for meter calibration and operation.

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

DEPARTMENT may also conduct occasional billing inquiries, validation and verification activities, or reconciliation procedures. During such DEPARTMENT inquiries, activities, and procedures, LICENSEE shall provide DEPARTMENT with the data and other information, including any billing algorithms and interval meter data representing System output, used to generate billing determinants at no cost to the Department.

DEPARTMENT will use its best efforts to provide or arrange for Utility metered interval data and billing data and information that can support the LICENSEE's billing process, either directly through a data file transmission, receipt through regular mail services, or through the appropriate and established arrangement with the Utility. For purposes of this paragraph, Parties agree that "best efforts" means that the DEPARTMENT will authorize the applicable Utility to provide metered interval data and billing data and information directly to the LICENSEE, as per the Utility's rules and applicable regulations.

- d. Guarantee of Minimum Output Performance: LICENSEE has estimated that the System will deliver the Expected Performance Output as indicated in Exhibit B, Section 2, of this PPA. LICENSEE guarantees a Minimum Output Performance from the System, which is defined to be 90% of the Expected Performance Output from the System over the course of a Fiscal Year. DEPARTMENT and LICENSEE agree that if the System output falls below the guaranteed minimum output, it is assumed that DEPARTMENT will have to purchase electricity from

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the Utility for the difference. If LICENSEE fails to meet the Minimum Output Performance requirement on a Fiscal Year basis, for reasons other than the Department's shading of the System, as described in Exhibit D, Section 12 below, LICENSEE will pay DEPARTMENT or offset future DEPARTMENT payments in the amount of 1.0 times the value of the Lost Savings, as calculated below, up to the Minimum Output Performance.

Lost Savings is defined as the amount of savings that the DEPARTMENT would have realized given that the LICENSEE delivered the Minimum Output Performance of Electricity from the System when compared to actual performance as measured at the end of each Fiscal Year. Lost Savings shall be calculated as follows:

$$LS = ((GMOPE - AMOPE) \times AAP) \times D$$

where:

LS = Lost Savings

GMOP = Guaranteed Minimum Output Performance as measured in total annual kWh and as calculated per Section 3(d) above.

AMOP = Actual Measured Output Performance as measured in total annual kWh delivered at the end of each Fiscal Year.

AAP = Annual average price for energy as measured in kWh and determined to be the total annual cost for energy delivered by the System divided by the total energy delivered on a Fiscal Year basis by the System as measured in kWh (\$/kWh)

D = Discount as listed in Exhibit B Section 1(a) of this PPA.

Parties agree that since the Minimum Output Performance is expressed in annual kWh it would be impossible to determine Lost Savings in any given billing period, and therefore must be measured at the end of each Fiscal Year. As a result, calculating an average annual price for Electricity delivered by the System which is to be utilized in the determination of Lost Savings reflects the best method in achieving the intent of this section.

4. DEPARTMENT agrees to purchase all Electricity supplied by the System that meets agreed-upon specifications up to the available output of the System, as more fully described in Exhibit B of this PPA. LICENSEE shall have no right to sell Electricity from the System to anyone other than the DEPARTMENT, excepting unbundled Renewable Energy Credits consistent with Exhibit D Section 1 of this PPA.

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5. The project representatives during the term of this agreement will be:

DEPARTMENT CONTACT: Department of	Contractor: Fuel Cell Company LLC
Section/Unit: Energy Management Section	
Name:	Name:
Address:	Address:
Phone:	Phone:
Email:	Email:

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

STATE CONTACT: Department of General Services	Contractor:
Section/Unit: Green Team	
Name: Patrick McCoy	Name:
Address: 707 3 rd Street, 4 th Floor West Sacramento, CA 95605	Address:
Phone: 916-375-5988	Phone:
Email: Patrick.McCoy@dgs.ca.gov	Email:

EXHIBIT A-1
DEFINITIONS

In addition to other terms specifically defined elsewhere in this PPA, the following words and phrases shall be defined as follows:

“Collateral Assignment” means that assignment to the System Lessor of certain rights and interests in property owned by the LICENSEE including the PPA and the SLA.

“DEPARTMENT” means the State of California Department of _____, which has jurisdiction and control of the Facility.

“Electricity” means electrical energy, measured in kilowatts and kilowatt-hours that is produced by the System and delivered by LICENSEE to the DEPARTMENT at the Electrical Interconnection Point and that conforms to applicable utility and/or authoritative regulatory body standards.

“Electrical Interconnection Point” means the point(s) specified in the project design where the System connects to the existing electrical systems serving the Facility.

“Facility” means the state building or site operated by DEPARTMENT which will house the System.

“Fiscal Year” means the State of California Fiscal Year, beginning on July 1 of each calendar year and ending on June 30 of the following calendar year.

“Leaseback Lease” means that agreement between the System Lessor and LICENSEE whereby the LICENSEE leases the System from the System Lessor.

“LICENSEE” means Fuel Cell Company LLC, who is the holder of the license pursuant to the Site License Agreement to install the System and sell Electricity to the DEPARTMENT at the Facility.

“Renewable Energy Credit” mean renewable energy credit or renewable energy credits or certificates, emission reduction credits, emission allowances, green tags, tradable renewable credits, and Green-e products related to renewable energy production and is a commodity that is separated or unbundled from the underlying electricity supplied from the renewable energy production system or facility.

“Site License Agreement” or “SLA” means the license granted by State and DEPARTMENT to LICENSEE to install and operate the System at the Facility.

“State” means the State of California, acting by and through the Department of General Services.

“System” means, but is not limited to, the integrated assembly of fuel cells, auxiliary equipment, cooling equipment, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, switches, wiring devices and wiring (as more specifically defined in Exhibit A-2, Site License Agreement) installed in the Licensed Area of the Facility for the purpose of generating Electricity for purchase by Department.

“System Lessor” means the owner of the System pursuant to an initial sale-leaseback arrangement to finance the System, and any subsequent permitted transferee or assignee pursuant to Exhibit D Section 16 (f).

“Utility” shall be the local provider of electric transmission, distribution and commodity services to the DEPARTMENT in the absence of the System.

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EXHIBIT B
ELECTRICITY PRICING, MINIMUM OUTPUT GUARANTEES AND BILLING METHODOLOGY

1. Electricity Pricing: The discount to the Reference Tariff specified below is:

a. Discount: _____ %

2. Expected Performance Output:

a. Electricity: _____ Total kWh

The Guaranteed Minimum Output Performance shall be calculated as referenced in Exhibit A, Section 3(d).

Parties understand that the System generation output meter installed at the Electrical Interconnection Point may be located on the low voltage side of the step up transformer. The step up transformer increases the System voltage output to the Facility voltage service level for delivery to the Facility. If the System is installed and metered in this manner, the amount of System generation output as metered at the Electrical Interconnection point is to be adjusted for transformer losses of 2%. The First Year Expected Performance Output as indicated in Section 2 above will also be adjusted for this 2% transformer loss.

3. Electricity Purchase and Sales.

(a) General Provisions.

- (i) LICENSEE will generate, deliver and sell Electricity, when available from the System, to the DEPARTMENT at the Electrical Interconnection Point during the term of this Agreement.
- (ii) LICENSEE agrees to generate, deliver and sell a quantity of Electricity as noted in Section 2 above and as guaranteed in Exhibit A Section 3(d) of this PPA to the DEPARTMENT from the System and DEPARTMENT agrees to purchase Electricity as measured at the Electrical Interconnection Point.
- (iii) LICENSEE shall be liable for and shall pay all standby charges imposed by the Utility and shall be liable for and shall pay any and all other charges imposed on or incurred by the DEPARTMENT to the extent that such charges would not have been imposed or incurred in the absence of the System.

(b) Reference Tariff.

- (i) DEPARTMENT's monthly payment to LICENSEE for Electricity shall in no event exceed the amount DEPARTMENT would have paid to the Utility under applicable tariffs for electricity and demand charges in the absence of the System, based on

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usage during the billing period in question. The applicable tariff shall be the lowest-cost Utility tariff which is available to DEPARTMENT for the purchase of all of its electricity requirements from the Utility for the Facility. The tariff established in the preceding sentence shall be known as the "Reference Tariff."

The total costs that the DEPARTMENT would pay in any given billing period for Utility electrical services delivered to the Facility in the absence of the System shall be known as the Business-As-Usual Cost ("BAU Cost"), which shall be determined by calculating the cost that the DEPARTMENT would have incurred based on its electricity consumption and profile for such billing period priced in accordance with the terms in the applicable Reference Tariff. Notwithstanding any other provision or formula in this Agreement, DEPARTMENT shall in no event pay more for its total electricity cost as a result of this Agreement than DEPARTMENT would have paid in the absence of this Agreement.

- (ii) As of the Effective Date of this Agreement, the Reference Tariff is [redacted]. For purposes of determining the relevant prices and rates for electricity, it is assumed that DEPARTMENT would take service from the applicable local utility at no less than the [redacted] kV level of service. The prices indicated for the various services in the Reference Tariff that are applicable at any point in time shall be known as the "Reference Prices." The Parties acknowledge that the Reference Prices in the applicable Reference Tariff change from time to time in accordance with rules and regulations adopted by the California Public Utilities Commission and that the prices applicable under this Agreement will change in a corresponding manner.
- (iii) If a Reference Tariff used at any time as the basis for pricing sales of Electricity under this Agreement is eliminated or is no longer applicable to DEPARTMENT, the Parties shall select a replacement Reference Tariff using the principles set forth in this Section 3 of Exhibit B. DEPARTMENT may select the tariff that in its sole reasonable opinion is the optimal tariff for the Facility given its loads and manner of operations. If there is no single local utility tariff that provides for fully-bundled service consistent with the provision of this Agreement, then the Parties shall negotiate in good faith to select a combination of local utility tariffs or if necessary, other readily available price benchmarks in order to establish a new Reference Tariff, meeting the standards of this section. Those services and charges may include commodity, transmission, distribution, regulatory and public service assessments, monthly customer and meter charges, charges for reactive demand and other charges that would normally and customarily be paid by a fully-bundled customer of the size and nature of the Facility.

Notwithstanding any provision herein, in no event shall any local utility tariff be deemed a Reference Tariff if such tariff applies to customers that take service at a voltage level lower than that normally purchased by the DEPARTMENT from the Utility or if such tariff generally applies to customers with electrical demand levels less than DEPARTMENT's electrical demand levels.

- (iv) The Reference Tariff may include charges that are collected by the Utility that are not exempted from payment by Utility customers who procure all or part of their electricity needs by a non-utility source of supply. The payment of these charges to the Utility will be the sole responsibility of the DEPARTMENT, and LICENSEE shall not collect these charges through payment of invoices for Electricity generated and delivered by the System to the DEPARTMENT. These charges

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may include, but are not limited to, Public Purpose Program, Nuclear Decommissioning, Competitive Transition, DWR Bond, and other Cost Recovery Surcharges as approved for collection from non-exempt Utility customers by the California Public Utilities Commission. LICENSEE shall ensure that the Reference Tariff prices applied in the determination of payment for Electricity generated and delivered by the System comply with this provision.

(c) Formulas for Pricing.

- (i) The Reference Tariff has several billing components and time-of-use (TOU) periods that need to be reflected in LICENSEE's invoice. Exhibit B-1 indicates the detailed formulas necessary to implement the intent of this section consistently with the Reference Tariff existing as of the Effective Date of this Agreement. The formulas in Exhibit B-1 are intended to reflect accurately the provisions of this section. If there is any discrepancy between the invoices that result from the formulas in Exhibit B-1 and the intent of this section, the provisions of this section including **Exhibit A** shall prevail, and the Parties shall amend the formula in Exhibit B-1 so as to comply with the intent of this section.

The Parties anticipate that the Reference Tariff may contain demand charges and that LICENSEE may serve some of the DEPARTMENT's demand from time to time in a manner that would reduce the amount of demand charges paid to the Utility under the Reference Tariff. In order to receive payment from DEPARTMENT for such demand service, the LICENSEE shall install and maintain any and all meters necessary to measure the demand served by the System for each relevant TOU period under the Reference Tariff, and LICENSEE's invoice shall clearly indicate the demand served by the System and the demand provided by the Utility in each TOU period that the Utility uses to determine billing demand under the Reference Tariff as of the Effective Date of this Agreement. The establishment of the amount of demand served by the System will be in accordance with Exhibit B-1 of this PPA.

- (ii) LICENSEE shall prepare invoices in accordance with the formulas set forth in Exhibit B-1. LICENSEE shall render to DEPARTMENT an invoice for each billing period within fifteen (15) business days of the close of the billing period during the Term of this Agreement setting forth the charges and the amounts due LICENSEE for Electricity generated and delivered by the System. For the purposes of this Agreement, each billing period in which the LICENSEE renders an invoice shall coincide with the applicable Utility's billing period. DEPARTMENT will remit full payment with each invoice to LICENSEE in compliance with Government Code Section 927 et seq., including where specified by Government Code Section 927 et seq., interest.

If DEPARTMENT in good faith disputes an invoice, DEPARTMENT shall provide LICENSEE with a written explanation specifying in detail the basis for the dispute, and DEPARTMENT shall pay the undisputed portion of the invoice. If any amount disputed by DEPARTMENT is determined to be owed to LICENSEE, it shall be paid to LICENSEE within the time specified by Government Code Section 927 et seq., along with the interest accrued pursuant to Government Code Section 927 et seq.

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- (iii) At the end of each Fiscal Year during the term of this PPA, Parties will conduct an annual reconciliation to measure the actual electricity deliveries to the Minimum Output Performance as defined in Exhibit A 3(d) of this PPA. Any adjustments necessary based on this annual reconciliation will be accrued to the next invoice after the annual reconciliation has been completed.

- (d) LICENSEE shall submit invoices to the DEPARTMENT at the address as set forth below. LICENSEE shall also submit a duplicate invoice (copy only) to the State at the address as set forth below. LICENSEE acknowledges that the DEPARTMENT has designated the State as its agent in reviewing invoices for accuracy and clarity and will provide reconciliation services to the DEPARTMENT as needed for ensuring that the provisions of this Agreement are being adhered to and administered accordingly.

FACILITY Billing Contact: I
Section/Unit:
Attention:
Address:
Phone:
Fax:
Email:

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

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STATE Billing Contact:	Department of General Services
Section/Unit:	Green Team, Executive Office
Attention:	Patrick McCoy
Address:	707 3 rd Street, 4 th Floor West Sacramento, CA 95605
Phone:	(916) 375-5988
Fax:	(916) 375-4466
Email:	Patrick.McCoy@dgs.ca.gov

(e) Payment Address- Notice: DEPARTMENT shall submit all payments under this Agreement as designated by LICENSEE. Parties agree that if DEPARTMENT receives notification to change the LICENSEE'S designated address for purposes of payment, DEPARTMENT will notify the project representative at the address listed in Exhibit A Section 5 and any Lender designated by LICENSEE pursuant to Section VIII(1) of the SLA at least sixty (60) days prior to the first submittal of payment to the new address. Parties also agree that DEPARTMENT will submit payments under this Agreement by electronic funds transfer when electronic transfer becomes a readily available payment method for State agencies.

(f) Net Energy Metering:

Parties acknowledge that if the System is electrically interconnected under a Net Energy Metering tariff, then LICENSEE shall prepare invoices in accordance with the applicable Reference Tariff in conjunction with the Net Energy Metering tariff. DEPARTMENT will submit payment for invoices prepared by LICENSEE in accordance with Exhibit B Section 3(c)(ii) and Section 3(c)(iii) of this Agreement. Payment for Electricity as generated by the System that is exported to the Utility's electrical grid shall be equal to the credits applied to DEPARTMENT's invoice from the Utility for the same billing period. In no event shall DEPARTMENT pay for Electricity that is not delivered to the Facility as measured at the Electrical Interconnection Point or accounted for by the Utility in accordance with the Net Energy Metering tariff.

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EXHIBIT B-1
BILLING FORMULAS AND EXAMPLES

The formulas in this Exhibit B-1 are intended to reflect the provisions of Exhibit B of this PPA. LICENSEE shall prepare invoices as directed in this Exhibit B-1 and shall indicate the source and calculation of each variable set forth below in a manner such that the DEPARTMENT can readily confirm the accuracy and appropriateness of each invoice. An example of a monthly invoice is attached as Exhibit B-2 to this Agreement.

- (i) The total invoice for Electricity delivered by LICENSEE for the applicable billing period shall be determined as follows:

$$P = P1 - P2 - P3 - P4 - P5$$

where:

- P = Total payment to LICENSEE for Electricity over the billing period.
- P1 = Total Electric Costs defined as what the DEPARTMENT would have paid to the Utility based on the total electric service provided by both the Utility and the LICENSEE.
- P2 = Payment to Utility for the amount of electricity served by Utility to DEPARTMENT during the billing period as indicated on the Utility invoice.
- P3 = Non-Collectable Charges as defined Exhibit B Section 3(b)(iv).
- P4 = Discount amount in dollars based on the application of the percent discount as listed in Exhibit B Section 1(a).
- P5 = Credit to DEPARTMENT by LICENSEE for any and all charges paid by DEPARTMENT to the Utility or other service providers for standby services and other charges during the billing period to the extent that such charges would not have been incurred by the DEPARTMENT in the absence of the System; any other credits deemed necessary for the purposes of accurate billing.

and where:

$$P1 = A_1 + B_1 + C_1 + D_1$$

$$P2 = A_2 + B_2 + C_2 + D_2$$

and where further:

$$A_1 = \text{MDR} \times \text{TMDL}$$

$$B_1 = \sum_{i=1}^n (\text{DR}_i \times \text{TDL}_i)$$

$$C_1 = \sum_{i=1}^n (\text{EP}_i \times \text{TEE}_i)$$

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$D_1 =$ Other Charges (Customer Charge, Franchise Fees and other taxes)

$A_2 =$ MDR x UMDL

$B_2 = \sum_{i=1}^n (DR_i \times UDL_i)$

$C_2 = \sum_{i=1}^n (EP_i \times UEE_i)$

$D_2 =$ Other Charges (Customer Charge, Franchise Fees and other taxes)

and where further:

MDR = The Reference Price for each time of use charge for the billing period as further described in the Reference Tariff, Exhibit B Section 3(c)(1).

TMDL = The total maximum demand for the billing period which represents the sum of the Utility measured maximum demand and the maximum demand served by LICENSEE (see Section (iii) below regarding the determination of demand served by LICENSEE). Also may be referred to as Maximum Demand or Facilities Related Demand as per the Utility's tariff.

UMDL = The maximum demand for the billing period that is served by the Utility's delivery of electricity to DEPARTMENT as indicated on the Utility invoice and separately paid for by DEPARTMENT. Also may be referred to as Maximum Demand or Facilities Related Demand as per the Utility's tariff.

$DR_i =$ The Reference Price for time-of-use demand in time-of-use period i.

$TDL_i =$ The total amount of DEPARTMENT's demand in time-of-use period i that is served by both the Utility's delivery of Electricity and the LICENSEE in time-of-use period i during the billing period.

$UDL_i =$ The amount of DEPARTMENT's demand that is served by the Utility's delivery of electricity in time-of-use period i during the billing period as indicated on the Utility invoice and separately paid for by DEPARTMENT.

$EP_i =$ The Reference Price in \$/kWh for Electricity usage during time-of-use i for the billing period.

$TEE_i =$ The total kWh of Electricity delivered to DEPARTMENT by both the Utility and LICENSEE in time-of-use period i during the billing period.

$UEE_i =$ The total kWh of Electricity delivered to DEPARTMENT by Utility in time-of-use period i during the billing period.

$i =$ Represents the particular time-of-use period under the Reference Tariff.

$n =$ The number of time-of-use periods for the month in the Reference Tariff.

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- (ii) During certain months of the year, June and October under the current Reference Tariff as of the Effective Date of this Agreement, the various components in the preceding formulas may need to be allocated between the winter and summer seasons, and the Parties agree to make such allocations consistent with the principles of this Agreement and consistent with Utility billing practices relative to crossing seasonal periods.
- (iii) Parties agree that the manner in establishing the demand services provided by the System in accordance to the formula as established in this section. This formula states that for any given billing period, the 15 minute metered interval demand as measured by the Utility shall be added to the 15 minute metered interval demand as provided by the System in a corresponding manner to establish a pro-forma Facility 15 minute interval demand load profile. Parties agree that this pro-forma Facility demand load profile reflects what the Facility would have required for demand services absent the System. From this pro-forma Facility 15 minute interval demand load profile, the highest demand levels will be determined for each time of use period for the billing period reflecting Utility practices. The utility billed demand as per the Utility invoice will be subtracted from the pro forma Facility time of use demand to establish the amount of demand services provided by the System. This is reflected in the formulas above for calculating TMDL and TDL_i and is the intent of determining the demand from the System.
- (iv) DEPARTMENT and LICENSEE agree that the formulas in this Exhibit B-1 best represent the intent of the Parties under the Reference Tariff as of the Effective Date of this Agreement and that, in the event that the structure of the Reference Tariff subsequently changes in a manner whereby those formulas no longer effect the intent of the Parties under this Agreement, the Parties will negotiate in good faith to establish formulas that reflect the intent of the Parties as otherwise expressed in Exhibit B Section 3.
- (v) LICENSEE shall apply facilities related demand charges in a manner that is consistent with the Utility application of facilities related demand charges in accordance with the Reference Tariff and the formula in Exhibit B-1.
- (vi) Parties understand that the current Reference Tariff may include charges for Department of Water Resources (DWR) procured energy. Parties also understand that the DWR may provide a portion of the Facilities energy needs according to a Utility based formula that can change from billing period to billing period. In this case, there is a ratio of DWR to Utility provided energy that is indicated on the applicable Utility invoice. This ratio between the Utility provided energy and the DWR provided energy generates a weighted average charge for energy, based on the Reference Tariff prices for Utility provided energy and DWR provided energy. Parties agree that the charge for energy as delivered by the System will reflect this weighted average charge for energy for each applicable and affected billing period.
- (vii) Parties understand that the Sample Invoice reflects the intent of the billing of Electricity as delivered by the System to the Electrical Interconnection Point in accordance with this Exhibit B-1. The invoice should first represent the actual Utility invoice for the billing period, then indicate the services provided by LICENSEE for both demand and energy, and then calculate a pro-forma bill that reflects what DEPARTMENT would have paid to the Utility absent the System. The difference between the Utility invoice and the pro-forma is what LICENSEE will bill DEPARTMENT for Electricity services provided by the System. The discount is to be applied to this amount due LICENSEE minus any taxes, charges and fees that are not to be collected by the LICENSEE in accordance with Exhibit B Section 3(b)(iv).

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EXHIBIT B-2
SAMPLE INVOICE

Solar Service Provider

Invoice #

Department of General Services
 455 Golden Gate Avenue, Suite 2600
 San Francisco, CA 94102

ACCT# 7994891914-1

Bill Issued: 1/15/2009

Due Date: 2/1/2009

Terms: Net 30

Utility Service District: PG&E –Pacific Gas & Electric

Rate: E-20P

Time of Use: YES

SERVICE DATES: 12/1/2008 To 1/1/2009

BILLING COMPONENT	SERVICES SUPPLIED BY UTILITY		UTILITY TARIFF RATE		UTILITY AMOUNT DUE (\$)	ADDITIONAL SERVICES SUPPLIED BY SOLAR		TOTAL ELECTRIC SERVICE		UTILITY TARIFF RATE		TOTAL ELECTRIC COSTS (\$)		
	[U]			=		[DG]		[U]+ [DG]			=			
Maximum Demand	1,872	X	3.09	=	\$5,784.48	86	kW	1,958	kW	X	3.09	=	\$6,050.22	
Summer Peak Energy	172,800	kWh	X	0.1207	=	\$20,856.96	42,190	kWh	214,990	kWh	X	0.1207	=	\$25,949.29
Summer Peak Demand	1,872	kW	X	11.13	=	\$20,835.36	86	kW	1,958	kW	X	11.13	=	\$21,792.54
Subtotal: On Peak Period					\$47,476.80								\$53,792.05	
Summer Mid Peak Energy	136,800	kWh	X	0.0736	=	\$10,068.48	49,127	kWh	185,927	kWh	X	0.0736	=	\$13,684.23
Summer Mid Peak Demand	1,872	kW	X	2.5	=	\$4,680.00	53	kW	1,925	kW	X	2.5	=	\$4,812.50
Subtotal: Mid Peak Period					\$14,748.48								\$18,496.73	
Summer Off Peak Energy	273,600	kWh	X	0.0719	=	\$19,671.84	55,582	kWh	329,182	kWh	X	0.0719	=	\$23,668.19
Subtotal: Off Peak Period					\$19,671.84								\$23,668.19	
Customer Charge					\$295.36								\$295.36	
Subtotal: Other Charges					\$295.36								\$295.36	
Subtotal: Electric Charges					\$82,192.48								\$96,252.33	
Energy Commission Tax	583,200	X	0.00022	=	\$128.30	146,900	kWh	730,100	kWh	X	0.00022	=	\$160.62	
Utility Users Tax (7.5%)	\$82,192.48	X	7.50%	=	\$6,164.44			\$96,252.33	X	7.50%	=	\$7,218.92		
TOTALS	What you actually paid to your Utility : (This should match the bill you received from your utility)				\$88,485.22			What you would have paid to your Utility: (Including services supplied by solar)				\$103,631.87		
								Electricity value provided by solar :				\$15,146.65		

Electricity Delivery Charge \$15,146.65
 Minus Excess Energy Commission Tax (\$32.32)
 Minus Excess Utility Users Tax (\$1,054.49)
Sub Total \$14,059.85
 Discount 33% (\$4,639.75)
Grant Total \$9,420.10
AMOUNT DUE: \$9,420.10
PLEASE PAY THIS AMOUNT: \$9,420.10
DUE DATE: 2/1/2009

CHECKS SHOULD BE MADE PAYABLE TO:

Solar Service Provider
 5150 Solar Lane
 Solarville, CA 90056

Attn: Crystal Silicon

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EXHIBIT C
GENERAL TERMS AND CONDITIONS

1. **APPROVAL**: This Agreement is of no force or effect until signed by both Parties and approved by the Department of General Services, if required. LICENSEE may not commence performance until such approval has been obtained.
2. **AMENDMENT**: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the Parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the Parties.
3. **ASSIGNMENT**: Except as allowed under Exhibit D Sections 16 and 17 of this PPA, this Agreement is not assignable by the LICENSEE, either in whole or in part, without the consent of the DEPARTMENT in the form of a formal written amendment.
4. **AUDIT**: LICENSEE agrees that the DEPARTMENT, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. LICENSEE agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. LICENSEE agrees to allow the auditor(s) access to such records during normal business hours after reasonable notice and to allow interviews of any employees who might reasonably have information related to such records. Further, LICENSEE agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code Section 8546.7, Public Contract Code Section 10115 et seq., California Code of Regulations Title 2, Section 1896).
5. **INDEMNIFICATION**: LICENSEE agrees to indemnify, defend and save harmless the DEPARTMENT and the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by LICENSEE in the performance of this Agreement.
6. **DISPUTES**: LICENSEE shall continue with the responsibilities under this Agreement during any dispute.
7. **TERMINATION FOR CAUSE**: The DEPARTMENT may terminate this Agreement and be relieved of any payments (other than payments due as of the date of termination) should the LICENSEE fail to perform the requirements of this Agreement at the time and in the manner herein provided, consistent with the applicable provisions in Exhibit D, including Sections 4 and 5. In the event of such termination the DEPARTMENT may proceed with the work in any manner deemed proper by the DEPARTMENT. All costs to the DEPARTMENT and the State shall be deducted from any sum due the LICENSEE under this Agreement and the balance, if any, shall be paid to the LICENSEE upon demand.
8. **INDEPENDENT CONTRACTOR**: LICENSEE, and the agents and employees of LICENSEE, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the DEPARTMENT or the State.
9. **RECYCLING CERTIFICATION**: The LICENSEE shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies

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offered or sold to the DEPARTMENT regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code Section 12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, LICENSEE and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, nor deny family care leave. LICENSEE and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. LICENSEE and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. LICENSEE and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

LICENSEE shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 (Exhibit C-1) are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto. Parties acknowledge that Provision 4 of CCC 307, "Contracts for Legal Services \$50,000 or More – Pro Bono Requirement, " is not applicable to the PPA or SLA.
12. TIMELINESS: Time is of the essence in this Agreement.
13. COMPENSATION: The consideration to be paid LICENSEE, as provided herein, shall be in compensation for all of LICENSEE's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
15. ANTITRUST CLAIMS: The LICENSEE by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the LICENSEE shall comply with the requirements of the Government Codes Sections set out below:
- a). The Government Code Chapter on Antitrust claims contains the following definitions:
- 1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
 - 2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

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b). In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c). If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d). Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of \$100,000, the LICENSEE acknowledges in accordance with Public Contract Code 7110, that:

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

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

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

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Public Contract Code Section 10353.

**EXHIBIT C-1
CCC-307 CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

CONTRACTOR CERTIFICATION CLAUSES

1. **STATEMENT OF COMPLIANCE**: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code Section 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. **DRUG-FREE WORKPLACE REQUIREMENTS**: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- a). Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b). Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs;
 - 4) penalties that may be imposed upon employees for drug abuse violations.
- c). Every employee who works on the proposed Agreement will:
 - 1) receive a copy of the company's drug-free workplace policy statement; and,
 - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code Section 8350 et seq.)

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3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Public Contract Code Section 10296)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

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

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

CONTRACT NAME
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EXHIBIT C-1
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7. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the Contractor certifies that it is in compliance with Public Contract Code section 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Public Contract Code Section 10410):

- 1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Public Contract Code Section 10411):

- 1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Public Contract Code Section 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Public Contract Code Section 10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

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3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

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

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

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

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be:

(1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;

(2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or

(3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

1. Potential Revenue from Renewable Energy Credits (RECs): If the RECs from the System realize market value during the term of this Agreement, LICENSEE shall retain the first two-cents per kilowatt-hour (2¢/kwh) of value, and any amount over 2¢/kwh shall be split equally between DEPARTMENT and the LICENSEE. Parties agree that LICENSEE will retain ownership of the RECs subject to the revenue sharing provision above, and that LICENSEE will provide a full accounting to DEPARTMENT of revenue, if any, generated by these RECs.

LICENSEE may distribute any revenue owing to DEPARTMENT under this provision as either a check or a credit to DEPARTMENT's Electricity bill for the System, unless the revenue owing the DEPARTMENT exceeds \$10,000. If the revenue owed to DEPARTMENT from LICENSEE pursuant to this provision exceeds \$10,000, LICENSEE shall issue a check to the DEPARTMENT for the revenue amount in the excess of \$ 10,000.

If LICENSEE offers for sale any of the RECs from the System, and receives a bona fide offer for such RECs, then the DEPARTMENT shall have the right to match the offer and purchase such RECs. The price to be paid by the DEPARTMENT shall be the same price offered by the third party less any share that the DEPARTMENT would have been entitled to as provided for above as if the RECs had been sold to the third party.

2. Rebates and Other Incentives: Any grant, rebate, incentive payment or credit by the Utility or the California Energy Resources Conservation and Development Commission and/or the California Public Utilities Commission, paid as a result of the design, construction and operation of the System shall inure to the benefit of the LICENSEE. DEPARTMENT will cooperate in good faith as necessary to enable LICENSEE to obtain all available incentives and rebates, including assignment to LICENSEE of any incentive received by DEPARTMENT, as consistent with this Agreement. DEPARTMENT has no interest in, never intended to own, nor any desire to receive any grant, rebate, incentive payment or credit issued by the Utility related to the installation and operation of the System by the LICENSEE.
3. CEQA Compliance: As a condition precedent to the DEPARTMENT's obligations under this PPA and the SLA, an analysis of the potential impacts associated with LICENSEE's proposed project is required under the California Environmental Quality Act ("CEQA"). The initial payments by LICENSEE to DEPARTMENT and/or the Department of General Services include costs for the initial analysis and investigation of potential environmental impacts. The LICENSEE shall not have any right to install the System until the DEPARTMENT and/or State have complied with the CEQA and issued a notice to proceed to LICENSEE. DEPARTMENT and State agree to begin the initial analysis within thirty (30) days after the effective date of this PPA. If that analysis indicates that a categorical exemption or mitigated negative declaration will suffice, and DEPARTMENT and State determine in their sole and absolute discretion that they desire to proceed, and LICENSEE agrees to bear the costs of the identified mitigation measures, then DEPARTMENT and State will promptly proceed to complete the categorical exemption or mitigated negative declaration in accordance with applicable law and file the requisite notice of determination. LICENSEE will have no obligations under this PPA until it receives a copy of the filed notice of determination. Once a copy of the filed notice of determination is provided to LICENSEE then LICENSEE shall promptly proceed to perform its obligations under this PPA and

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the SLA to design and construct the System, and shall comply, at its cost, with all mitigation measures adopted for the project.

If the DEPARTMENT or State determine that an environmental impact report ("EIR") is required then LICENSEE shall be notified of that decision and the estimated costs and timing of preparing the EIR. If after such notice the LICENSEE determines not to proceed, then this PPA and the SLA shall terminate and neither Party shall have any obligations or liability to the other. If LICENSEE determines to proceed with the EIR, then LICENSEE shall pay to DEPARTMENT and State all the costs of preparing the EIR. If during the preparation of the EIR, or adoption of the EIR, mitigation measures are identified or required and LICENSEE determines those costs are too great and notifies DEPARTMENT and State of its desire to terminate the project, then this PPA and the SLA shall terminate and neither Party shall have any obligations or liability to the other. If the EIR is certified and the notice of determination is filed and provided to LICENSEE, and LICENSEE has not elected to terminate this PPA and the SLA, then LICENSEE shall comply, at its cost, with mitigation measures adopted for the project. LICENSEE will have no obligations under this PPA until it receives a copy of the filed notice of determination. If the EIR results in a finding that it is not feasible to reduce or avoid significant potential environmental effects of the proposed project as identified during the course of the EIR and DEPARTMENT and State determine not to issue a statement of overriding consideration then LICENSEE's project shall be deemed rejected and this PPA and the SLA shall terminate and neither Party shall have any obligations or liability to the other.

4. Termination Rights, DEPARTMENT: DEPARTMENT shall have the right to terminate the PPA at any time on thirty (30) days written notice to LICENSEE and any Lender, without further liability, if any of the following occur: a) If a Force Majeure event has occurred (as defined in Section 7 below) which results in a permanent shutdown of the Facility; b) If LICENSEE or any Lender fails to demonstrate the ability to perform under the PPA or SLA following the filing or adjudication of a bankruptcy proceeding (as defined in Section 22 below); c) Upon an Event of Default by LICENSEE (as defined in Section 8 below).
5. Termination for Convenience, DEPARTMENT: In addition to the termination rights in Section 4 above, DEPARTMENT may terminate this Agreement for convenience, subject to sixty (60) days written notice to LICENSEE and any Lender. In the event that DEPARTMENT terminates this Agreement for convenience pursuant to this section, DEPARTMENT shall pay LICENSEE a Termination Fee in accordance with Exhibit D, Section 14 and Exhibit E of this PPA.
6. Termination Rights, LICENSEE: LICENSEE shall have the right to terminate the PPA at any time on thirty (30) days written notice to DEPARTMENT, without further liability, if any of the following occur: a) If, prior to the first date of scheduled delivery of Electricity, LICENSEE determines that the System cannot be built as planned or that its construction and operation would not be economically viable for the LICENSEE, including LICENSEE's determination that the installation of the System is not economically viable as a result of the environmental review of the project under CEQA. LICENSEE will be responsible for repairing any damage to the Facility arising from activities conducted by LICENSEE pursuant to the PPA or SLA and restoring the Facility to a condition substantially similar to the pre-installation condition. LICENSEE shall reimburse DEPARTMENT and the Department of General Services for any costs associated with review and approval of the PPA and SLA, and installation of the System; b) Upon occurrence of a Force Majeure, including, but not limited to, LICENSEE's inability, after diligent efforts, to obtain or maintain required approval or permits from any governmental authority for the installation or operation of the System; c) In the event that, through no fault of LICENSEE and for other than a Force Majeure event, the System is permanently shut down due to renovation, damage, destruction or closure of the Facility, and DEPARTMENT and LICENSEE cannot agree upon an alternative location for the System (as defined in Section 11 below); d) Upon a Event of Default by DEPARTMENT (as defined in Section 9 below).

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7. Force Majeure: "Force Majeure" means an act of God (such as earthquakes, fires, riots), actions or inactions of a regulatory authority, or actions of others such as strikes, lockouts, or other industrial disturbances, not within the control or arising from the fault of the Party claiming Force Majeure. Any Party claiming Force Majeure shall advise the other Party as soon as possible of the occurrence of the event and shall provide the other Party with the basis of the claim, in writing, within ten (10) days of the occurrence of the event. Parties shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

For DEPARTMENT, due to the constitutional limitations pertaining to multiple year contracts (Article XVI, Section 1), a Force Majeure event shall include a "budget non-appropriation event" in which the Budget Act of any year covered in this Agreement does not appropriate funds for the procurement of any utility services for DEPARTMENT. Upon occurrence of a budget non-appropriation event as defined above, this Agreement shall be of no further force and effect as to DEPARTMENT during such event. DEPARTMENT agrees that it shall use its best efforts to seek appropriation for utility services during the term of this Agreement. If this Agreement is terminated due to a permanent "budget non-appropriation event", DEPARTMENT agrees that it will not seek funding for a source of electricity other than the System at the Facility for one year from the date of termination to the extent permitted by law. Parties agree that a Permanent Shutdown of the Facility, as defined under Section 11 below, will not constitute a "budget non-appropriation event" for purposes of this Force Majeure provision.

8. Event of Default, LICENSEE: The following may be considered an Event of Default by LICENSEE at the option of DEPARTMENT as the non-defaulting Party: a) LICENSEE's failure to operate the System for a continuous period of sixty (60) days or for ninety (90) days in any six month period, which failure is not caused by DEPARTMENT. DEPARTMENT shall have the right to demand an explanation of any continuous periods of non-operation in excess of thirty (30) days in order to assess the nature and cause of the failure to operate; b) Unreasonable interference by LICENSEE with the operations of DEPARTMENT at the Facility, if the interference is curable by suspension of operation of the System and LICENSEE fails to suspend operation of the System within 48 hours of DEPARTMENT's notice to LICENSEE regarding the interference without good cause, as determined by DEPARTMENT; c) For terms other than those listed in a) and b) above, failure by LICENSEE to perform or comply with any material term of the PPA or the Site License Agreement within sixty (60) days of written notice to LICENSEE and any Lender or System Lessor by DEPARTMENT, unless DEPARTMENT agrees to a longer period to cure the default.
9. Event of Default, DEPARTMENT: The following may be considered an Event of Default by DEPARTMENT at the option of LICENSEE as the non-defaulting Party: a) DEPARTMENT's failure to pay undisputed invoices in accordance with Government Code section 927 et seq. for a continuous period of 180 or more days, except when such failure is a direct result of a "budget non-appropriation event" as defined under Section 7 above, "Force Majeure"; b) The renovation, damage, destruction or closure of the Facility, for other than a "Force Majeure" event, which results in the permanent shutdown of the System at the Facility, if DEPARTMENT and LICENSEE are unable to agree upon an alternative location for the System as defined in Section 11 below; c) For terms other than those listed in a) and b) above, failure by DEPARTMENT to perform or comply with any material term of the PPA or the Site License Agreement within sixty (60) days of written notice by LICENSEE, unless LICENSEE agrees to a longer period to cure the default; d) If DEPARTMENT refuses to sign authorizations needed by LICENSEE to obtain any rebate or subsidy contemplated in Section 2 above or if DEPARTMENT refuses to sign or comply with any material term of the approved interconnection agreement required by the Utility for interconnection of the System.
10. Temporary Shutdown of System; In-lieu Payments or Extension of Agreement: If, during the term of the PPA, renovations or damage to the Facility occurs, for reasons other than a "Force Majeure" event (as described in Section 7 above), which significantly reduces or eliminates the use of Electricity from

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the System or requires the temporary shutdown of the System, DEPARTMENT and LICENSEE may, by mutual consent, do either of the following as a means of avoiding default under this Agreement. Under either alternative, DEPARTMENT will make a good faith effort to give as much notice as possible to LICENSEE prior to System shutdown:

- a. DEPARTMENT may pay LICENSEE "in-lieu" fees over the duration of the reduction or shutdown. These in-lieu fees shall be based on the actual payments made by the DEPARTMENT during the same period on a daily basis in the previous calendar year, unless the DEPARTMENT and LICENSEE mutually agree to an alternative "in-lieu" fee methodology. In no instance, however, shall DEPARTMENT pay a fee which exceeds the cost that would otherwise be incurred by using the agreed upon pricing as per Exhibit D Section 1 of this PPA. In exchange for DEPARTMENT's payment of in-lieu fees during System shutdown, LICENSEE shall provide an off-set or credit to DEPARTMENT at the end of the term of the Agreement for the total number of kilowatt hours paid during the shutdown on a 1:1 basis, and the term of this PPA and SLA shall be extended by one day for each day of the reduction or shutdown; or
- b. DEPARTMENT and LICENSEE may agree to extend the term of the Agreement by one day for each day that the System was shut down as an alternative to DEPARTMENT payment of in-lieu fees.

In the event of a temporary shutdown of the System due to a Force Majeure event, the DEPARTMENT will not be liable for payment of in lieu fees. However, this PPA and SLA shall be extended by one day for each day of the temporary shutdown.

11. Permanent Shutdown of the System at Facility: If, through no fault of LICENSEE and for reasons other than a Force Majeure event (as described in Section 7 above), the System is permanently shut down due to renovation, damage, destruction or closure of the Facility, or the State and DEPARTMENT elects to relocate the System, LICENSEE shall be entitled to the following:

- a. Within thirty (30) days after permanent shutdown of the System, DEPARTMENT shall provide written notice to LICENSEE indicating whether or not the DEPARTMENT intends to restore operation of the Facility or whether relocation of the System will be pursued.
- b. If, within ninety (90) days after permanent shutdown of the System, DEPARTMENT and LICENSEE agree on an alternative location from which LICENSEE can provide Electricity to DEPARTMENT, then DEPARTMENT shall pay the costs associated with relocation of the System. This alternative location shall, in the opinion of LICENSEE, have the potential to provide substantially similar overall system output as the original Facility, measured in total kilowatt-hours over a 12- month period, unless DEPARTMENT and LICENSEE mutually agree that this output level is not required. If DEPARTMENT and LICENSEE mutually agree upon an alternative location which is substantially inferior to the Facility for purposes of Site insolation or Utility rates (assuming different portions of the Facility have different Utility rates), then DEPARTMENT and LICENSEE shall agree to an adjustment in the pricing formula identified in Exhibits B and B-1 to compensate for the alternative location such that LICENSEE receives payments comparable to those which it would have received from the System at the Facility.
- c. DEPARTMENT and LICENSEE may agree that LICENSEE shall be reimbursed for the period of System shutdown prior to relocation, if any, under the payment mechanisms specified in Section 10 above for Temporary Shutdown of the System.

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- d. If, within ninety (90) days after permanent shutdown of the System, DEPARTMENT and LICENSEE have not agreed upon an alternative location for the System, LICENSEE may terminate this Agreement and receive a Termination Fee as defined in Section 14 below and Exhibit E.

12. DEPARTMENT Remedies: If LICENSEE causes an Event of Default, DEPARTMENT shall have the right to terminate the PPA and the SLA by providing written notice to LICENSEE indicating that the PPA and the SLA have been terminated and requesting that the System be removed at LICENSEE's cost and the Facility restored to a substantially similar pre-installation condition subject to ordinary wear and tear. If the LICENSEE fails to remove the System and restore the Facility within sixty (60) days of notice by DEPARTMENT, DEPARTMENT may consider the System abandoned and may remove the System and any other property owned by the LICENSEE from the Facility and dispose of LICENSEE's property in any manner within DEPARTMENT's discretion, but subject to applicable law. In addition, DEPARTMENT may also recover from LICENSEE any reasonable expenses incurred as a result of LICENSEE's default, including repair and restoration of the Facility to a substantially similar pre-installation condition. DEPARTMENT's remedies shall also include, but not be limited to, the right by DEPARTMENT to offset any damages resulting from LICENSEE's default against any monies owing or to be owed to LICENSEE under this Agreement. DEPARTMENT shall not pay any Termination Fees as a result of termination of the SLA and PPA under an Event of Default by LICENSEE. If the DEPARTMENT elects not to terminate the PPA and SLA following an Event of Default by LICENSEE, this election shall not constitute a waiver by DEPARTMENT as to any subsequent Event of Default by LICENSEE.

13. LICENSEE Remedies: If DEPARTMENT causes an Event of Default, LICENSEE shall have the right to a Termination Fee in the form of Liquidated Damages as provided in Exhibit E of this PPA. For purposes of this Liquidated Damages calculation, Parties agree that the Net Installed Price is the full cost of the System. The Net Installed Price shall be confirmed by the calculations provided in the California Self Generation Incentive Program (SGIP) incentive application. LICENSEE shall provide DEPARTMENT with a copy of the final approved documentation from the SGIP incentive application process to verify the approved project cost and incentive amount. Parties also agree that if DEPARTMENT causes an Event of Default (under Section 9 above) or Termination for Convenience (under Section 5 above) within the first sixty-one (61) months of the Commercial Operation Date as defined in the SLA, Liquidated Damages as set forth in Exhibit E of this PPA, are inclusive of any rebates, tax credits or incentives which LICENSEE can demonstrate are lost or must be repaid by LICENSEE, or penalties accruing to LICENSEE as a direct result of DEPARTMENT's Default or Termination within the first sixty-one (61) months of the Commercial Operation Date. Parties acknowledge and agree that in the Event of Default by DEPARTMENT of this Agreement, LICENSEE's damages would be difficult or impossible to compute and that this Liquidated Damages provision represents the reasonable estimate of such damages established by the Parties in good faith consideration of the facts and circumstances surrounding the transactions contemplated by this Agreement as of the effective date.

Parties have initialed this Section 14 to establish their intent to liquidate damages in accordance with this Section. In addition to the remedies specified herein, the LICENSEE may remove its System at its cost, provided the Facility is restored to a condition substantially similar to the pre-installation condition subject to ordinary wear and tear, and otherwise in compliance with Section VII (1) of the SLA.

LICENSEE: _____ DEPARTMENT: _____

14. Limitation on Remedies: For purposes of this PPA, LICENSEE hereby accepts the Facility in an "As-Is" condition and acknowledges that DEPARTMENT and the State have not made any statements or representations or warranties regarding the Facility, and LICENSEE is not relying upon any statement or

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representation or warranty of DEPARTMENT, the State or any third party regarding the Facility as to the fitness of the Facility for any particular use of the LICENSEE or any other matter. The DEPARTMENT and the State hereby expressly disclaim and LICENSEE hereby waives all implied warranties, including, without limitation, any warranty of merchantability or warranty of fitness for a particular use or purpose. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy, the obligor's liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided in the PPA or in a transaction, the obligor's liability shall be limited to direct actual damages only, such direct actual damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. Unless expressly provided in the PPA, neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, by statute, in tort or in contract or otherwise.

15. Assignment: The duties and obligations of LICENSEE under this PPA shall not be assignable by the LICENSEE in whole or in part without the written consent of the DEPARTMENT and upon such reasonable terms and conditions that the DEPARTMENT may require. DEPARTMENT's consent to one assignment shall not be deemed consent to any subsequent assignment.
- a. Event of Default. In the event of default by assignee of LICENSEE or any successor to LICENSEE in the performance of the terms hereof, DEPARTMENT may proceed directly against LICENSEE without the necessity of exhausting remedies against such assignee.
 - b. Unique Expertise. Notwithstanding the foregoing, LICENSEE acknowledges that DEPARTMENT is relying upon the unique expertise and capability of LICENSEE. LICENSEE must demonstrate that any proposed assignee has both the financial capacity and the technical ability to perform the obligations required under the PPA at a level deemed appropriate by DEPARTMENT.
 - c. Definition of Assignment. For purposes of this section, the sale, assignment, transfer or disposition, directly or indirectly, of any type which results in a change of control of LICENSEE shall be deemed an assignment of this PPA. Change of control shall be as defined in common law, and may be the result of a single or multiple related transactions which result in the cumulative transfer of more than fifty percent (50%) of the voting stock or equity interests of LICENSEE. However, in no event shall the transfer of shares (i) to a Lender which meets the qualifications in Section 16(d) below, which assumes LICENSEE's obligations hereunder, or (ii) to another limited liability company of which LICENSEE is the managing member, or (iii) in an open market transaction sale of shares of a public held company be considered an assignment needing DEPARTMENT's approval. LICENSEE shall have a continuing duty to keep DEPARTMENT fully apprised in writing of any material changes in the LICENSEE's business structure and/or status.
 - d. Consent to Assignment. DEPARTMENT consents to the assignment by LICENSEE to the Lender, of LICENSEE's right, title and interest in and to this Agreement, provided that, in the reasonable opinion of the DEPARTMENT, the proposed assignee meets the qualifications as listed in Exhibit G of this PPA, specifically as listed under the following headings: I. Bidder Qualifications and Experience: B. Installation Qualifications/Experience; C. Project Management, Implementation and Delivery Capabilities, Capacity & Experience; D. Site Output Monitoring and Billing; E. Project Financing Experience; II. Financial/Business Strength of Bidder; and III. Client/Customer Reputation of Bidder. For purposes of this section, a "Qualified Assignee" is an assignee that demonstrates the above requirements in the format required as listed in Exhibit G of this PPA.

“Affiliate” means, with respect to LICENSEE, any other entity directly or indirectly controlling, controlled by or under common control with LICENSEE. For the purposes of this definition, “control” and its derivatives mean, with respect to any entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or otherwise. “Control” may be deemed to exist notwithstanding that LICENSEE owns or holds, directly or indirectly, less than 50% of the beneficial equity interest in another entity.

- e. Nothing in this Section 16 shall (i) prohibit LICENSEE from assigning or granting a lien on, for purposes of collateral security, LICENSEE’s rights to payments under this PPA or (ii) except as permitted under Section 16(c) above, or Section 16(f) below, or with DEPARTMENT’s consent in accordance with Section 16(b) and (d) above, allow LICENSEE to assign its duties and obligations under this PPA.
- f. In the alternative, LICENSEE may utilize a sale-leaseback form of financing for the System (the “Leaseback Lease”). Under this alternative, LICENSEE will initially sell the System to a System Lessor which will own the System, and LICENSEE will lease the System back from the System Lessor. The Licensee has also pledged the PPA and SLA as additional security to the System Lessor (the “Collateral Assignment”), but LICENSEE through the Leaseback Lease and the Collateral Assignment will maintain the right, unless in default, to operate the System and receive the benefits and undertake the obligations of the PPA and SLA.

The DEPARTMENT and State consents to the assignment by LICENSEE to the System Lessor, of LICENSEE’ s right, title and interest in and to this Agreement and the SLA. State consents to the initial sale and the Leaseback Lease for the purpose of financing the System. If the System Lessor notifies the DEPARTMENT that an event of default under and as defined in the Leaseback Lease has occurred, and is continuing, and that the System Lessor has elected to exercise its rights and remedies thereunder or under any of the security documents entered into in connection therewith, then, upon the exercise of such rights and remedies, the System Lessor or any other purchaser of, or successor to, the interests in a judicial or nonjudicial foreclosure sale or otherwise that meets the conditions of assignment set forth in Sections 16(b) and (d) above (the “Substitute Owner”) shall be substituted for the LICENSEE under this Agreement and the SLA and the DEPARTMENT will recognize the Substitute Owner and will continue to perform its obligations under this Agreement and the SLA in favor of the Substitute Owner; provided that (i) such Substitute Owner expressly acknowledges in writing that it is assuming all obligations of LICENSEE under this Agreement and the SLA arising on or after the date that such party became Substitute Owner and (ii) such Substitute Owner shall not be required to perform or be subject to any defenses or offsets by reason of any of the LICENSEE’s obligations under this Agreement and the SLA that were unperformed at the time such Substitute Owner became a Substitute Owner (other than any defaults for failure to pay amounts owed under this Agreement or the SLA or any setoffs of overpayments to LICENSEE by State, any defaults which are susceptible to cure by the Substitute Owner, and any defenses or offsets arising out of any such defaults that would or did delay or prevent the DEPARTMENT from performing its obligations or materially affect the DEPARTMENT during the course of performing its obligations under this Agreement or the SLA).

However, any subsequent voluntary or involuntary sale or transfer of on any interest in the System by the System Lessor or subsequent voluntary or involuntary sale or transfer of the

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LICENSEE's rights in this Agreement and SLA under the Collateral Assignment shall be subject to demonstrating that the requirements of Section 16(b) and (d) above have been met. The System Lessor shall promptly notify State and DEPARTMENT of any defaults or pending defaults by LICENSEE under the Leaseback Lease or any other agreement affecting the System and shall notify the State and DEPARTMENT of any pending judicial or nonjudicial foreclosure sale of the Leaseback Lease or other agreements affecting the System.

- g. For any assignment for which notice was not provided to DEPARTMENT at the time of execution of this Agreement, LICENSEE shall provide sixty (60) days notice to DEPARTMENT regarding its intent to assignment of this Agreement, which shall include adequate supporting information as per Section 16(d) above to verify that assignee is qualified to assume the PPA and SLA.
16. Financing: DEPARTMENT will not subordinate its interest in the Facility as security for any LICENSEE loans or financing. However, and notwithstanding the provisions of Exhibit D Section 16 LICENSEE may pledge its interest in the PPA, including any rights to payment and the System, as security for loans or financing against its personal property. If LICENSEE's lender(s) requests additional terms and conditions to those already provided in this PPA, DEPARTMENT agrees to consider any such requests, but may refuse such requests in its sole and absolute discretion and may withhold consent or approval of such additional terms and conditions. DEPARTMENT acknowledges that LICENSEE will be financing the acquisition and installation of the System with financing accommodations from one or more financial institutions and that LICENSEE's obligations will be secured by, among other collateral, a pledge or collateral assignment of this Agreement and LICENSEE's rights to payment and a first security right in the System. In order to facilitate such necessary financing, and with respect to any such financial institutions of which LICENSEE has notified DEPARTMENT in writing (each, a "Lender") and any System Lessor DEPARTMENT agrees as follows:
- a. Classification of System as personal property only: DEPARTMENT acknowledges that it has been advised that part of the collateral securing financial accommodations of LICENSEE is the granting of a first priority security interest ("Security Interest") in the System to Lender to be perfected by a filing under the Uniform Commercial Code (UCC) and to be documented in a recorded notice on title to the real property underlying the Facility. DEPARTMENT agrees to such filings so long as they reflect the Parties' agreement that any filing to perfect or provide notice of the Security Interest clearly document the Parties' intent that the System is considered personal property only and is not considered a fixture to the Facility. These filings by LICENSEE or Lender may include:
- i. UCC filing of a Financing Statement (FORM UCC-1) which clearly covers the System as personal property only and not as a fixture.
- ii. Real estate filing ("fixture filing") in the appropriate office for recording of real estate records of the jurisdiction of the Facility which disclaims fixture status of the System. Such filing shall contain information sufficiently identifying the Facility such that the disclaimer will be disclosed by a title search of the real property underlying the Facility. Such filing shall not create any interest in or lien upon the real property underlying the Facility or the Facility or the interest of the DEPARTMENT or the State therein and shall expressly disclaim the creation of such an interest or a lien.
- b. DEPARTMENT will use commercially reasonable efforts to place its successors, assigns, and lienors on notice of the ownership of the System by LICENSEE and/or LENDER and/or System Lessor, the existence of the security interest, and the fact that the System is

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not part of the Facility or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.

- c. DEPARTMENT is not aware of any existing lease, mortgage, security interest or other interest in or lien upon the Facility that could attach to the System as an interest adverse to Lender's security interest therein or System Lessor's ownership thereof.

17. Debt Liability Disclaimer / Hold Harmless: The State of California, including, but not limited to, any source of funding for DEPARTMENT, any General Fund or any special self insurance program, is not liable for any debts, liabilities, settlements, liens, or any other obligations of the LICENSEE or its heirs, successors or assigns. The State of California and its agencies, departments and divisions, including but not limited to, DEPARTMENT, shall not be liable for and shall be held harmless and indemnified by LICENSEE for any claims or damages arising out of any other contract to which LICENSEE is a party, tort, action or inaction, negligent error in judgment, act of negligence, intentional tort, negligent mistakes or other acts taken or not taken by the LICENSEE, its employees, agents, servants, invitees, guests or anyone acting in concert with or on behalf of the LICENSEE. The State of California and its agencies, departments and divisions, including, but not limited to, DEPARTMENT, has no obligation to defend or undertake the defense on behalf of the LICENSEE or its heirs, successors or assigns.

LICENSEE shall defend the State of California and its agencies, departments and divisions, including, but not limited to, DEPARTMENT, from any claims, actions, lawsuits, administrative proceedings or damages associated with any contract, tort, action or inaction, error in judgment, act of negligence, intentional tort, mistakes, or other acts taken or not taken by the LICENSEE, its employees, agents, servants, invitees, guests, or anyone acting in concert with or on behalf of LICENSEE in connection with the performance of this PPA.

18. Compliance with Applicable Laws, including Utility Interconnection Standards: LICENSEE, at its own cost and expense, shall comply with all applicable laws and regulations relating to the operation of the System and the generation and sale of Electricity to DEPARTMENT, including obtaining and maintaining all relevant approvals and permits. In particular, LICENSEE agrees throughout the term of the PPA to fully comply with any and all operational standards and requirements imposed by the Utility, and to comply with the electrical interconnection requirements as stated in the applicable and controlling Utility tariff and/or rules. DEPARTMENT will cooperate with LICENSEE and, if necessary, will provide consents and execute with the Utility such agreements (if such agreements do not have unacceptable or prohibited terms and/or conditions, or impose additional costs on DEPARTMENT) as are necessary to permit the interconnection of the System. This electrical interconnection shall be done at no cost or liability to DEPARTMENT or the State and LICENSEE shall reimburse DEPARTMENT and the State for all out of pocket costs incurred in connection with any interconnection agreement. Should the Utility demand fees or equipment exceeding \$10,000 for electrical interconnection requirements, LICENSEE may at its sole discretion cease to proceed with installation of the System without further obligation to the DEPARTMENT other than obligations which were incurred prior to notice from the Utility of the fees or the equipment costs and the obligation to restore the Facility to pre-installation condition if installation was initiated.
19. Compliance with Site License Agreement, including Maintenance and Repair: The Site License Agreement is incorporated by reference as Exhibit F to the PPA. Any default by LICENSEE under the SLA, including, but not limited to, LICENSEE's obligation to maintain and repair the System, shall be deemed a default by LICENSEE of the PPA.
20. Taxes: LICENSEE shall pay all lawful taxes, assessments or charges that at any time may be levied upon any interest in this PPA. DEPARTMENT will not pay municipal energy or utility users' taxes or franchise fees on Site energy purchased from LICENSEE as a private on-site Site energy provider.

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21. Bankruptcy: If LICENSEE or any approved assignee (as defined in Section 16 above) at any time after the execution of this PPA files a voluntary petition in bankruptcy or is adjudged bankrupt either upon voluntary petition or petition of creditors of the LICENSEE which is not dismissed within ninety (90) days of its being filed, or should the LICENSEE seek, claim, or apply for any right, privilege, remedy, relief, or protection afforded by any statute or statutes of the United States related to bankruptcy, or should a receiver be appointed over, or should an attachment be levied and permitted to remain for a period of more than ninety (90) days following the levying of such attachment upon or against any right or privilege of this PPA, then, upon the happening of any of these events, DEPARTMENT shall have the right to demand assurances of continued performance of the PPA and SLA by LICENSEE, the Lender or the approved assignee. If LICENSEE, the Lender, or any approved assignee fail to provide adequate assurances of continued performance of the PPA or SLA, DEPARTMENT shall have the option to terminate the PPA upon thirty (30) days written notice to LICENSEE, the Lender, and any approved assignee, without further obligation or liability under this PPA, except for obligations incurred prior to the petition for bankruptcy plus the ninety (90) days referenced in this Section. LICENSEE shall retain the right to remove its System at its cost, provided that LICENSEE restores the Facility to the pre-installation condition subject to ordinary wear and tear.
22. Confidentiality of Data: Any financial, statistical, personal, technical and other data and information relating to the DEPARTMENT's or State of California's operations which are designated confidential by DEPARTMENT and made available to LICENSEE in order to carry out the PPA shall be protected by the LICENSEE from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. DEPARTMENT shall identify all confidential data and information and shall provide LICENSEE in writing with the State's procedural requirements for protection of such data and information.
23. Associated Agreements: Within fifteen (15) calendar days after the effective date of this PPA, and prior to commencing design of the system, LICENSEE shall provide DEPARTMENT and State copies of all forms of other agreements including but not limited to interconnection agreements, rebate agreements, or other utility required agreements which it is contemplated that DEPARTMENT will need to execute in order to effectuate the purpose of this PPA. DEPARTMENT shall notify LICENSEE not later than fifteen (15) business days after it receives the forms of agreements as to whether or not DEPARTMENT will be prepared to later execute such forms. The final agreements submitted to the DEPARTMENT for execution shall not deviate materially from, or impose any obligations on DEPARTMENT beyond, those approved forms of agreements, and DEPARTMENT will not unreasonably withhold its signature of such final agreements in compliance with this section.
24. Survival: The obligations under Exhibit D Section 7 and Exhibit C Section 5 of this PPA, or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.
25. Counterparts: This PPA may be executed in multiple copies, each of which shall be deemed an original, but all of which shall constitute one Agreement after each Party has signed such a counterpart.

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EXHIBIT E
TERMINATION FEE SCHEDULE

Early Termination By DEPARTMENT

In the event of a termination of this Agreement pursuant to Exhibit D, Sections 5, 11, 12 and 14 of this PPA, DEPARTMENT shall pay to LICENSEE an Early Termination Fee corresponding to the year in which early termination occurs.

Termination Fees are expressed in terms of dollars per Watt installed (DC rating).

Early Termination Occurs in Year:	Early Termination Fee (LICENSEE bears costs of removal)	Early Termination Fee (DEPARTMENT bears costs of removal)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		

State's Option to Purchase:

At Expiration: \$ per Watt (DC rating)

For the purposes of clarifying the application of this table to Section VII (3) of the SLA, State's Option to Purchase, the value of the System at the end of the term of the Agreement shall be based on the fair market value, except in the case where the fair market value is less than the residual value of the System as indicated in this Exhibit, which is reflected in the value labeled "At Expiration" above. In this case, the purchase price for the system will be based on the value as determined by the "At Expiration" fee.

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EXHIBIT F
SITE LICENSE AGREEMENT

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EXHIBIT G
RFP TABLE 3-1

Table 3-1 Qualifications and Experience Review Criteria

Qualifications & Capabilities Considered		Minimum Requirements To Pass
I. Bidder Qualifications & Experience		
A. System Design & Engineering		
<ul style="list-style-type: none"> Total generation capacity of fuel cell systems engineered and designed, and types of applications over the last three (3) years. 		Demonstration that bidder has engineered and designed fuel cell systems of similar size and scope as those Site PV systems contemplated under this RFP
Individual fuel cell system generation capacity and type of application (i.e. per project size, installation type and generating capacity) engineered and designed , broken out by year over the last three (3) years.		Demonstrated experience in engineering and designing fuel cell systems equal to or larger than 100 kW.
Experience with engineering and designing electrical interconnection of fuel cell systems at medium voltage levels (e.g. 4160 V and 12 kV)		Demonstrated experience with engineering and designing electrical interconnection facilities for fuel cell systems at medium voltage levels in accordance with Rule 21 or equivalent.
Experience with engineering and designing metering and meter data solutions for both billing and energy management; experience with or some capacity to integrate with facility Energy Management Systems.		Demonstrated experience with engineering and designing metering and meter data acquisition and presentation systems, billing systems, and some knowledge of integrating with facility Energy Management Systems. Demonstrates the ability to meet the billing requirements as per the RFP and PPA.
B. Installation Qualifications and Experience		
<ul style="list-style-type: none"> Number of projects and types of applications of fuel cell systems installed by bidder over the last three (3) years. 		<ul style="list-style-type: none"> Bidder has installed at least one fuel cell system 100 kW or greater, in the last three (3) years.
Individual fuel cell system generation capacity and type of application installed , broken out by year over the last three (3) years.		Bidder has installed at least one 100 kW fuel cell system.

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Qualifications & Capabilities Considered		Minimum Requirements To Pass
Fuel cell system installation experience in California.		Bidder demonstrates total installed fuel cell generation capacity in California of 100 kW in the last three (3) years, with at least one system in either PG&E or SoCal Edison utility service territories.
Appropriate contractors license for the installation of Site PV systems.		Provide evidence to demonstrate meeting this requirement as per Section 4.4 and Attachment 4 (Form 3 – Contractor Documentation) of this RFP.
<i>C. Project Management, Implementation & Delivery Capabilities, Capacity & Experience</i>		
<ul style="list-style-type: none"> • Project management capability 		<ul style="list-style-type: none"> • Demonstrates engineering and design management capabilities and experience.
<ul style="list-style-type: none"> • Project delivery capability. 		<ul style="list-style-type: none"> • Demonstrates project construction and installation management capabilities and experience.
<ul style="list-style-type: none"> • Project delivery capacity. 		<ul style="list-style-type: none"> • Demonstrates ability and experience to manage and deliver, at a minimum, a 100 kW fuel cell system.
<ul style="list-style-type: none"> • Construction management experience. 		<ul style="list-style-type: none"> • Demonstrates experience in relation to managing the construction of a fuel cell system.
<i>D. Site Output Monitoring & Billing</i>		
5. Monitoring, diagnosing & tracking system performance and energy output		<ul style="list-style-type: none"> • Bidder demonstrates experience in monitoring fuel cell system performance and submits plan for performing monitoring, diagnosing and tracking system performance.
6. Fuel cell system maintenance.		<ul style="list-style-type: none"> • Bidder demonstrates experience in maintaining fuel cell systems of at least 100 kW. Provide maintenance plan, including activities, tasks, and schedules.
<ul style="list-style-type: none"> • System for tracking output and billing host site, consistent with price form bid 		<ul style="list-style-type: none"> • Identification of responsive system and method for tracking system output and billing host site, as well as making interval metered data available to State host facility on a near real time basis with ability to download interval meter data in CSV format. • Sample bill format consistent with form of price bid and Attachment 7.

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Qualifications & Capabilities Considered		Minimum Requirements To Pass
<ul style="list-style-type: none"> Understanding of utility tariffs, applicable regulations, and effective monitoring of both. 		<ul style="list-style-type: none"> Bidder demonstrates an understanding of utility tariffs and applicable regulations regarding the installation and operation of grid parallel on site fuel cell systems in California. Bidder also demonstrates how they monitor changes in utility tariffs and the regulatory activities that affect distributed generation fuel cell systems.
E. Project Financing Experience		
<ul style="list-style-type: none"> Experience in securing financing that will be required to implement the total cost of the Site PV systems that are included in bidder's price bid response. 		Provide example(s) and evidence of placed financings by the proposed capital team in the last three (3) years for fuel cell system installations in California. Provides description of financing methods that have been utilized on past projects.
<ul style="list-style-type: none"> Experience financing fuel cell systems under a third party ownership model with the power sold under a power purchase agreement. 		Provide examples and evidence of all of the fuel cell systems that the bidder has installed under a third party ownership and power purchase agreement business model.
II. Financial/Business Strength of Bidder		
Evidence that <i>capital team</i> members, as applicable, can secure financing required for the installed cost of all systems bid.		Commitment letter from anticipated funding source(s). Capital sources in turn must demonstrate they are financially solvent and funds are available for these projects.
Evidence that bidder has necessary bonding capacity as per Section 4.6 of this RFP.		Bidder demonstrates sufficient bonding capacity to meet the requirements of Section 4.6 of this RFP. This shall be in the form of a letter from the bidder's bonding company.

CONTRACT NAME
CONTRACT NUMBER

Qualifications & Capabilities Considered		Minimum Requirements To Pass
Evidence that bidder can meet the insurance requirements of this RFP and the Site agreements.		Bidder demonstrates an ability to secure the appropriate insurance as required by this RFP and the Site agreements. This shall be in the form of a letter from the bidder's insurance broker.
Evidence that the bidder is a creditworthy company and in good standing.		Bidder submits credit information as per Section 5.9. Minimum criteria are one of the following: Standard and Poor's – BBB; Moody's – Baa; Fitch – BBB; Dunn and Bradstreet – IC-2; A.M. Best – B.
III. Client/Customer Reputation of Bidder		
Testimonials of previous or current fuel cell customers and financial clients from Site projects installed in the last three (3) years.		At least three customer testimonials representing a reasonable cross section of previous and/or current customers expressing satisfaction with the service provided and willingness to continue a business relationship with the bidder. Customer systems must be under a third party power purchase agreement business model currently in commercial operation and under the management of the bidder.
IV. Technology Proposed & Performance		
<ul style="list-style-type: none"> Performance <u>ratings</u> of technology proposed. 		Must meet minimum specifications of Attachment 2, as demonstrated in Proposal Form 1 (see Attachment 4)
<u>Field data performance</u> of systems previously installed, including performance over time.		Demonstrate that previous installations perform at or above the expected output level for these installed systems

End of Table 3-1

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