

EXHIBIT B

USE AND OCCUPANCY AGREEMENT

Dated as of _____, 20__

by and between

as Provider

and

the Natural Energy Laboratory of Hawaii Authority

for
Installation of Microgrid System
at the Natural Energy Laboratory of Hawaii Authority Research Campus
Kailua Kona, Hawaii

TABLE OF CONTENTS

1.	Definitions	1
2.	Grant of Use and Occupancy Rights	2
3.	Right to Install, Maintain And Operate the System	2
4.	Permits, Licenses and Other Approvals	2
5.	Work Completion	2
6.	Maintenance	2
7.	Repair	3
8.	No Obstruction	3
9.	Reservation of Rights.....	3
10.	State Work Within or Affecting the Premises	3
11.	Indemnity	4
12.	Insurance	4
13.	Default	5
14.	Term	6
15.	Termination	6
16.	Liens and Mortgages	6
17.	Hazardous Materials	10
18.	Removal Upon Termination	16
19.	Notices	17
20.	Compliance with Applicable Law	17
21.	Entire Agreement	18
22.	Assignment	18
23.	Successors and Assigns	18
24.	Singular, Plural	18
25.	Headings	19

Exhibits

- Exhibit A - Description of Site and Premises
- Exhibit B - Description of System

THIS AGREEMENT is made on _____, 20____, but effective as of _____, 20____, by and between the NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY (the "State"), by its Executive Director, and _____, whose principal place of business and post office address is _____ ("Provider").

RECITALS:

WHEREAS, the State owns, directly or indirectly, facilities in a certain location in the State of Hawaii as more particularly described in Exhibit A attached hereto (the "Site"); and

WHEREAS, Provider has been awarded a contract to install, maintain and operate a renewable energy generation system pursuant to a certain related power purchase agreement between the parties for a term of fifteen (15) years (the "Power Purchase Agreement") located at the Site as more particularly described in Exhibit B attached hereto (the "System"); and

WHEREAS, Provider desires to occupy portions of the Site, as described and delineated on Exhibit A attached hereto (the "Premises"), for the installation, maintenance and operation of the System; and

WHEREAS, the State does not object to granting Provider use and occupancy rights over the Premises, provided Provider fully complies with the terms and conditions set forth below;

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

AGREEMENT:

1. Definitions. Terms not otherwise defined herein shall have the same meaning as in the Power Purchase Agreement.

2. Grant of Use and Occupancy Rights. The State hereby grants Provider the non-exclusive right to use and occupy the Premises for the purpose of installing, maintaining and operating the System.

3. Right to Install, Maintain And Operate the System. Provider may install, maintain and operate the System on, within, over and across the Premises in accordance with the terms and conditions of the Power Purchase Agreement and this Agreement, provided that Provider obtains any and all approvals that may be required by the Power Purchase Agreement for construction or alteration of any portion of the System. Provider shall be solely responsible for all costs and expenses incurred in connection with the System and the maintenance of the Premises, including but not limited to, all design, planning, engineering, construction, alteration and maintenance costs and expenses.

4. Permits, Licenses and Other Approvals. In accordance with the terms and conditions of the Power Purchase Agreement, Provider shall obtain permits, licenses and other approvals as required by Applicable Law for any Installation Work and O&M Work on, within, over or across the Premises prior to commencing such work.

5. Work Completion. Upon the completion of any Installation Work and O&M Work performed in, on, over or across the Premises by Provider, Provider shall remove therefrom all equipment and unused or surplus materials, if any, and shall restore the Premises and any other affected areas that are not a part of the System to the condition the Premises and any other affected areas were in when Provider began Installation Work.

6. Maintenance. In accordance with Section 4 (Operation and Maintenance of System) of the Power Purchase Agreement, Provider shall, at its sole cost and expense, to the extent that Provider uses them, keep the Premises in a safe, clean, sanitary, and orderly condition, including, but not limited to, making all necessary repairs to the System, and shall not make, permit or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Premises.

7. Repair. In accordance with Section 4.2.2 (Repairs) of the Power Purchase Agreement, Provider shall not damage, undermine or otherwise destroy any portion of State property, including without limitation, any State facilities or improvements or facilities of other State tenants situated on or near the Site or any equipment or appurtenances relating thereto, including, but not limited to, sidewalks, storm drains, drainage systems, and underground utility systems, except to the extent indicated in plans approved pursuant to the terms of the Power Purchase Agreement. Provider shall, at its sole cost and expense, repair, restore and reconstruct that portion of said State property so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances.

8. No Obstruction. Provider shall not construct, replace, repair or maintain any portion of the System on, within, over or across the Premises in such a manner as to (a) unreasonably obstruct or otherwise constitute a hazard to State operations or (b) unreasonably obstruct operations of other State tenants on or near the Premises.

9. Reservation of Rights. The State reserves unto itself the full use and enjoyment of the Premises and to grant to others rights and privileges for any and all purposes affecting the Premises, all without charge by and without the consent of Provider, provided that, subject to Sections 7.2.5 (Access to Site) and 7.2.6 (Actions to Prevent Injury) of the Power Purchase Agreement, such use by the State and/or third parties does not unreasonably interfere with Provider's rights to use the Premises under this Agreement. Provider shall take steps necessary to ensure that Provider's exercise of the rights and privileges granted hereunder does not cause any substantial interference with the State's operations in or near the Premises.

10. State Work Within or Affecting the Premises. If the State decides to perform work of any kind within, on, over, under, across, near, or affecting the Premises, the State will coordinate such work with Provider. Provider shall not prevent the State from performing such work, provided, however, that the State will take certain protective measures to assure that such work does not unreasonably interfere with Provider's use of the Premises subject to the provisions of Section 4.6 (Temporary Shutdown of System; In-Lieu Payments or Extension of Agreement) of the Power Purchase Agreement.

10.1. Insolation. State understands that unobstructed access to sunlight (“insolation”) is essential to Provider’s performance of its obligations and a material term of the Power Purchase Agreement. State shall not in any way cause and, where possible, shall not in any way permit any interference with the System’s insolation. If State becomes aware of any activity or condition that could diminish the insolation of the System, State shall notify Provider immediately and shall cooperate with Provider in preserving the System’s existing insolation levels.

11. Indemnity. In accordance with Section 7.1.3 (Health and Safety) of the Power Purchase Agreement, Provider shall at all times with respect to the System and the Premises use due care for public safety. It is strictly understood that the State shall in no way be held liable for any claims, damages, causes of action or suits resulting from any acts or omissions of Provider. Provider shall hold harmless, indemnify and defend the State from and against all claims, demands, liabilities, suits, actions, judgments, costs and expenses for loss, injury, death or damage, including, without limitation, claims for property damage, personal injury, or death of persons, whenever such damage, injury, loss or death arises out of, is connected with or related to (a) occurrences or incidents related to the activities of Provider and/or its Subcontractors on, within, over or across the Premises or the System, (b) the exercise of the rights and privileges herein granted, (c) any failure on the part of Provider to use due care or otherwise perform in accordance with the terms and conditions of this Agreement and the Power Purchase Agreement, and/or (d) any act or omission of Provider. The State shall be responsible, to the extent permitted by applicable law, for damage or injury caused by the State’s officers and employees in the scope of their employment, provided that the State’s liability for such damage or injury has been determined by a court or agreed to by the State. The State shall pay for such damage and injury provided that funds are appropriated and allotted for that purpose.

12. Insurance. In addition to such insurance requirements, if any, as may be reasonably imposed by the State in connection with the issuance of work permits pursuant to Section 4 (Permits, Licenses and Other Approvals) herein, Provider shall procure, at Provider’s own cost and expense, and keep in force during the entirety of this Agreement, with an insurance

carrier authorized to do business in the State and rated A- VII by A.M. Best, insurance policies covering the Premises and the System with minimum limits and coverages specified in and subject to Section 8 (*Insurance Requirements*) of the Power Purchase Agreement. Prior to commencement of any work, Provider shall furnish the State with a certificate evidencing that such policies have been issued and are in force, and without notice or demand, furnish a like certificate on an annual basis to the State. Said policies shall also name the State as an additional insured and Provider will immediately provide written notice to the contracting department or agency should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration. The minimum limits of insurance may be increased by the State as the State deems necessary in the exercise of sound business judgment. The procurement of insurance pursuant to this Section 12 (*Insurance*) shall not relieve or release Provider from its responsibilities under this Agreement or limit the amount or degree of Provider's liability. Insurance obtained by Provider shall not apply in excess of and shall not be contributing with any insurance policy maintained by the State.

13. Default.

13.1. Notice of Default. If Provider defaults on or otherwise fails to perform its obligations under this Agreement, the State will issue a written notice of default to Provider. Provider's failure to construct the System in accordance with the plans and specifications approved by the State pursuant to the Power Purchase Agreement, the occurrence of a Provider Default under the Power Purchase Agreement or any other material failure to perform its obligations thereunder, shall be deemed a default of this Agreement.

13.2. State Remedies for Provider's Default. If Provider fails to cure said defaults or fails to perform within the required time period, the State's remedies shall be as specified in Section 12.1 (*State Purchaser's Remedies Upon Occurrence of a Provider Default*) of the Power Purchase Agreement.

13.3. No Consequential Damages. Nothing in this Agreement is intended to cause either Party to be, and neither Party shall be, liable to the other Party for any

lost business, lost profits or revenues from others or other special or consequential damages, all claims for which are hereby irrevocably waived by the State and Provider.

14. Term. The term of this Agreement shall commence on the date of the Power Purchase Agreement (as indicated on page 1 of the Power Purchase Agreement) between Provider and the State, and shall terminate one hundred eighty (180) days after termination or expiration of the Power Purchase Agreement (the date of any such termination, the “Termination Date”), to allow for System removal, if applicable.

15. Termination. This Agreement may be cancelled, before the Termination Date, in whole or in part, upon the same terms and conditions provided in Section 10 (*Term; State Purchaser Options; Termination*) of the Power Purchase Agreement. It is the understanding of the parties that the term of this Agreement will run concurrent with the Term of the Power Purchase Agreement.

16. Liens and Mortgages

16.1. Except as provided in this Section 16, Provider shall not engage in any financing or other transaction creating any mortgage upon the Premises; place or suffer to be placed upon the Premises any lien or other encumbrance; or suffer any levy or attachment to be made on Provider's interest in the Premises, other than such levy or attachment as may result from a foreclosure of a mortgage that is consistent with this Section 16. Any inconsistent mortgage, encumbrance, or lien shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced, and is void in its inception.

16.2. During the term of this Agreement, Provider may encumber its interest in the System by way of one or more loans secured by a mortgage, subject to Section 16.3 below. The proposed holder of any mortgage must be approved by the State prior to the execution of such loan, which approval shall not be unreasonably withheld or delayed. Any loan may be further secured by a conditional assignment of the Agreement by Provider to the mortgagee. The State agrees to execute an estoppel certificate and any other similar

documentation as may reasonably be required by the mortgagee so as to give its consent to the conditional assignment of this Agreement and to certify as to the status of this Agreement and to the performance of Provider hereunder as of the date of such certification. If required by the mortgagee, Provider may also request the State for approval, which approval shall not be unreasonably withheld or delayed, to subordinate any lien, security interest or claim that the State has or may have to the System in favor of the mortgagee's lien, security interest or claim to the System and to execute such documents as may be required by such mortgagee to evidence the foregoing subordination and to obtain similar executed documents from any third party who now has or obtains in the future an interest in the Site or the Premises, including any lenders to the State.

16.3. No mortgage shall extend to or affect the fee, the reversionary interest or the estate of the State in the Premises. No mortgage shall be binding upon the State in the enforcement of its rights and remedies under this Agreement and by law provided, unless, and until a copy thereof shall have been delivered to the State and such mortgage is authorized in accordance with the provisions of this Section 16.

16.4. Promptly after assigning or encumbering the System as permitted in accordance with Section 16.3, Provider shall furnish the State a written notice setting forth the name and address of such mortgagee. Further, Provider shall notify the State promptly of any lien or encumbrance which has been created or attached to the Premises, whether by act of Provider or otherwise, of which Provider has notice.

16.5. If a mortgagee or purchaser at foreclosure of the mortgage shall acquire Provider's interest in the System, by virtue of the default by Provider under the mortgage or otherwise, this Agreement shall continue in full force and effect so long as the mortgagee or purchaser at foreclosure is not in default thereunder. The mortgagee or purchaser at foreclosure may not appoint an agent or nominee to operate and manage any portion of the System on its behalf without obtaining the prior written approval of the State. Such approval shall require a determination that the proposed agent or nominee has demonstrated experience or expertise in the development, operation and maintenance of a photovoltaic array to supply and deliver

renewable (solar power) utility service. For the period of time during which the mortgagee or any purchaser at foreclosure of a mortgage holds Provider's interest in the Premises, the mortgagee or such purchaser shall become liable and fully bound by the provisions of this Agreement.

16.6. With respect to the mortgagees of the System, the State agrees that the following shall apply:

16.6.1. If requested by a mortgagee which shall have duly registered in writing with the State its name and address, any notice from the State to Provider with respect to a default or termination of this Agreement or other notice affecting the System shall be simultaneously delivered to such mortgagee at its registered address, and in the event of any such registration, no notice of default or termination of this Agreement affecting the System given by the State to Provider shall be deemed legally effective until and unless like notice shall have been given by the State to such mortgagee.

16.6.2. Such mortgagee entitled to such notice shall have any and all rights of Provider with respect to the curing of any default hereunder by Provider.

16.6.3. The State will not accept any cancellation by Provider or enter into any material modification of this Agreement affecting the System without the prior written consent thereto of each mortgagee who shall become entitled to notice as provided in this Section 16. The foregoing shall not apply or be construed to apply to any right the State may have to terminate this Agreement pursuant to its terms. It is also agreed that Provider shall provide any such mortgagee with notice of any proposed modification.

16.7. If the State shall elect to terminate this Agreement by reason of any default described herein with respect to this Agreement, each mortgagee that shall have become entitled to notice as provided in this Section 16 shall not only have any and all rights of Provider with respect to curing of any default, but also shall have the right to postpone and extend the specified date for the termination of this Agreement (“Mortgagee's Right to Postpone”) in any

notice of termination by the State to Provider (“Termination Notice”), subject to the following conditions:

16.7.1. Such mortgagee shall give the State written notice of the exercise of the Mortgagee's Right to Postpone prior to the date of termination specified by the State in the Termination Notice and simultaneously pay to the State all amounts required to cure all defaults then existing (as of date of the exercise of Mortgagee's Right to Postpone) which may be cured by the payment of a sum of money.

16.7.2. Such mortgagee shall pay any sums and charges which may be due and owing by Provider and promptly undertake to cure, diligently prosecute and, as soon as reasonably possible, complete the curing of all defaults of Provider which are susceptible of being cured by such mortgagee.

16.7.3. The Mortgagee's Right to Postpone shall extend the date for the termination of this Agreement specified in the Termination Notice for a period of not more than six (6) months.

16.7.4. If, before the date specified for the termination of this Agreement as extended by such mortgagee's exercise of Mortgagee's Right to Postpone, the assumption of performance and observance of the covenants and conditions herein contained on Provider's part to be performed under this Agreement and under the Power Purchase Agreement shall be delivered to the State by the mortgagee, or its nominee and the mortgagee shall have complied with all obligations on Provider's part to be performed with respect to this Agreement and the Power Purchase Agreement and no further defaults shall have occurred which shall not have been cured within the periods of time after notice above provided for; then and in such event, all defaults under this Agreement shall be deemed to have been cured, and the State's Termination Notice shall be deemed to have been withdrawn.

16.8. Nothing herein contained shall be deemed to impose any obligation on the part of the State to deliver physical possession of the System to such holder of a mortgage.

16.9. If more than one mortgagee shall seek to exercise any of the rights provided for in this Section 16, the holder of the mortgage having priority of lien over the other mortgagees shall be entitled, as against the others, to exercise such rights. Should a dispute arise among mortgagees regarding the priority of lien, the mortgagees must prove to the satisfaction of the State that they have settled that dispute.

16.10. The mortgagee may not appoint an agent or nominee to operate and manage the System on its behalf without obtaining the prior written approval of the State. Such approval shall require a determination that the proposed agent or nominee has demonstrated experience or expertise in the development, operation and maintenance of a photovoltaic array to supply and deliver renewable (solar power) utility service to the State.

17. Hazardous Materials.

17.1.1. Definitions. For purposes of this Section 17, Provider acknowledges and agrees that the following terms shall have the following meanings:

17.1.2. “Environmental Laws” shall mean all federal, state and local laws of every nature including statutes, ordinances, rules, regulations, codes, notices, standards, directives of every kind, guidelines, permits, licenses, authorizations, approvals, interpretations of the foregoing by any court, legislative body, agency or official, judicial decisions, judicial and administrative orders, rulings or judgments, or rules of common law which currently are in effect or which may come into effect through enactment, issuance, promulgation, adoption or otherwise, which in any way pertain to, relate to, or have any relevance to the environment, health or safety. These environmental laws include, but are not limited to, regulations and orders of the federal Environmental Protection Agency and the Hawaii Department of Health.

17.1.3. “Hazardous Substance” shall include any chemical, substance, radioactive materials, organic or inorganic material, controlled substance, object, condition, waste, living organism, or combination thereof which is, may in the future be, or has been determined by state or federal authority under any Environmental Law to be hazardous to

human health or safety or detrimental to the environment. This term shall include, but not be limited to, petroleum hydrocarbons, asbestos, radon, polychlorinated biphenyls (PCB5), methane, fuels of any kind, and other materials or substances that are, or may in the future be, regulated by the state or federal authorities.

17.2. Provider's Activities and Duties.

17.2.1. Compliance with Environmental Laws. Provider agrees, at its sole expense and cost, to comply with all Environmental Laws applicable to its occupancy, activities, operations, and use of the Facilities and the Premises. This duty shall survive the expiration or termination of this Agreement, which means that Provider's duty to comply with Environmental Laws shall include complying with all Environmental Laws that may in the future apply, or be determined to apply, to the occupancy and activities of Provider on the Premises after the expiration or termination of this Agreement. Failure of Provider to comply with any Environmental Laws shall constitute a breach of this Agreement for which the State may, in its sole discretion, terminate this Agreement, exercise its remedies under this Agreement, including remediation of any condition on behalf of Provider at Provider's expense under Section 17.2.5 (Environmental Investigations and Assessments) below and Section 17.2.7 (Restoration and Surrender of Premises) below, and take any other action at law or in equity that the State deems appropriate.

17.2.2. Hazardous Substances. Provider shall not use, store, treat, dispose, discharge, release, generate, create, or otherwise handle any Hazardous Substances, or allow the same by any of its employees, agents, guests, Providers or third persons, on the Premises without first obtaining the written consent of the State (which consent may be withheld by the State in its absolute discretion) and comply with all Environmental Laws, including giving all required notices, reporting to, and obtaining permits from, all appropriate authorities, and comply with all provisions of this Agreement.

17.2.3. Notice to the State. Provider shall keep the State fully informed at all times regarding all matters related to any Environmental Laws affecting Provider

or the Premises. This duty shall include, but not be limited to, providing the State with a current and complete list and accounting of all Hazardous Substances of every kind which are present in, on or about the Premises by or as a result of Provider, together with evidence that Provider has in effect all required and appropriate permits, licenses, registrations, approvals, and other consents that may be required by any federal, state, or county authority, under any authority or Environmental Laws. Provider shall provide said list and accounting at the commencement of the Agreement and shall update said list and accounting whenever any Hazardous Substance not accounted for on said list is or becomes present in, on, or about the Premises by Provider or otherwise. Provider shall also provide immediate written notice of any investigation, enforcement action, compliance order, or order of any type, or any other legal action, initiated, issued, or any indication of an intent to do so, communicated in any way to Provider by any federal, state, or county authority or individual that relates in any way to any Environmental Law or any Hazardous Substance on the Premises. This written notice to the State shall include copies of all written communications from any federal, state, or county agency or authority, including copies of all correspondence, claims, complaints, warnings, reports, technical data, and any other documents received or obtained by Provider. At least thirty (30) days prior to termination of this Agreement, or termination of the use and occupancy of the Premises by Provider, whichever occurs first, Provider shall provide the State with written evidence satisfactory to the State that Provider has fully complied with all Environmental Laws, including any orders issued by any governmental authority that relate to the Premises, and the results of all assessments and investigations that may be ordered by the State pursuant to Section 17.2.5 (*Environmental Investigations and Assessments*) of this provision, or by any governmental agency responsible for enforcement of the Environmental Laws.

17.2.4. Disposal/Removal. Except the possession and handling of Hazardous Substances for which Provider is exempt and those Hazardous Substances for which Provider has obtained all currently required permits to sort or use certain Hazardous Substances on the Premises, including written permission from the State, Provider shall cause any Hazardous Substances resulting from Provider's use to be removed and transported from the Premises for disposal solely by duly licensed hazardous substances transporters to duly licensed

facilities for final disposal as required by all applicable Environmental Laws. Provider shall provide the State with copies of documentary proof including manifests, receipts, or bills of lading, which reflect that said Hazardous Substances have been properly removed and disposed of in accordance with all Environmental Laws.

17.2.5. Environmental Investigations and Assessments. Provider, at its sole cost and expense, shall cause to be conducted such investigations and assessments of the Premises to determine the presence of any Hazardous Substance on, in, or under the Premises as may be reasonably directed from time to time by the State, or by any federal or state authority. The extent and number of any environmental investigations and assessments shall be determined by the State or the federal or state authority directing said investigations and assessments to be conducted, Provider shall retain a competent and qualified person or entity that is satisfactory to the State or governmental authority, as the case may be, to conduct said investigations and assessments. Provider shall direct said person or entity to provide the State or governmental authority, if so requested, with testable portions of all samples of any soils, water, ground water or other material that may be obtained for testing and provide directly to the State and the governmental authority at the sole expense of Provider written results of all tests on said samples upon completion of said testing. In any event, Provider shall have the option to conduct environmental assessments as aforesaid prior to or at the time of termination of this Agreement in order to determine the condition of the Premises.

17.2.6. Remediation. Subject to the terms and conditions of Section 14.21 (Hazardous Materials) of the Power Purchase Agreement, in the event that any Hazardous Substance is used, stored, treated, or disposed on the Premises by Provider, or handled, discharged, released by Provider or determined to be present on the Premises by or as a result of Provider's actions, Provider shall, at its sole expense and cost, remediate the Premises of such Hazardous Substance, and dispose/remove said Hazardous Substance in accordance with Section 17.2.4 (Disposal/Removal) of this provision. This duty to remediate includes strict compliance with all Environmental Laws, as well as any directives by the State to Provider to remediate such Hazardous Substance. This duty to remediate shall include replacement of any

materials, such as soils, so removed with material that is reasonably satisfactory to the State and governmental authority, as the case may be.

17.2.7. Restoration and Surrender of Premises. Provider hereby agrees to timely surrender the Premises within 180 days after the Expiration Date or the Termination Date of the Power Purchase Agreement, whichever date is applicable and, prior thereto, shall restore the Premises to the same condition as the Premises existed at the commencement of this Agreement, as determined by the State, reasonable wear and tear excepted. Said surrender and restoration shall be at the sole cost and expense of Provider. This duty to restore the Premises includes remediation as described in Section 17.2.6 (Remediation). This duty also includes, but is not limited to, the removal of all of Provider's improvements, including, without limitation, pipes, pipelines, tanks, containers, equipment and appurtenances of any kind that provider has installed or erected on the Premises but does not include System support structures and electric/wiring components in accordance with Section 10.2.3(ii) of the Power Purchase Agreement. In the event Provider does not timely restore the Premises to a satisfactory condition, as determined by the State, Provider understands and agrees that the State may exercise its rights under Section 17.2.9 (State's Right to Act), and until such time as the restoration is completed to the satisfaction of the State, Provider shall be liable for any damages and costs that the State may have incurred, including penalties, fines, and assessments related to the Premises which may be imposed on the State or Provider by any governmental authority.

17.2.8. Tanks, Pipelines; Inspections and Repairs. Unless the State specifically agrees in writing prior to their installation, all pipes, pipelines, tanks, containers, or conduits of any kind that may at any time have contained, or may have been intended to contain, Hazardous Substances of any type (hereafter referred to as a "Facility"), must be installed above ground level in such manner that allows for periodic inspection and maintenance of the Facility for purposes of determining the existence of leaks and discharges from, and deterioration of any kind to, and that allows repair of, the Facility. Provider shall provide the State with prior notice of Provider's intent to install a Facility to allow the State ample time, as reasonably determined by the State, to inspect the plan for installation of such a

Facility. Said Facility shall not be installed unless and until the Facility and its manner of installation are approved by the State. Within ninety (90) days of the commencement of this Agreement, or commencement of possession of the Premises by Provider, whichever first occurs, Provider shall submit a contingency plan covering Provider facilities if any, and as applicable, to control and remedy any spill, discharge, or leak from any Provider Facility on the Premises during the term of this Agreement, which plan shall include the cleanup of all Hazardous Substances that may be spilled, discharged, or leaked, to the satisfaction of the State. Provider shall also submit to the State a plan for Provider to conduct, or have conducted, regular inspections of all Provider facilities, if any, on the Premises for the purpose of prevention of any leak, discharge, or spill from said facilities. Said contingency plan and inspection plan are subject to the approval of the State. Provider shall timely obtain and maintain in effect all required permits, licenses, and approvals for such facilities from any governmental authority. Failure to submit said plans, to comply with said plans, or obtain and maintain any required permits, licenses, or approvals constitutes a breach of this Agreement, giving the State the right to immediately terminate this Agreement, take possession of the Premises, and pursue any other remedy available to the State.

17.2.9. State's Right to Act. In the event Provider fails for any reason to comply with any of its duties under any Environmental Laws within the time set for doing so, or within a reasonable time as determined by the State, the State shall have the right, but not the obligation, in its sole discretion, to perform those duties, or cause them to be performed. Provider hereby grants access to the Premises at all reasonable hours to the State, its agents and anyone designated by the State, in order to perform said acts and duties. Any cost, expense, or liability of any type that may be incurred by the State in performing said acts or duties shall be the sole responsibility of Provider and Provider hereby agrees to immediately pay to the State all of such costs and expenses incurred by the State in performing said acts or duties. This obligation shall extend to any costs and expenses incident to enforcement of the State's right to act, including litigation costs, attorney fees, and the costs and fees for collection of said costs, expenses, or liability.

17.2.10. Release and Indemnity. Provider hereby agrees to release the State, its officers, employees, agents, successors, and assigns from any liability of any kind, including, but not limited to, any liability for any damages, penalties, fines, judgments, or assessments that may be imposed or obtained by any person, agency, or governmental authority against Provider by reason of any Hazardous Substance that may be present by or as a result of Provider's use of the Premises by whatever means on, in or under the Premises including any time or penalties assessed against the State for Provider's non-compliance with any Environmental Laws unless such actions which result in liability for damages, penalties, fines, judgments or assessments imposed are caused by the State, its officers, employees, or agents.

17.2.11. Burden of Proof. In all instances covered in this Section 17 (*Hazardous Materials*), Provider accepts the burden of establishing that it is not responsible for the existence of Hazardous Materials in the Premises. If Provider cannot establish that it is not responsible for the existence of Hazardous Materials in the Premises, Provider shall be deemed responsible for the existence of the Hazardous Materials.

18. Removal Upon Termination. Upon any termination or cancellation of this Agreement pursuant to Section 15 (*Termination*), Provider shall remove all of its tangible property comprising the System from the Site within one hundred eighty (180) days after the Expiration Date or Termination Date of the Power Purchase Agreement, whichever date is applicable. In accordance with Section 10 (*Term, State Purchaser Options; Termination*) of the Power Purchase Agreement, Provider shall return the Site to its original condition except for ordinary wear and tear, and Provider shall leave the Site in neat and clean order. Termination or cancellation of this Agreement shall not relieve Provider of its obligations to indemnify, defend and/or hold harmless the State pursuant to Sections 11 (*Indemnity*) and 17 (*Hazardous Materials*) herein with respect to any such claims, demands, liabilities, suits, actions, judgments, costs and expenses for loss, injury, death or damage arising prior to such termination or cancellation of all or a portion of this Agreement.

19. Notices. All notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person or (b) mailed, postage prepaid, either by

registered or certified mail, return receipt requested or (c) sent by reputable overnight express courier, addressed in each case to the addresses set forth below, or to any other address either of the parties to this Agreement shall designate in a written notice to the other party:

If to Provider:

[_____]

If to State:

Natural Energy Laboratory of Hawaii Authority
73-4460 Queen Kaahumanu Hwy., #101
Kailua Kona, Hawaii 96740
Attention: Executive Director
Phone: (808) 327-9585
Fax: (808) 327-9586

All notices, communications and waivers under this Agreement, if applicable, to any Person who has or will make a loan to Provider to help finance the System shall be to the name and address specified in a notice from Provider to the State. All notices sent pursuant to the terms of this Section 19 shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight, express courier, then on the next business day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third (3rd) business day following the day sent or when actually received.

20. Compliance with Applicable Law. Provider, at all times during the term of this Agreement, shall comply with all of the requirements of Applicable Law, now in force or which may hereafter be in force.

21. Entire Agreement. This agreement (including all exhibits attached hereto) and the Power Purchase Agreement represent the entire agreement between the parties to this Agreement with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous oral and prior written agreements. In the event of any conflict between the provisions of this Agreement and the provisions of the Power Purchase Agreement, with the exception of Section 17 (*Hazardous Materials*) of this Agreement, the provisions of the Power Purchase Agreement shall govern and control.

22. Assignment.

22.1. Assignment. This Agreement shall be assignable by either Party in whole or in part with the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Provider shall have the unilateral right, without requiring the State's prior consent, to assign its rights and obligations under this Agreement to a third party for the purpose of financing the System.

22.2. Title to the System. Provider, or Provider's permitted assigns, shall at all times retain title to and be the legal and beneficial owner of the System, which shall remain the personal property of Provider and shall not become fixtures, notwithstanding that the System may be physically mounted or adhered to the Premises, unless and until the State exercises its purchase option pursuant to Section 10.2.2 (*Prior to Expiration Date [Purchase Option]*) of the Power Purchase Agreement. Provider shall not transfer title to another entity without prior written notification to the State and without the State's approval, except as provided in Section 14.3 (*Assignment*) of the Power Purchase Agreement.

23. Successors and Assigns. All provisions contained in this Agreement shall be binding upon and inure to the benefit of the respective parties, their successors and permitted assigns, and officers, agents, and employees or any person acting for and on their behalf.

24. Singular, Plural. All words used herein the singular number shall extend to and include the plural. All words used in any gender shall extend to and include all genders.

25. Headings. The headings and captions herein are for convenience of reference only and are not intended to fully describe, define or limit the provisions of this Agreement to which they may pertain.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have executed this Agreement the day and year first above written.

PROVIDER: _____

By _____
Name:
Title:

APPROVED AS TO FORM:

PURCHASER: NATURAL ENERGY
LABORATORY OF HAWAII AUTHORITY

Deputy Attorney General

By _____
Name: Gregory P. Barbour
Title: Executive Director

EXHIBIT A
DESCRIPTION OF SITE AND PREMISES

- I. Description of Site: [_____]
- Description of Area: [_____]
- Description Area Condition: [_____]
- Description of Electrical Facility: [_____]
- Site Exposure: [_____]
- Satellite Picture of Property: [_____]
- II. Description of Premises: [_____]

EXHIBIT B
DESCRIPTION OF SYSTEM

Provider will provide and install the System on the Site described in Exhibit A of this Agreement.

System shall include the following:

- (1) Photovoltaic modules and other energy generators and mounting thereof;
- (2) Other renewable energy generation and storage systems to be used;
- (3) Inverters and associated wiring;
- (4) Module racking and mounting hardware;
- (5) All miscellaneous electrical work to connect System components to the facility electrical load;
- (6) Structural attachments and weatherproofing of attachments; and
- (7) Utility grade meters.

STATE OF HAWAII)
) ss.
CITY & COUNTY OF HONOLULU)

On this _____ day of _____, A.D. 201____, before me appeared _____, to me personally known, did say that he/she is the _____ of _____, and who executed the foregoing instrument and being by me duly sworn did depose and say that he/she executed and delivered such instruments as his/her voluntary act and deed for the uses and purposes therein mentioned.

Seal

Notary Public
State of Hawaii

My Commission Expires: _____

Doc. Date: _____ UNDATED _____ # Pages: _____

Name _____ First Circuit

Doc. Description _____

Notary Signature

Date

NOTARY CERTIFICATION

Seal