
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 8-K/A
(Amendment No. 3)

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): October 27, 2009

FUELCELL ENERGY, INC.
(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

1-14204

(Commission File Number)

06-0853042

(IRS Employer Identification No.)

**3 Great Pasture Road,
Danbury, Connecticut**

(Address of principal executive offices)

06813

(Zip Code)

Registrant's telephone number, including area code: **(203) 825-6000**

Not Applicable

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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FuelCell Energy, Inc. (the "Company") is filing this Form 8-K/A to amend the Company's Current Report on Form 8-K, originally filed with the Securities and Exchange Commission on November 2, 2009 (the "Original Filing"). The purpose of the amendment is to add a list of exhibits and attachments and to clarify the confidential treatment being requested for certain items in Exhibit 10.1.

Item 9.01. Financial Statements and Exhibits

4.01	Securities Purchase Agreement (incorporated by reference from Exhibit 4.01 filed with the Original Filing)
10.1	Stack Technology Transfer and License Agreement
10.2	Contract for the Supply of DFC Modules and DFC Components
99.1	Press release, dated October 27, 2009, issued by FuelCell Energy, Inc. (incorporated by reference from Exhibit 99.1 filed with the Original Filing)

Confidential treatment has been requested as to certain portions of Exhibits 10.1 and 10.2. Redacted portions of the exhibits are marked with an * and have been filed separately with the SEC.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

FUELCELL ENERGY, INC.

Date: April 13, 2010

By: /s/ Joseph G. Mahler
Joseph G. Mahler
Senior Vice President, Chief Financial Officer,
Corporate Secretary and Treasurer

STACK TECHNOLOGY TRANSFER AND LICENSE AGREEMENT (“STTA”)

dated as of October 27, 2009

between

FUELCELL ENERGY, INC.

and

POSCO POWER

Confidential treatment requested as to certain portions of this exhibit marked with an *. Such portions have been redacted and filed separately with the SEC.

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Exhibits :

Exhibit A:	Form of STTP
Exhibit B:	Form of DOE Approval
Exhibit C:	List of FCE Patents
Exhibit D:	Sales Targets

Schedules :

Schedule A:	POSCO Affiliates
Schedule B:	Non-Exclusive Territory
Schedule C:	FCE Previously Granted Distribution Rights

THIS STACK TECHNOLOGY TRANSFER AND LICENSE AGREEMENT (this “Agreement”) is made and entered into this 27th day of October, 2009, by and between FUELCELL ENERGY, INC., a Delaware corporation having a place of business at 3 Great Pasture Rd., Danbury, CT 06813, U.S.A. (“FCE”) and POSCO POWER, a Korean corporation having a place of business at Posteel Tower 20th floor, 735-3, Yeoksam-dong, Gangnam-gu, Seoul 135-080, Korea (“POSCO Power”).

RECITALS:

A. POSCO Power and FCE are parties to a series of agreements identified as follows (collectively, the “Transaction Agreements”):

(i) the Technology Transfer, Distribution and Licensing Agreement for the transfer of Balance of Plant technology (the “Technology Transfer Agreement” or “TTA”) and the Alliance Agreement (the “Alliance Agreement” or “AA”), both executed as of February 7, 2007;

(ii) the Technology Transfer Program (“TTP”) executed as of July 11, 2007;

(iii) the Contract for the Supply of DFC Plants and DFC Modules from FCE to POSCO Power (“2008 Purchase Contract”) executed as of April 22, 2008;

(iv) the Contract for the Supply of DFC Modules and DFC Components from FCE to POSCO Power (“2009 Purchase Contract”) executed as of June 9, 2009; and

(v) the Securities Purchase Agreement by and between FCE and POSCO Power (the “2009 Securities Purchase Agreement”) executed as of June 9, 2009.

B. FCE has developed technology for the assembly of Fuel Cell Stack Modules from Repeating Components, Module Components and Non-Repeating Components (“Module Assembly”) for use in high temperature Molten Carbonate Fuel Cell (“MCFC”) power plants known as the “Direct FuelCell ® ” (DFC ®), and is developing new DFC based products currently designated by FCE as “DFC/T ®”, “DFC-ERG ®” and “DFC/H2 ®”.

C. FCE wishes to grant a license of the FCE Technology (defined below) to POSCO Power and/or POSCO Affiliates and transfer the FCE Technology and provide technical assistance and support to POSCO Power. POSCO Power wishes to accept such a license and receive the FCE Technology, technical assistance and support, all in accordance with the terms of this Agreement and the other Transaction Agreements (defined below), as applicable.

D. POSCO Power, together with the POSCO Affiliates (defined below), wishes to engage in Fuel Cell Stack Module Assembly, Conditioning, Diagnosis and Repairing of such Fuel Cell Stack Module in Korea under license from FCE, and to continue in the

commercialization of the DFC technologies in the Korean Market (defined below) and in the Non-Exclusive Territory (defined below).

E. POSCO Power wishes to grant a license of the POSCO Technology (defined below) to FCE for the purpose of allowing FCE to further improve and modify the Fuel Cell Stack Module technologies developed by FCE, in accordance with the terms of this Agreement and the other Transaction Agreements, as applicable.

F. The Parties acknowledge and agree that Fuel Cell Stack Module Manufacturing in Korea (defined below) under the license granted herein by FCE may achieve, among other things, cost reduction, product improvement, lead time improvement and service quality improvement. It is thus intended that POSCO Power will engage, directly or indirectly through one or more POSCO Affiliates or independent third parties, in Fuel Cell Stack Module Manufacturing in Korea on terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth below and intending to be legally bound, the parties agree as follows:

I. DEFINITIONS

As used in this Agreement, the following terms shall have the following respective meanings which are intended to define the scope of this Agreement:

“ Additional Term ” shall have the meaning set forth in Section 8.2.

“ Applicable Laws ” shall mean all applicable laws, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, interpretations and permits of any Governmental Authority.

“ Balance of Plant ” or “BOP” shall mean all subsystems for operation and generation of electrical power by DFC’s MCFCs in one or more stacks and including, but not limited to, fuel pre-treatment boilers, water recovery, fuel exhaust burner, inverter, control system, utility interface and start-up and stand-by equipment. For the avoidance of doubt, BOP shall mean all components of the DFC Power Plant other than the Fuel Cell Stack Module.

“ DFC ” shall mean FCE’s proprietary MCFC.

“ DFC Components ” means a quantity of Repeating Components (RC), Non-Repeating Components (NRC) and Module Components from which a complete Fuel Cell Stack Module may be assembled.

“ DFC Manuals ” means the documents prepared and provided by FCE which contain, but are not necessarily limited to, instructions for installation, operation, initial start-up, field procedures, instrumentation and controls, diagnosis and maintenance of the DFC Power Plants.

“ DFC Module Kit ” shall mean a set of components comprised of Module Components, NRC, and RC, which are manufactured wholly by FCE, in sufficient quantity for the subsequent assembly and conditioning by POSCO Power of a complete Fuel Cell Stack Module.

“ DFC Power Plant ” shall mean the MCFC power plant comprising the Fuel Cell Stack Module and the BOP, and shall specifically exclude items of equipment such as foundations, structures, enclosures, transmission/distribution lines and interconnections, fuel lines, fuel preparation and clean-up equipment water drainage/removal, computer hardware and software and any other items related to the foregoing.

“ DOE Approval ” shall mean the necessary consent or approval from the U.S. Department of Energy, in form substantially similar to the form of DOE Approval set forth in Exhibit B attached hereto.

“ Effective Date ” shall mean the date upon which all the obligations of FCE set forth in Section 6.3 have been satisfied or waived.

“ Fuel Cell Stack ” shall be comprised of RC and NRC as defined herein below.

“ Fuel Cell Stack Module ” shall mean the Module Components and the Fuel Cell Stack.

“ Fuel Cell Stack Module Manufacturing in Korea ” shall mean the engagement by POSCO Power, directly or indirectly through one or more POSCO Affiliates or independent third parties, to manufacture certain components of Module Component and NRC (as defined below) under the condition as set forth in Section 2.9.

“ FCE Products ” shall mean DFC Power Plants currently designated DFC300MA, DFC1500MA, DFC1500B and DFC3000 with introductory ratings of 300 kW, 1.2 MW, 1.4 MW and 2.8 MW, respectively, and modifications and improvements thereof, regardless of how designated by FCE, which are made available, or in the future may be made available, for commercial use or sale by FCE during the Term.

“ FCE Know-How ” shall mean all technical information, know-how, inventions (whether patented or not), trade secrets, and other technical, engineering and design information and data, as available and/or in then current use by FCE, whether included as part of the DFC Manual or not, including all information provided by third parties to FCE, related to the Module Assembly Process, Module Conditioning Process, and the Module Repair Process; the Module Assembly Facility Data, Module Conditioning Facility Data, and the Module Repair Facility Data; the Module Components; and the NRC. It is understood that FCE Know-How shall not include: (i) information and data relating to machines or processes used in the manufacture of RC materials, parts, and components; (ii) information and data relating to design, manufacture and materials used for the RC; and (iii) information and data which is subject to restriction on disclosure by a third party, provided, however, that FCE shall exercise commercially reasonable good faith efforts to obtain the consent needed to make such information available to POSCO Power. It is

further understood that FCE Know-How shall not include such information which relates to “New DFC Based Products”.

“ FCE Patents ” shall mean the letters patents, and any applications for letters patent which have a “Convention Date” under the International Convention for the Protection of Industrial Property prior to the earlier of the expiration or termination date of this Agreement and which are owned or acquired by FCE or in which FCE has or acquires a licensable interest (including without limitation any U.S. or non-U.S. patents and patent applications that are counterparts thereof, and/or any divisions, continuations, continuations-in-part or reissues, reexaminations, renewals, substitutions, extensions, supplementary protection certificates in respect thereof) and which relate to the technology being licensed hereunder to POSCO Power as listed in Exhibit C attached hereto.

“ FCE Technology ” shall mean FCE Patents and FCE Know-How.

“ Force Majeure ” shall mean unforeseen circumstances beyond the reasonable control and without the fault or negligence of either Party and which such Party is unable to prevent or provide against by the exercise of reasonable diligence including, but not limited to, acts of God, any acts or omissions of any civil or military authority, earthquakes, strikes or other labor disturbances, wars (declared or undeclared), terrorist and similar criminal acts, epidemics, civil unrest and riots.

“ Governmental Authority ” shall mean any supranational, national, federal, state, municipal or local government or quasi-governmental or regulatory authority (including a national securities exchange or other self-regulatory body), agency, court, commission or other similar entity, domestic or foreign.

“ Governmental Order ” shall mean any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“ Initial Term ” shall have the meaning set forth in Section 8.1.

“ Korean Market ” shall mean the Republic of Korea.

“ Korean Company ” shall include any corporation, company or entity established under the laws of the Republic of Korea, including any Subsidiary thereof, wherever located or established, other than POSCO Power and POSCO Affiliates.

“ MCFC ” shall mean molten carbonate fuel cell.

“ Module Assembly Facility Data ” shall mean engineering and design information and data, as available and/or in then current use by FCE, including but not limited to the construction, operation and maintenance of facilities, equipment, and tooling to perform Module Assembly Processes.

“ Module Assembly Process ” shall mean engineering and design information and data, inventions, trade secrets, know-how, work instructions, and related information as

available and/or in then current use by FCE, including but not limited to the assembly of Fuel Cell Stack Modules from RC, NRC, and Module Components as well as information and know-how related to quality assurance and quality control (QA/QC) for the assembly process.

“ Module Components ” shall mean parts and components of the Fuel Cell Stack Module other than Fuel Cell Stack, necessary to assemble a Fuel Cell Stack Module, including but not limited to the catalytic oxidizer, mixer/educt, stack enclosure vessel, enclosure insulation, flex hoses and instrumentation tubing.

“ Module Conditioning Facility Data ” shall mean engineering and design information and data, as available and/or in then current use by FCE, including but not limited to the construction, operation and maintenance of facilities, equipment, and tooling to perform Module Conditioning Processes.

“ Module Conditioning Process ” shall mean the first heat treatment process following the complete assembly of Fuel Cell Stack Module, through which the initial product tests and quality checks are performed.

“ Module Repair Facility Data ” shall mean engineering and design information and data, as available and/or in then current use by FCE, including but not limited to the construction, operation and maintenance of facilities, equipment, and tooling to perform Module Repair Processes.

“ Module Repair Process ” shall mean all processes including tear-down, diagnosis, testing, replacing, repairing and conditioning of a malfunctioning Fuel Cell Stack Module, excluding those portions of the diagnosis and repair process which relate to RC, to place such Fuel Cell Stack Module in a re-operable condition.

“ New DFC-Based Products ” shall mean, as currently designated by FCE, the DFC/T[®], the DFC/H2[®], the DFC-ERG[®], and any modifications and derivation in whole or in part of thereof, regardless of designation.

“ New DFC-Based Technology ” shall mean all technical information, know-how, inventions (whether patented or not) or trade secrets, which relate to the New DFC-Based Products.

“ New Joint Products ” shall mean products which are unique and distinct from the New DFC Based Products and New DFC-Based Technology, and for which FCE has not, as of the Effective Date of the STTA, commenced initial concept development, analysis or product development activities; for example, fuel cell technology for on-site application, industrial back-up power application, and marine application.

“ Non-Exclusive Territory ” shall mean the jurisdictions set forth in Schedule B hereto, it being understood and agreed that additional jurisdictions may be added, as mutually agreed by the Parties from time to time.

“ Non-Repeating Components ” or “NRC” means parts and components necessary for the assembly of the Fuel Cell Stack other than RC, including but not limited to supporting hardware, manifolds, instrumentation, assembly and compression hardware.

“ Party ” shall mean FCE or POSCO Power, or when used in the plural, FCE and POSCO Power.

“ Person ” shall mean any natural person, firm, partnership, association, corporation, company, joint venture, trust, business trust, Governmental Authority or other entity.

“ POSCO Affiliate ” shall mean each of those entities controlled by, or under common control with, POSCO Power, which may receive all or part of the FCE Technology in connection with this Agreement, and which are listed in Schedule A, it being understood and agreed that additional entities may be added as mutually agreed by the Parties.

“ POSCO Modules ” shall mean Fuel Cell Stack Modules manufactured by POSCO under license from FCE.

“ POSCO Module Net Sales.” shall mean the revenues generated from the sales by POSCO Power or POSCO Affiliate of the POSCO Modules; less the POSCO Module Net Sales Adjustments, all determined in accordance with Section 4.1(c) below.

“ POSCO Module Net Sales Adjustments ” shall include the cost of DFC Components, DFC Module Kit, or any components or parts of the POSCO Modules, purchased by POSCO Power and/or any POSCO Affiliate from FCE and POSCO Products and POSCO Parts that (a) are manufactured using the proprietary technology, engineering and design, know-how and inventions of POSCO Power and/or any POSCO Affiliate, and (b) do not use or contain any FCE Technology and the following items incurred in normal, bona fide, commercial transactions to the extent to which they are actually paid and expressly included in the gross invoice price: (i) sales returned; (ii) sales discounts; (iii) duties and taxes on sales; (iv) transportation insurance premiums; (v) packing expenses on sales; (vi) transport expenses on sales.

Further, sales and purchases by and between POSCO Power and POSCO Affiliate to effect the sales of POSCO Modules, to customers shall be excluded only to the extent such POSCO Modules are not put into use or operation by such POSCO Affiliate. If such POSCO Modules are subsequently resold to third parties, such subsequent sale to the third party shall be included.

In addition, the Parties recognize and agree that there should not be any duplicate royalties counting for any single transaction by calculating royalties under the previous TTA and this STTA, thus, any royalty calculation resulting from the Net Sales of POSCO Module under this STTA shall be taken into account with the calculation of the royalties resulting from the Net Sales of DFC Power Plants, POSCO Products and/or POSCO Parts under the TTA.

“ POSCO Parts ” shall mean any parts or components of POSCO Products.

“ POSCO Products ” shall mean any products, regardless of designation, which are the same as, or a modification or derivation in whole or in part of FCE Products.

“ POSCO Technology ” shall mean all inventions, know-how, trade secrets, data or information arising or developed independently, during the Term, by POSCO Power and POSCO Affiliates and (i) by any employee of POSCO Power or POSCO Affiliate or (ii) by POSCO Power or POSCO Affiliate vendors, subcontractors, consultants or suppliers (but only to the extent that POSCO Power or POSCO Affiliate has obtained rights thereto), derived from or based on the FCE Technology, including, without limitation, technical information, know-how, inventions (whether patented or not), trade secrets, and other technical, engineering and design information and data, detailed drawings, bill of material, system analytical models, system operating software, manufacturing plant data, vendor qualification and selection procedures, and quality assurance procedures.

“ Repeating Components ” or “RC” shall consist of discrete fuel cell packages composed of active fuel cell components, which include but are not limited to anodes, cathodes, current collector plates, and matrices.

“ Royalty Determination Firm ” shall have the meaning set forth in Section 4.4.

“ Stack Technology Transfer and License Agreement ” or “STTA” shall mean this Agreement.

“ Stack Technology Transfer Protocol ” or “STTP” shall mean that certain document containing the detailed terms and schedules relating to the transfer by FCE of FCE Technology, including the scope of assistance and support provided, to POSCO Power and POSCO Affiliates, as applicable, it being understood and agreed that, the STTP shall become part of this Agreement, as Exhibit A hereto.

“ Subsidiary ” shall mean, with respect to any Person (for the purposes of this definition, the “parent”), any other Person (other than a natural person), whether incorporated or unincorporated, of which at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other persons performing similar functions is directly or indirectly owned by the parent or by one or more of its respective Subsidiaries or by the parent and any one or more of its respective Subsidiaries.

“ Term ” shall have the meaning set forth in Section 8.1.

II. LICENSE GRANT

2.1 FCE Technology License .

(a) During the Term, and subject to the terms of this Agreement, FCE hereby grants to POSCO Power:

(i) an exclusive right and license to use the FCE Technology to construct, assemble, manufacture, use, sell, import, maintain, service and/or repair POSCO Modules in the Korean Market;

(ii) a right and license to use the FCE Technology to sell, export, maintain, service and/or repair POSCO Modules in the Non-Exclusive Territory; and

(iii) an exclusive right and license to have manufactured and assembled in the Korean Market, POSCO Modules by POSCO Affiliates in Korea, subject to the execution by POSCO Affiliates of confidentiality agreements substantially similar to the terms and conditions set forth in Article XI of this Agreement.

(b) For the avoidance of doubt, the foregoing license consists of a right and license to use the FCE Know-How, and a right and license under the FCE Patents which cover the FCE Know-How, which are now owned or which may hereafter be acquired by, or granted to FCE and under which FCE has or may acquire the right to grant such a right and license.

(c) At the request of POSCO Power, and upon consent by FCE, which consent shall not be unreasonably withheld, FCE shall designate any POSCO Affiliate indicated by POSCO Power as an additional licensee under this Agreement.

2.2 Distribution Rights. FCE hereby grants to POSCO Power or any POSCO Affiliate, as applicable, a non-exclusive right to distribute, sell, maintain, export/import, service and/or repair Fuel Cell Stack Modules and FCE Products in the Korean Market and in the Non-Exclusive Territory during the Term, subject to certain distribution rights previously granted by FCE to other third parties; provided, however, that during the Term, FCE shall (i) not grant any new distribution rights for FCE Products for the Korean Market; (ii) in any way extend the term of any distribution rights granted to any third parties prior to the date hereof with respect to the Korean Market upon expiration or termination thereof; or (iii) not sell the FCE Products in the Korean Market or to any third party (except as permitted in the Alliance Agreement) which, in its reasonable judgment after due inquiry, may have an intention to re-sell the same in the Korean Market. A list of all distribution rights granted by FCE prior to the date hereof is set forth in Schedule C attached hereto.

2.3 POSCO Technology License. POSCO Power hereby grants to FCE a non-exclusive, non-assignable, non-sublicensable and paid-up license to use POSCO Technology during the Term and to manufacture, have manufactured and sell FCE Products that incorporate POSCO Technology by giving prior notice to POSCO Power. Notwithstanding the foregoing, the Parties agree that FCE may sub-license the POSCO Technology to a third party for the sole purpose of further developing and improving the FCE Technology, with prior written consent of POSCO Power, provided that any such development or improvement shall be transferred to POSCO Power and that the third party shall not use or commercialize the POSCO Technology, without the prior written consent of POSCO Power, which consent shall be given at POSCO Power's sole discretion.

2.4 License to POSCO Power Upon Expiration of the Term . Upon expiration of the Term, FCE hereby agrees to continue and extend the grant and license, on a non-exclusive basis, to POSCO Power of all rights set forth under Section 2.1 of this Agreement, subject to the payment by POSCO Power to FCE of royalties to be mutually determined by the Parties upon such expiration through commercially reasonable good faith efforts; provided, that in the absence of an agreed royalty determination within the sixty (60) day period immediately following the initial request by either Party to determine the royalties, the Parties will submit to binding determination in accordance with Section 4.4. Such determination shall take into account any compensation owed by FCE to third parties.

2.5 License to FCE Upon Expiration of the Term . Upon expiration of the Term, POSCO Power hereby agrees to continue granting to FCE on a non-exclusive basis all rights set forth under Section 2.3 of this Agreement, subject to the payment by FCE to POSCO Power of royalties to be mutually determined by the Parties upon such expiration through commercially reasonable good faith efforts, taking into consideration the contribution of each Party to the POSCO Technology; provided, that in the absence of an agreed royalty determination within the sixty (60) day period immediately following the initial request by either Party to determine the royalties, the Parties will submit to binding determination in accordance with Section 4.4.

2.6 Use of "FCE" Trademarks . During the Term, FCE grants POSCO Power the right to use "FCE" marks, in connection with the labeling, advertising or sale of POSCO Modules that POSCO Modules made by it are "manufactured under license of FUELCELL ENERGY, INC., U.S.A.", or any other similar statement, to the extent that such is, in fact, the case. In addition, FCE hereby grants to POSCO Power a non-exclusive fully paid-up license and right to use, consistent with the terms of this Agreement, any and all trademarks and trade names owned by FCE and subject to appropriate provisions concerning protection of trademarks and trade names, including quality control.

2.7 Transfer of Technical Data . FCE hereby agrees to provide POSCO Power, upon completion of payment obligations described in Section 4.1(a) hereunder, technical data and other information existing in documented form as of the Effective Date, relating to the FCE Know-How in accordance with the terms of the STTP. FCE hereby agrees that it will supply or cause to be supplied to POSCO Power and POSCO Affiliates, as applicable, free of any charges, except as indicated in the STTP, full up-to-date information, to the extent available in documented form of FCE Technology in a form (*e.g.* , drawings, standard operating procedures, blueprints, written memoranda, training of employees or personal consultation) or non-documented form via oral or other visual forms in a commercially reasonable manner and form that will satisfactorily and expeditiously accomplish the transfer of FCE Know-How to POSCO Power. FCE will supply all such information in a reasonably usable form and in the English language. In the event that POSCO Power requests, in writing, that FCE supply such information in a technical form that differs from the technical form in which FCE has previously supplied or offered to supply it, then POSCO Power agrees to reimburse FCE the actual costs and expenses incurred by FCE; provided , however , that POSCO Power will not be required to

pay the costs of obtaining any such information if it is already available to FCE in the form requested by POSCO Power. At its sole discretion, POSCO Power may transfer to POSCO Affiliates the technical data described in this Section, for the purpose, and subject to limitations, set forth in Section 2.1(a)(iii) above.

2.8 Joint Committee(s). The Parties shall form one or more joint committee(s) consisting of at least two members selected from time to time by each of FCE and POSCO Power, for the purposes of: (i) developing a plan for Fuel Cell Stack Module Manufacturing in Korea, as indicated in Section 2.9 below (hereafter the “Localization Plan”), (ii) developing a joint development plan and strategy with respect to the New Joint Products, New DFC-Based Technology and New DFC-Based Products (hereinafter the “Joint Development Plan”), and (iii) developing a plan for executing the technology transfer in accordance to the STTP (hereinafter the “STTP Transfer Plan”), and (iv) such other matters as the Parties mutually agree.

(a) The Localization Plan shall include, but not be limited to: (i) plan for qualification of local vendors following FCE standard vendor qualification procedures in effect from time to time; (ii) fabrication of first article prototype POSCO Module(s); and (iii) a detailed plan to demonstrate the quality of components and manufacturing processes incorporated in the Localization Plan.

(b) The Joint Development Plan shall include, but not limited to: (i) plan for Parties to jointly develop and commercialize New Joint Products, New DFC-Based Technologies and New DFC-Based Products in Korea and other countries.

(c) The STTP Transfer Plan shall include, but not limited to the plans to: (i) draft and finalize the initial STTP draft to be completed by the execution date of this Agreement, (ii) monitor the transfer progress in view of the STTP as jointly deemed necessary, (iii) modify or update the STTP, and (iv) assist and function as the communication channel between the Parties.

2.9 Manufacturing in Korea. POSCO Power may engage one or more POSCO Affiliates and independent third parties to perform Fuel Cell Stack Module Manufacturing in Korea upon completion of the transfer of the Module Component and NRC technology, subject to completion of the activities described in Sections 2.9(a) and 2.9(b) hereunder.

(a) Within 60 days of the earlier of May 31, 2011 or the completion of the Fuel Cell Stack Module prototype manufacturing as defined in the STTP, and prior to commencing local manufacturing of NRC and Module Components for sale to end use customers, the Parties shall work in good faith and in a commercially reasonable manner and agree on a localization schedule and the level of adjustment to the royalty set forth in Section 4.1(b) herein (or other form of compensation, as mutually agreed by the Parties), which shall be based on, among other things, market conditions, cost of local manufacturing, and the availability of qualified vendors.

(b) The Parties acknowledge and agree that the quality of the components and manufacturing processes incorporated in Fuel Cell Stack Module Manufacturing in Korea is critical to the success of the continued commercialization of the DFC technologies in the Korean Market. Thus, the Parties agree that any Fuel Cell Stack Module Manufacturing in Korea by POSCO Power or any independent third party designated by POSCO Power shall be subject to the prior consent of FCE as to the satisfaction of FCE's standard vendor qualification policies and procedures in effect at the time.

2.10 Regular Exchange of Technical Data . During the Term, the Parties shall exchange on a regular basis certain reasonably available technical data in connection with the performance of this Agreement, in accordance with the terms of the STTP.

2.11 New product development and Improvements . FCE acknowledges that POSCO Power will be making efforts to develop new products and improve the FCE Technology and agrees to provide POSCO Power with technical and related information reasonably necessary and to the extent reasonably available to FCE for such new product development and improvement efforts. POSCO Power acknowledges and agrees that any such new product development and improvements shall be subject to quality review and consent by FCE (which consent shall not be unreasonably withheld) before they are incorporated into Fuel Cell Stack Modules.

III. OWNERSHIP OF INTELLECTUAL PROPERTY

3.1 Ownership of FCE Technology . POSCO Power acknowledges that all FCE Technology in and relating to the FCE Products, whether developed by or for FCE prior to or after the Effective Date of this Agreement, is and shall remain the property of FCE or its third party licensors.

3.2 Ownership of POSCO Technology . All inventions, know-how, trade secrets, data or information made, invented, conceived, created or otherwise developed by POSCO Power and POSCO Affiliates, as applicable, and their employees, derived or resulting from the FCE Technology shall be considered POSCO Technology and shall be the sole property of POSCO Power or POSCO Affiliates, as applicable. For the avoidance of doubt, it is understood and agreed that nothing contained herein shall convey ownership to POSCO of any FCE Technology from which such POSCO Technology is derived.

3.3 Joint Ownership . All inventions, know-how, trade secrets, data or information which results from joint development by the Parties hereto shall be jointly owned by the Parties. The Parties hereby agree to cooperate in good faith in the filing of any and all patent applications in all jurisdictions.

IV. ROYALTIES

4.1 Royalty Payments .

In consideration of the license of FCE Technology granted herein, POSCO Power agrees to pay to FCE the following royalty payments:

(a) An up-front royalty payment in the amount of USD \$10 million (the “Upfront Payment”) shall be paid in full on the Effective Date of this Agreement. For the avoidance of doubt, POSCO Power shall be responsible for payment of withholding taxes or other payments.

(b) A royalty of 4.1% of the POSCO Module Net Sales, which is subject to adjustment as set forth in Section 2.9(a), during the Initial Term. The royalty payment shall be paid by POSCO Power in cash. The royalty payment shall be paid semi-annually and within forty-five (45) days of June 30 and December 31 of each year.

(c) The Parties acknowledge that although the Royalty set forth above in Section 4.1(b)(i) shall be applicable, it may be difficult to ascertain the royalties in certain transactions. Such transactions may include, but are not limited to, transactions in which the POSCO Modules are leased, loaned, bartered or exchanged for goods or services, transferred to a third party or any entity affiliated or closely associated with POSCO Power at a price other than market price or on terms other than in an arm’s length, or otherwise put into use by POSCO Power or POSCO Affiliates. POSCO Power agrees to notify FCE within five (5) days after entering into such arrangements, and the Parties shall subsequently use commercially reasonable good faith efforts to establish guidelines for determining the royalties for such transactions within sixty (60) days from the date such notice is received, taking into consideration the principles of the Korean GAAP and U.S. GAAP and incorporating the principles of best accounting practices. If the Parties failed to reach agreement, the Parties agree to abide by the procedures set forth in Section 4.4.

4.2 No Other Royalties, Payments, Etc. . The Parties acknowledge and agree that, other than the Upfront Payment and the Royalty, and certain reasonable travel, per diem, and related expenses to be reimbursed pursuant to the STTP, POSCO Power or any POSCO Affiliates shall not be liable for any fees, royalties, expenses or payments in connection with the license rights granted herein or the use by POSCO Power or POSCO Affiliates of the FCE Technology under this Agreement.

4.3 Royalty Report .

(a) Regular Reports . When rendering payment of the foregoing royalties, POSCO Power shall provide FCE with a written report showing the calculation of the royalty, the number of products to which the royalty is applicable. At its expense, FCE may, by its designated independent public accountants, audit the royalty amounts reported by POSCO Power no more than once a year. To the extent any sales are made by any POSCO Affiliates, POSCO Power agrees to furnish to FCE copies of relevant books and records of the POSCO Affiliates for the sole purpose of such audit by FCE.

(b) Final Report . POSCO Power shall deliver a written report to FCE within sixty (60) days of the termination or expiration of this Agreement, containing information relevant to the calculation of the royalties due under this Agreement; provided that such report shall include the Net Sales of POSCO Modules that are sold and on order by POSCO Power on or prior to the date of termination or expiration and not previously

reported to FCE, and such other information as may be necessary to determine the royalties due hereunder.

4.4 Royalty Determination Firm. The Parties agree that in case of any dispute with respect to the determination of royalty pursuant to Sections 2.3, 2.4, 4.1(c), 9.2 and 9.3, any such determination shall be determined by an internationally recognized independent accounting firm jointly selected and paid for by the Parties ("Royalty Determination Firm"). If the Parties dispute the royalty amount determined by the Royalty Determination Firm, then the disputing Party has the right at its own expense to retain another internationally recognized independent accounting firm; and in such event, the determination of the royalty shall be the average of the two determinations, provided that, that the average of the two determinations shall not exceed by more than 10% of the difference between the royalty amount determined by the Royalty Determination Firm and the royalty amount determined by the independent determination firm.

V. CUSTOMER RESPONSIBILITY

5.1 End User Warranty. For POSCO Modules assembled by POSCO Power and/or POSCO Affiliates from DFC Components supplied by FCE, POSCO Power shall be responsible to the end user for warranty, performance guarantees and service obligations related to the POSCO Modules. FCE shall have no obligations under the service agreements which POSCO Power may execute with end users for POSCO Modules, beyond the performance guarantees and warranties contained in the purchase contracts for such products executed between POSCO Power and FCE.

VI. GOVERNMENT REGULATIONS

6.1 POSCO Power Obligations. POSCO Power hereby agrees to comply with the U.S. Department of Commerce Export Administration Regulations concerning exportation and re-exportation of technical data (including computer software), direct products thereof or any components purchased hereunder to any countries or territories. POSCO Power hereby gives FCE the assurance required by the U.S. Department of Commerce Export Administration Regulations with respect to the U.S. origin technical information furnished by FCE hereunder and the direct product of such technical information.

6.2 FCE Obligations. FCE hereby agrees to comply with the U.S. Department of Commerce Export Administration Regulations concerning exportation and re-exportation of technical data (including computer software), direct products thereof or any components purchased hereunder to any countries or territories. FCE hereby gives POSCO Power the assurance required by the U.S. Department of Commerce Export Administration Regulations with respect to the U.S. origin technical information furnished by FCE hereunder and the direct product of such technical information.

6.3 DOE Approval. FCE shall use its best efforts to obtain all necessary consent or approval from the U.S. Department of Energy, in form substantially similar to the form of DOE Approval set forth in Exhibit B attached hereto.

VII. REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of FCE. FCE represents and warrants to POSCO Power that as of the date hereof and as of the Effective Date:

(a) It has all requisite right, power and authority, to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;

(b) The execution, delivery and performance by FCE of this Agreement, and the consummation by FCE of the transactions contemplated hereby, have been duly and validly authorized by all necessary corporate action on the part of FCE and no other corporate actions or proceedings on the part of FCE are necessary to authorize this Agreement and the transactions contemplated hereby. Assuming due authorization, execution and delivery of this Agreement by POSCO Power hereto, this Agreement constitutes a legal, valid and binding obligation of FCE enforceable against it in accordance with its terms;

(c) The execution, delivery and performance by FCE of this Agreement, and the consummation by FCE of the transactions contemplated hereby do not (i) violate any Applicable Law; (ii) violate or conflict with any contract or agreement to which FCE is a party; (iii) violate any Governmental Order; (iv) require the approval, consent or permission of any Governmental Authority having authority over FCE except for the DOE Approval; or (v) violate FCE's organizational documents;

(d) Neither FCE or any of its Subsidiaries nor any director, officer, agent, employee or other Person acting on behalf of FCE or its Subsidiaries has, in the course of its actions for, or on behalf of, FCE or any of its Subsidiaries (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of in any material respect any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended; or (iv) made or received any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to or from any foreign or domestic government official or employee;

(e) POSCO Power's contemplated use of the FCE Technology under this Agreement does not infringe and is not being infringed upon by any valid rights of any third party, including but not limited to patent rights, copyrights, trademarks or other intellectual property rights owned or controlled by third parties in any country;

(f) The FCE Technology furnished to POSCO Power and POSCO Affiliates pursuant to this Agreement will correspond to the FCE Technology used by FCE in the manufacture of FCE Products. If any FCE Technology provided hereunder does not meet this requirement and POSCO Power notifies FCE, FCE shall correct the discrepancy at its own expense, by furnishing corrected FCE Technology; and

(g) FCE Power Plants using FCE Technology are designed with commercially reasonable safety precautions and FCE participates in on-going safety certification programs for its plants, such as CSA.

(h) FCE recognizes and acknowledges that maintaining the scope of protection on the FCE Technology in the Territory is critical to the success of the continued commercialization of POSCO Modules in Korea. Thus, FCE represents and warrants that it has been and it shall continue to take commercially reasonable defensive and offensive measures to protect FCE Technology against encroachment by any third parties.

7.2 Representations and Warranties of POSCO Power . POSCO Power represents and warrants to FCE that as of the date hereof and as of the Effective Date:

(a) It has all requisite right, power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;

(b) The execution, delivery and performance by POSCO Power of this Agreement, and the consummation by POSCO Power of the transactions contemplated hereby, have been duly and validly authorized by all necessary corporate action on the part of POSCO Power and no other corporate actions or proceedings on the part of POSCO Power are necessary to authorize this Agreement, and the transactions contemplated hereby. Assuming due authorization, execution and delivery of this Agreement by FCE hereto and thereto, this Agreement constitutes a legal, valid and binding obligation of POSCO Power enforceable against it in accordance with its terms;

(c) The execution, delivery and performance by POSCO Power of this Agreement, and the consummation by POSCO Power of the transactions contemplated hereby, do not: (i) violate any Applicable Law; (ii) violate or conflict with any Contract to which POSCO Power is a party; (iii) violate any Governmental Order; (iv) require the approval, consent or permission of any Governmental Authority having authority over POSCO Power except for the DOE Approval; or (v) violate POSCO Power's organizational documents; and

(d) Neither POSCO Power or any of its Subsidiaries nor any director, officer, agent, employee or other Person acting on behalf of POSCO Power or its Subsidiaries has, in the course of its actions for, or on behalf of, POSCO Power or any of its Subsidiaries (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of in any material respect any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended; or (iv) made or received any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to or from any foreign or domestic government official or employee; and

(e) All work to be performed by POSCO Power in its manufacture, assembly and test activities hereunder shall be performed in accordance with drawings, manufacturing

practices, instructions and quality plans as furnished by FCE or as mutually agreed upon by the parties.

VIII. TERM

8.1 Term. The initial term of this Agreement (the “ Initial Term ”) shall commence on the Effective Date and shall continue, unless earlier terminated in accordance with the provisions set forth herein or in any Transaction Agreement, for a period of ten (10) years from the Effective Date.

8.2 Extension. The Initial Term may be extended for additional terms (each, “ Additional Term ”, and, together with the Initial Term, the “ Term ”), each for a period of five (5) years, by mutual agreement on terms mutually agreed upon by the Parties. This Agreement shall be extended only if the other Transaction Agreements are extended for the same period.

IX. TERMINATION

9.1 Termination by Mutual Agreement. This Agreement may be terminated, without any further obligation or liability by mutual written agreement of the Parties.

9.2 FCE Termination by Material Breach of POSCO Power.

(a) Notwithstanding anything to the contrary contained herein or in any other Transaction Agreements, in the event POSCO Power materially breaches any representation or warranty or materially fails to perform any obligation or undertaking to be performed by it under this Agreement or any other Agreement between the Parties and such material breach or failure is not cured within sixty (60) days after notice from FCE specifying the nature of the breach, then, FCE shall have the right to terminate this Agreement after complying with the procedures set forth in Article XIV below.

(b) FCE Remedy. In the event that FCE terminates this Agreement pursuant to Section 9.2(a):

(i) FCE may retain all POSCO Technology, including all copies and summaries thereof, furnished by POSCO Power prior to such termination;

(ii) FCE shall have a non-exclusive perpetual license and right to use the POSCO Technology to manufacture and sell the FCE Products, only to the extent that FCE Products incorporate POSCO Technology, under all patents of all countries under which POSCO Power or POSCO Affiliates, as applicable, during the Term, has or may acquire the right to grant such licenses, provided that any sublicensing or resale to any Korean Company by FCE shall be subject to POSCO Power’s consent in its sole discretion, and provided, further, that the foregoing license shall be subject to the payment by FCE to POSCO Power of royalties to be mutually determined by the Parties in a commercially reasonable good faith manner, it being understood and agreed that if the Parties are

unable to reach agreement within sixty (60) days following the initial request of FCE, the royalties determined pursuant to Section 4.4 above shall be final and binding upon the Parties;

(iii) POSCO further agrees that POSCO shall, at the request of FCE, continue to supply POSCO Modules to FCE, if such are in production, on terms and conditions to be mutually agreed upon by the Parties in good faith; and

(iv) POSCO Power, on its own behalf and on behalf of POSCO Affiliates, shall pay FCE all royalty amounts then due and owing as of the date of termination and all reimbursement amounts then due and owing as of the date of termination and actual damages.

The foregoing provisions of this Section 9.2 represent the sole and exclusive remedy of FCE in the event of a material breach by POSCO Power.

9.3 POSCO Power Termination by Material Breach of FCE.

(a) In the event FCE materially breaches any representation or warranty or materially fails to perform any obligation or undertaking to be performed by it under this Agreement and any other Transaction Agreements and such material breach or failure is not cured within sixty (60) days after notice from POSCO Power specifying the nature of the breach, then, POSCO Power shall have the right to terminate this Agreement after complying with the procedures set forth in Article XIV below (except as noted below in Section 9.3(b)(i)).

(b) POSCO Power Remedy. In the event that POSCO Power terminates this Agreement pursuant to Section 9.3(a) above:

(i) FCE shall pay to POSCO Power actual damages, plus, if the FCE Technology has not been fully transferred to POSCO Power, as scheduled in the STTP, FCE shall promptly and in a commercially reasonable manner transfer to POSCO Power all of the remaining FCE Technology, and further acknowledge and agree that POSCO Power shall be entitled to seek and obtain from FCE the specific performance of FCE's obligations under this section in the U.S. District Court for the Southern District of New York, or in the event that court lacks jurisdiction, in any competent court in the State of New York, if FCE fails to transfer the FCE Technology to POSCO Power, as set forth in the STTP;

(ii) POSCO Power may retain all FCE Technology, including all copies and summaries thereof, furnished by FCE prior to such termination;

(iii) POSCO Power shall have a non-exclusive perpetual license and right in and of the FCE Technology to construct, assemble, manufacture, use, sell, import, maintain, service, reconfigure and/or repair the POSCO Modules in the Korean Market and to sell, maintain, service, reconfigure and/or repair the POSCO Modules in the Non-Exclusive Territory; and provided, further, that the foregoing license shall be subject to the payment by POSCO Power to FCE of royalties to be mutually determined by the Parties in a commercially reasonable good faith manner, it being understood and agreed that if the

Parties are unable to reach agreement within sixty (60) days following the initial request of FCE, the royalties determined pursuant to Section 4.4 above shall be final and binding upon the Parties; and

(iv) FCE further agrees that FCE shall, at the request of POSCO Power, continue to supply DFC Components on reasonable terms and conditions to be mutually agreed upon by the Parties in good faith.

The foregoing provisions of this Section 9.3 represent the sole and exclusive remedy of POSCO Power in the event of a material breach by FCE. For the purpose of Section 9.3(b)(i) above, the Parties hereto consent to the jurisdiction of such court in respect of any action or proceeding thereunder.

9.4 Return of FCE Technology. In the event this Agreement is terminated pursuant to Section 9.1 or Section 9.2 above, POSCO Power shall return to FCE all FCE Know-How, including all copies and summaries thereof, furnished by FCE prior to such termination and shall not be permitted to make any further use of such FCE Technology.

9.5 Return of POSCO Technology. In the event this Agreement is terminated pursuant to Section 9.1 or Section 9.3 above, FCE shall return to POSCO Power all POSCO Technology including all copies and summaries thereof, furnished by FCE prior to such termination and shall not be permitted to make any further use of such POSCO Technology.

9.6 Survival. Upon expiration or termination of this Agreement as provided herein, or by operation of law or otherwise, all rights granted and all obligations undertaken hereunder shall terminate forthwith except the following provisions:

(a) Upon expiration of the Term, Sections 2.4 ('License to POSCO Power Upon Expiration of the Term'), 2.5 ('License to FCE Upon Expiration of the Term,') and 4.4 ('Royalty Determination Firm') and Articles III ('Ownership of Intellectual Property'), IX ('Termination'), X ('Indemnification'), XI ('Confidential Information'), XII ('Notices') and XIII ('Entire Agreement'); and

(b) Upon termination of this Agreement, Section 4.4 ('Royalty Determination Firm'), Articles III ('Ownership of Intellectual Property'), IX ('Termination'), X ('Indemnification'), XI ('Confidential Information'), XII ('Notices') and XIII ('Entire Agreement') and the full STTP.

X. INDEMNIFICATION

10.1 POSCO Power Obligations. POSCO Power shall indemnify and hold harmless FCE and its affiliates, officers, directors, members, employees and agents, against any and all judgments, damages, liabilities, costs and losses of any kind (including reasonable attorneys' and experts' fees) (collectively, "Losses") that arise out of or relate to (i) any breach by POSCO Power of its representations or warranties or covenants under this Agreement, (ii) any claim, action or proceeding that arises from defects caused by the manufacture by POSCO Power or POSCO Affiliates of POSCO

Modules, or (iii) any claim, action or proceeding that arises from defects caused by the servicing by POSCO Power or POSCO Affiliates of the FCE Products; provided, however, that FCE must promptly notify POSCO Power in writing of any such claim, action or proceeding (but the failure to do so shall not relieve POSCO Power of any liability hereunder except to the extent that POSCO Power has been materially prejudiced therefrom). POSCO Power may elect, by written notice to FCE within ten (10) days after receiving notice of such claim, action or proceeding to assume the defense thereof with counsel acceptable to FCE. If POSCO Power does not so elect to assume such defense or disputes its indemnity obligation with respect to such claim, action or proceeding, or if FCE reasonably believes that there are conflicts of interest between FCE and POSCO Power or that additional defenses are available to FCE with respect to such defense, then FCE shall retain its own counsel to defend such claim, action or proceeding, at POSCO Power's defense. POSCO Power shall reimburse FCE for expenses as these are incurred under this Section. FCE shall have the right, at its own expense, to participate in the defense of any claim, action or proceeding against which it is indemnified hereunder; provided, however, that FCE shall have no right to control the defense, consent to judgment or agree to settle any such claim, action or proceeding without the written consent of POSCO Power unless FCE waives its right to indemnity hereunder. POSCO Power, in the defense of any such claim, action or proceeding, except with the written consent of FCE, shall not consent to entry of any judgment or enter into any settlement which (i) does not include, as an unconditional term, the grant by the claimant to FCE of a release of all liabilities in respect of such claims or (ii) otherwise adversely affects the rights of FCE.

10.2 FCE Obligations. FCE shall indemnify and hold harmless POSCO Power and its affiliates, officers, directors, members, employees and agents, against any and all judgments, damages, liabilities, costs and losses of any kind (including reasonable attorneys' and experts' fees) (collectively, "Losses") that arise out of or relate to (i) any breach by FCE of its representations, warranties, covenants or agreements under this Agreement (it being understood and agreed that any indemnity with respect to the FCE Products shall be governed by a separate purchase order contract), (ii) any claim, action or proceeding that arises from or relates to the servicing by FCE of POSCO Modules or FCE Products, (iii) any claim, action or proceeding that arises from any licensor of FCE or any third party, in or relating to the FCE Technology (it being understood and agreed that this obligation includes an obligation to take all necessary steps to ensure the continued use by POSCO Power of the FCE Technology, without interruption), provided, however, that POSCO Power must promptly notify FCE in writing of any such claim, action or proceeding (but the failure to do so shall not relieve FCE of any liability hereunder except to the extent that FCE has been materially prejudiced therefrom). FCE may elect, by written notice to POSCO Power within ten (10) days after receiving notice of such claim, action or proceeding to assume the defense thereof with counsel acceptable to POSCO Power. If FCE does not so elect to assume such defense or disputes its indemnity obligation with respect to such claim, action or proceeding, or if POSCO Power reasonably believes that there are conflicts of interest between FCE and POSCO Power or that additional defenses are available to POSCO Power with respect to such defense, then POSCO Power shall retain its own counsel to defend such claim, action or proceeding, at FCE's defense. FCE shall reimburse POSCO Power for expenses as these

are incurred under this Section. POSCO Power shall have the right, at its own expense, to participate in the defense of any claim, action or proceeding against which it is indemnified hereunder; provided, however, that POSCO Power shall have no right to control the defense, consent to judgment or agree to settle any such claim, action or proceeding without the written consent of FCE unless POSCO Power waives its right to indemnity hereunder. FCE, in the defense of any such claim, action or proceeding, except with the written consent of POSCO Power, shall not consent to entry of any judgment or enter into any settlement which (i) does not include, as an unconditional term, the grant by the claimant to POSCO Power of a release of all liabilities in respect of such claims or (ii) otherwise adversely affects the rights of POSCO Power.

10.3 Limitation of Damage. In no event, whether as a result of breach of contract, warranty, tort (including negligence), strict liability, indemnity, or otherwise, shall either Party or its subcontractors or suppliers be liable to the other Party for loss of profit or revenues, loss of use of the DFC Power Plant or any associated equipment, cost of capital, cost of substitute equipment, facilities, services or replacement power, downtime costs, claims of the indemnified Party's customers for such damages, or for any special, consequential, incidental, indirect or exemplary damages.

XI. CONFIDENTIAL INFORMATION

11.1 POSCO Power Obligations. All written information marked "proprietary" or "confidential" (or if oral, subsequently reduced to a writing so marked and delivered to the receiving Party within thirty (30) days of its oral disclosure) which FCE discloses to POSCO Power as a result of the provisions of this Agreement, whether contained in blueprints, drawings, written reports, letters or memoranda, process descriptions, operating procedures and other written data, shall be treated as confidential unless (a) such information shall have been in the possession POSCO Power prior to its receipt from the FCE, (b) such information is or becomes part of the public knowledge or literature through no fault of POSCO Power, or (c) such information shall otherwise become available to POSCO Power from a source other than FCE, said source not being violative of any obligation of secrecy with respect to such information. Information which is so considered to be confidential shall be held by POSCO Power for its sole benefit and used only in accordance with this Agreement; provided that POSCO Power may share proprietary or confidential information with POSCO Affiliates for the purpose set forth in Section 2.1(a)(iii) above; and, further provided, that POSCO Power shall cause POSCO Affiliates to restrict the use so as to be consistent with the terms of this Agreement and to restrict disclosure to its employees, on a need-to-know basis, of any confidential or proprietary information shared with POSCO Affiliates. POSCO Power shall use all reasonable efforts to prevent the use of all or any part of such confidential information belonging to FCE in any other connection or the transmission thereof to third parties unless and until it has first obtained the written consent of FCE specifically authorizing such use or transmission. The Parties understand that information may be provided which is subject to a confidentiality agreement with a third Party. The Parties agree that such information shall be held in confidence in accordance with the terms of the third Party confidentiality agreement. No Party shall be obligated to divulge third party confidential information to the other Party. POSCO Power shall require, as a

condition precedent to any agreement for any FCE Product or POSCO Product sale, lease, or other similar transaction, that the purchaser, lessor or customer for such transaction must agree to accept the terms of this paragraph, including the requirement for any subsequent purchaser to accept the terms of this paragraph. Any breach of the confidentiality provisions of this paragraph may be considered material breach of this agreement by the non-breaching Party.

11.2 POSCO Affiliate . The Parties agree that each POSCO Affiliate shall enter into a confidentiality agreement with POSCO Power containing the terms that are substantially similar to the confidentiality provision set forth above.

11.3 FCE and POSCO Power Obligations . All obligations under this article shall apply *mutatis mutandis* to the Parties.

XII. NOTICES

All notices pursuant to this Agreement shall be in writing and will be deemed to have been duly given if delivered personally or by internationally recognized courier service, or by facsimile to the parties at the addresses set forth below.

if to FCE, to:

FuelCell Energy, Inc.
3 Great Pasture Road
Danbury, CT 06813
Facsimile: (203) 825-6079
Attention: Ben Toby

with copy to:

FuelCell Energy, Inc.
3 Great Pasture Road
Danbury, CT 06813
Facsimile: (203) 825-6069
Attention: Ross Levine

if to POSCO Power, to:

POSCO Power
POSTEEL Tower 20th Fl. 735-3
Yeoksam-dong, Gangnam-gu
Seoul, 135-080 KOREA
Attention: Taehyoung (TH) Kim

All notices under this Agreement that are addressed as provided in this Section (i) if delivered personally or by internationally recognized courier service, will be deemed given upon delivery or (ii) if delivered by facsimile, will be deemed given when confirmed. Either Party from time to time may change its address or designee for

notification purposes by giving the other Party notice of the new address or designee and the date upon which such change will become effective.

XIII. ENTIRE AGREEMENT

This Agreement, including any Exhibits and Schedules attached hereto, and any other Transaction Agreements which are incorporated into this Agreement by this reference, constitute the full and complete statement of the agreement of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, between the Parties with respect to the subject matter hereof. There are no representations, understandings or agreements relating to this Agreement that are not fully expressed in this Agreement other than those representations, understandings or agreements contained in the other Transaction Agreements. To the extent there is any inconsistency between this Agreement and any other Transaction Agreements, the provisions of this Agreement shall prevail.

XIV. APPLICABLE LAW AND ARBITRATION

14.1 Governing Law . This Agreement shall be governed by and construed in accordance with the substantive laws of the State of New York, U.S.A., without giving effect to any choice of law rules that may require the application of the laws of another jurisdiction.

14.2 Efforts to Resolve by Mutual Agreement . Any dispute, action, claim or controversy of any kind arising from or in connection with this Agreement or the relationship of the Parties under this Agreement (the “Dispute”) whether based on contract, tort, common law, equity, statute, regulation, order or otherwise, shall be resolved as follows:

(i) Upon written request of either FCE or POSCO Power, the Parties shall meet and attempt to resolve any such Dispute. Such meetings may take place via teleconference or videoconference. The Parties shall meet as often as the Parties reasonably deem necessary to discuss the problem in an effort to resolve the Dispute without the necessity of any formal proceeding.

(ii) Formal proceedings for the resolution of a Dispute may not be commenced until the later of (i) the Parties concluding in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or (ii) the expiration of a sixty (60) day period immediately following the initial request by either Party to resolve the Dispute; provided, however, that this Section 14.2 will not be construed to prevent a Party from instituting formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors or to seek temporary or preliminary injunctive relief.

14.3 ICC Arbitration . If the Parties are unable to resolve any Dispute pursuant Section 14.2 above and except as otherwise specified in Section 9.3(b)(i), the Dispute shall be finally settled under the Rules of Arbitration (the “Rules”) of the International Chamber of Commerce (“ICC”) by three (3) arbitrators designated by the Parties. Each

Party shall designate one arbitrator. The third arbitrator shall be designated by the two arbitrators designated by the Parties. If either Party fails to designate an arbitrator within thirty (30) days after the filing of the Dispute with the ICC, such arbitrator shall be appointed in the manner prescribed by the Rules. An arbitration proceeding hereunder shall be conducted in London, U.K., and shall be conducted in the English language. The decision or award of the arbitrators shall be in writing and is final and binding on both Parties. The arbitration panel shall award the prevailing Party its attorneys' fees and costs, arbitration administrative fees, panel member fees and costs, and any other costs associated with the arbitration, the enforcement of any arbitration award and the costs and attorney's fees involved in obtaining specific performance of an award; provided, however, that if the claims or defenses are granted in part and rejected in part, the arbitration panel shall proportionately allocate between the Parties those arbitration expenses in accordance with the outcomes; provided, further, that the attorney's fees and costs of enforcing a specific performance arbitral award shall always be paid by the non-enforcing Party, unless the applicable action was determined to be without merit by final, non-appealable decision. The arbitration panel may only award damages as provided for under the terms of this Agreement and in no event may punitive, consequential and special damages (or as otherwise specified in this Agreement, including, without limitation, Section 10.3) be awarded. In the event of any conflict between the Rules and any provision of this Agreement, this Agreement shall govern.

14.4 Waiver of Jury Trial. The Parties hereto hereby irrevocably waive, to the fullest extent permitted by Applicable Law, any and all right to trial by jury in any legal proceeding arising out of or relating to Section 9.3(b)(i).

XV. MISCELLANEOUS

15.1 Amendment. This Agreement may not be modified or amended except by a writing duly signed by the authorized representatives of both Parties.

15.2 Severability. In the event any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, said provision(s) shall be deemed severed and deleted here from and the validity, legality and/or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

15.3 Government Information. Nothing in this Agreement shall authorize the disclosure of, or access to, classified or restricted information, material or know-how of the Government of the United States of America to persons not authorized or licensed to disclose or receive such classified or restricted information.

15.4 Independent Contractors. The Parties are independent contractors, and nothing contained in this Agreement shall be construed as (a) giving either Party the power to direct and control the day-to-day activities of the other, (b) constituting either Party as a partner, a joint venture, a co-owner or a fiduciary of the other or (c) creating any other form of legal association that would impose liability on one Party for the act or

failure to act of the other or as providing either Party with the right, power or authority (express or implied) to create any duty or obligation of the other.

15.5 Assignment. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party may, nor will it have the power to, assign this Agreement, or any part hereof, without the prior written consent of the other Party, and any such unauthorized assignment shall be null and void, except that the Parties acknowledge and agree that POSCO Power may, without the consent of FCE assign its rights and obligations to any entity controlled by POSCO Power or a POSCO Affiliate, provided that POSCO Power remains liable for the obligations set forth in this Agreement and in other Transaction Documents to which it is a Party. In the event of any other assignment of this Agreement by either Party, the assignee shall assume, in writing (in form and substance reasonably satisfactory to the other Party), the rights and obligations of the assigning Party under this Agreement.

15.6 No Third Party Beneficiary. Except as expressly contemplated herein, this Agreement shall be binding upon and inure solely to the benefit of each Party hereto and nothing in this Agreement is intended to confer upon any other person or entity any rights or remedies of any nature whatsoever under or by reason of this Agreement.

15.7 Headings. The headings preceding the text of Articles and Sections included in this Agreement and the headings to Exhibits and Schedules attached to this Agreement are for convenience only and shall not be deemed part of this Agreement or be given any effect in interpreting this Agreement.

15.8 Right to Injunction; Specific Performance. The Parties further acknowledge and agree that POSCO Power will suffer irreparable harm, which is not compensable by monetary damage in the event the FCE Technology has not been fully transferred to POSCO Power at the time of the termination of this Agreement due to a material breach by FCE hereunder. Accordingly, the Parties agree that POSCO Power shall be entitled to an injunction or injunctions to enforce specifically the transfer of the FCE Technology to POSCO Power in accordance with Section 9.3(b)(i) above. The Parties further acknowledge and agree that each Party will suffer irreparable harm, which is not compensable by monetary damage, in the event the other breaches its obligations under Article XI. Accordingly, in the event of a breach by one Party of such obligations, the other shall be entitled to injunction or injunctions to enforce and remedy such breach in addition to all other remedies available at law or in equity.

15.9 Force Majeure. Neither Party shall be liable to the other for a failure to perform any of its obligations under this Agreement, except for payment obligations under this Agreement, during any period in which such performance is delayed due to a Force Majeure, and if such Party notifies the other of the delay; provided, however, that in the event a period of Force Majeure restricts a Party's performance for greater than 120 days, the non-restricted Party may terminate this Agreement without further cause and without liability for such termination. The date of delivery shall be extended for a period equal to the period of a delay due to Force Majeure, in addition to any additional time as may be reasonably necessary to overcome the effect of such excusable delay; provided.

further, that the Party seeking relief under this Section 15.9 shall promptly notify the other of the Force Majeure event, the anticipated resolution of such event, the actual resolution of such event and the actual impact on its obligations hereunder.

XVI. SALES TARGETS AND EXCLUSIVITY

16.1 Sales Targets. The Parties acknowledge that this Agreement is based on, among other things, the business plan as to the sales expectations set forth in Exhibit D attached hereto.

(a) In the event the cumulative sales of Fuel Cell Stack Modules in the Korean Market as of December 31, 2013, have not reached the target figure of 112 MW as set forth in Exhibit D, the Parties shall undertake a performance review in good faith and in a commercially reasonable manner to determine the feasibility and desirability of the continuation of the exclusivity set forth in Sections 2.1(a)(i) and 2.2 hereunder, as well as the Korean Market exclusivity provisions set forth elsewhere in the Transaction Agreements. The performance review shall take into consideration, among other things, past performance, market conditions, business prospects, profitability, bona fide efforts by the Parties, quality issues affecting marketability and future plans. In the event that after discussions in good faith the Parties are not able to agree, disputes shall be resolved through Sections 14.2 and 14.3 above. The decision or award of the arbitrators pursuant to Section 14.3 shall be final and binding on both Parties.

(b)(i) It is acknowledged and agreed by POSCO Power that during the term of this Agreement, POSCO Power shall make commercially reasonable efforts to commercialize the technology licensed hereunder in the Korean Market; and

(ii) it is acknowledged and agreed by FCE that during the term of this Agreement, FCE shall make commercially reasonable efforts to improve and enhance the DFC technology to maintain market competitiveness.

The Parties shall undertake subsequent performance review(s) from time to time on dates to be mutually agreed by the parties, starting January 1, 2014, but no more than once in two (2) year intervals during the term of this Agreement. The performance review shall take into consideration, among other things, past performance, market conditions, business prospects, profitability, bona fide efforts by the Parties, quality issues affecting marketability and future plans. In the event that after discussions in good faith the Parties are not able to agree, disputes shall be resolved through Sections 14.2 and 14.3 above. The decision or award of the arbitrators pursuant to Section 14.3 shall be final and binding on both Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in a manner binding upon them by their duly authorized officers as of the date first above written.

FUELCELL ENERGY, INC.

By: _____
Name: _____
Title: _____

POSCO POWER

By: _____
Name: _____
Title: _____

EXHIBIT A (STTP)

STACK TECHNOLOGY TRANSFER PROGRAM

THIS STACK TECHNOLOGY TRANSFER PROGRAM (“STTP”) is made and entered into this 27th day of October, 2009, to be effective on the Effective Date of the STTA as defined below, by and between FUELCELL ENERGY, INC., a Delaware corporation having a place of business at 3 Great Pasture Rd., Danbury, CT 06813, U.S.A. (“FCE”) and POSCO Power, a Korean corporation having a place of business at Posteel Tower 20th floor, 735-3, Yeoksam-dong, Gangnam-gu, Seoul 135-080, Korea (“POSCO Power”). FCE and POSCO Power may be referred to hereunder as the “Parties.”

This STTP is made and entered into by the Parties pursuant to the Stack Technology Transfer Agreement (“STTA”) dated October 26, 2009, and is made part of the STTA. The purpose of this STTP is to describe the transfer by FCE to POSCO Power of the FCE Technology which shall have the meaning set forth in the STTA.

POSCO Power and FCE are parties to the following agreements (collectively the “Existing Agreements”): (i) the Technology Transfer, Distribution and Licensing Agreement for the transfer of Balance of Plant technology (the “Technology Transfer Agreement” or “TTA”) and the Alliance Agreement (the “Alliance Agreement” or “AA”), both executed as of February 7, 2007; (ii) the Technology Transfer Program (“TTP”) executed as of July 11, 2007; (iii) the Contract for the Supply of DFC Plants and DFC Modules from FCE to POSCO Power (“2008 Purchase Contract”) executed as of April 22, 2008; (iv) the Contract for the Supply of DFC Modules and DFC Components from FCE to POSCO Power (“2009 Purchase Contract”) executed as of June 9, 2009; and (v) the Securities Purchase Agreement by and between FCE and POSCO Power (the “2009 Securities Purchase Agreement”) executed as of June 9, 2009.

Capitalized terms used herein, but not defined herein, shall have the meanings given to them in the Existing Agreements.

Section 1. Technology to be transferred by STTP

FCE shall transfer the following technologies, know-how and information to POSCO Power and POSCO Affiliates in accordance with the schedule set forth in Section 3 of this STTP:

- 1.1. Manufacturing Process Information (see Exhibit “B” for a complete list of documentation)

1.1.1. Module Assembly Process Information

1.1.1.1. General Facility Recommendations

1.1.1.2. Stacking

1.1.1.3. Manifolding

1.1.1.4. Final Module Assembly

1.1.1.5. Instrumentation

1.1.1.6. Standard Tooling used throughout Module Assembly Facility

1.1.2. Module Conditioning Process Information

1.1.2.1. MW Module Conditioning

1.1.2.2. Sub-MW Module Conditioning

1.1.3. Module Teardown and Repair Process Information

1.2. Non-Repeating Component and Module Component Design Documentation (see Exhibit “C”)

1.3. Design Documentation for Conditioning Facilities (see Exhibit “D”)

1.3.1. MW Conditioning Facility

1.3.2. Sub-MW Conditioning Facility

Section 2. Method for the Technology Transfer

2.1 Personnel

Each of FCE and POSCO Power/POSCO Affiliate will appoint a dedicated Program Manager to serve as the primary point of interface between POSCO Power/POSCO Affiliate and FCE. FCE will also support the program with management and expertise gathered from its manufacturing department and related departments to successfully execute this STTP.

2.2 Mechanism for the Transfer of Technology

Information will be transferred using a web-based portal as described in Exhibit “B”. FCE will notify POSCO Power as soon as practicable when any changes to the information have been made by FCE, and will post such modified information on the web portal for downloading by POSCO Power/POSCO Affiliate.

A procedure for managing changes to the NRC or module component designs that affect fabrication, assembly or conditioning shall be implemented and maintained by both parties mutually. FCE will notify POSCO Power of impacts due to changes made to the RC that affect module assembly, conditioning or repair and transfer revised procedures. In addition, a procedure for managing the as-built configuration (the “Module Build-Book system” described in Exhibit “B”) of the modules assembled at the POSCO facility shall be implemented and maintained by both parties mutually.

2.3 Training

2.3.1 Certification Training Program for Module Assembly and Conditioning

FCE shall develop a Certification Training Programs for Module Assembly and Conditioning, which shall be offered to POSCO Power and/or POSCO Affiliate consistent with the scope and timing of the technology transfer program described hereunder. The Certification Training Program for Module Assembly shall include training in the procedures for stacking, manifolding, final module assembly, instrumentation installation and teardown. The Certification Training Program for Module Conditioning shall include training in the procedures for conditioning of finished stack modules prior to their shipment to customer sites. POSCO Power agrees to undertake the training program designed by FCE, and FCE agrees to confer certified status on employees of POSCO Power and/or POSCO Affiliate who successfully complete the training. Additionally, POSCO Power and/or POSCO Affiliate agrees to undergo periodic refresher training by FCE to maintain the certification status of all personnel who are to be employed in the assembly, conditioning and teardown of fuel cell stack modules as determined by the Joint Committee.

2.3.2 Co-Work and On-the-Job Training (“OJT”)

POSCO Power/POSCO Affiliate may obtain the FCE Technology through co-work and OJT by mutual agreement or as defined by the certification training programs. This training will take place on a continuous basis, at FCE’s facilities in the U.S., at POSCO Power/POSCO Affiliate’s facilities in Korea, and via remote communications.

2.3.3 Organization and Personnel Recommendations

FCE will provide a recommended organizational structure, job descriptions and required background experience for each position. FCE will specify which job descriptions need certification, including the duration of the certification, per paragraph 2.3.1.

2.4 Meetings

2.4.1 Regular Meetings

Regular meetings will take place as required. Following is a brief description of the various types of meetings which shall be scheduled:

- a. *Program Reviews* are conducted to ensure that milestones have been met in accordance with the requirements as defined in Exhibit “A”.

- b. *Facility Design Reviews* are technical reviews of manufacturing facilities, and they are conducted to ensure best practices in manufacturing are captured prior to commencing construction activities. FCE proposes both preliminary and final Facility Design Reviews.

2.4.2 Ad Hoc Meetings

Ad Hoc meetings beyond the above regular meetings will take place on an as-needed basis by mutual agreement.

Section 3. Schedule

The schedule for the transfer of technology between FCE and POSCO Power and/or POSCO Affiliate is provided in Exhibit “A” of this STTP.

Section 4. Costs

FCE shall use commercially reasonable efforts to make available technical consultation and assistance in connection with POSCO Power/POSCO Affiliate’s activities under this STTP without additional charge, provided, however, that FCE shall not be obligated to provide such assistance in excess of 500 or TBD man-days for the duration of the STTA. Additional man-days beyond 500 or TBD man-days may be provided by FCE subject to availability of personnel. Payments from POSCO Power to FCE for additional man-days beyond 500 or TBD man-days, if any, shall be based upon mutually agreeable terms and conditions. For the purposes of this section, a “man-day” shall be defined as eight (8) working hours, and a “man-year” shall be defined as 1,920 working hours.

Tracking. FCE shall continually track the number of man-days consumed, and the number of man-days remaining. FCE shall provide on a quarterly basis a Work Progress Summary outlining activities and deliverables completed or ongoing from the prior reporting period, as well as a summary of the number of man-hours remaining.

Documented travel and living expenses for FCE personnel during visits to POSCO Power/POSCO Affiliate facilities in Korea or other locations, when carried out pursuant to this STTP or at the request of POSCO Power or POSCO Affiliate, shall be borne by POSCO Power or POSCO Affiliate, or if paid by FCE, shall be reimbursed to FCE. The payment standard for traveling expenses by FCE’s personnel is provided as Attachment 1 to this STTP. Changes to the payment standard as provided in Attachment 1 shall be by mutual agreement.

Section 5. Quality Plans

Current quality methodologies for Module Assembly and Conditioning will be transferred as listed in Section 1. Both parties will work together to develop and exchange future improved quality assurance methodologies for Module Assembly and Conditioning.

Quality information for the repeating components to be transferred will be of three categories: (1) processes that POSCO Power can duplicate to ensure the component meets the quality requirements, for example, visual inspection criteria; (2) quantitative information that FCE has measured that shows the component meets the quality requirements, for example, package and matrix dimensions; (3) certification of detailed specifications that FCE has measured but cannot transfer that ensures the component meets the quality requirements. The details of these three levels will be developed by the Joint Committee.

Section 6. Module Repair

Both parties will work together to diagnose and repair modules with performance issues in the field or in the POSCO Power Module facility. FCE will also provide diagnosis and repair experience for POSCO Power/POSCO Affiliate personnel at the POSCO Teardown Facility. Also, both parties will work together to develop and share future improved module repair methodologies.

Section 7. Access to Data

For every module produced, POSCO Power will grant access to and/or transfer all data listed below to FCE:

- a. Module stacking and assembly manufacturing process measurements, inspection findings, quality data and in-process pictures via the Module Build Book;
- b. Fabricated NRC and Module component quality data per the protocols for inspection of the incoming parts;
- c. Module conditioning data through the PI data system;
- d. Commercial power-plant field operation data from the EBOP, MBOP and Module for the life of the module through the PI data system.

Section 8. Quality Audits

From time to time, to ensure that POSCO Power is working in accordance to FCE's specifications, upon mutual agreement as to reasonable time and condition, FCE may inspect: (1) POSCO Power's module during its manufacture, including stack assembly, module assembly, conditioning, repair and storage; (2) POSCO Power's training records of personnel involved in assembling, conditioning, and storing the fuel-cell modules, as well as work instructions and other training material developed by POSCO Power for the production of fuel-cell modules; and (3) POSCO Power's tooling and tooling documentation used to produce fuel-cell modules.

Section 9. Obligation to Exercise Best Good Faith Efforts

Consistent with the objectives of the Alliance Agreement, the Parties shall use the best good faith efforts to cooperate with each other to effectuate the transactions contemplated by the STTA and this STTP.

Section 10. Action Plans for Technology Transfer Program

Detailed action plans for this STTP is attached hereto an Exhibit "A" and made part hereof.

11. Joint Development Program

POSCO Power and FCE acknowledge and agree to participate in a program of joint product development (hereafter "Joint Development Program") as described in this section. The particular characteristics of the Joint Development Program shall be subject to mutual agreement of the parties. It is anticipated that the Joint Development Program shall include one or both of the following components: (a) the adaptation of New DFC-Based Products and New DFC-Based Technology for the Korean Market, and/or (b) the joint development of New Joint Products.

A. Development Group. Consistent with the requirements of Section 2.8(b) of the STTA, POSCO Power and FCE shall identify and designate sufficient business, financial and technical personnel and resources to form a joint committee development planning group (hereafter "Development Group") that shall meet, either in person or via teleconference, at mutually acceptable intervals for the planning and execution of the Joint Development Program.

B. Marketability Evaluation. Product development plans which are to be considered for development under the Joint Development Program (hereafter "Plans") shall consider and incorporate, but not be limited to, the following components: (i) initial technical, economic and market analysis to establish required product attributes; (ii) product performance criteria (e.g. power output rating, efficiency, fuel type and quality, use of waste heat, etc.); (iii) pricing targets; (iv) product development schedule including start-

up dates, interim milestones, and completion dates; (v) quality plans, including but not limited to testing and acceptance criteria; (vi) market size; and (vii) explicit identification of projects that will be considered New Joint Products. The foregoing criteria shall be used to guide the Parties in the selection and allocation of resources to the execution of Plans. The Parties further agree and acknowledge that Joint Development Program relates only to the development of product(s), and that all terms relating to the purchase, sale, distribution, and marketing of product(s), among other terms, shall be governed by the Transaction Agreements or by separate purchase agreement(s).

C. Cooperative Efforts of the Parties . The Parties agree to undertake the Joint Development Program activities in a spirit of partnership, and shall strive to foster dialog and mutual cooperation to achieve efficient and expeditious outcomes, and maximize the chances of success. In addition, consistent with the requirements of Section 2.11 of the STTA, each Party agrees to provide the other Party with technical and related information reasonably necessary and to the extent reasonably available to carry out their respective responsibilities under the Joint Development Program.

D. Resource Allocation and Development Costs . Each party agrees to bear its own costs incurred in the Joint Development Program, except as specifically provided for in a separate instrument. The Parties acknowledge and agree that each Party's participation in the Joint Development Program shall be determined based upon the availability of its own technical personnel and financial resources, at the sole discretion of each individual participating Party. Further, the contribution of each party in terms of intellectual property shall be duly considered, alongside consideration of the level of effort in personnel and resources contributed to the Joint Development Program, when determining joint ownership of resulting intellectual property.

E. POSCO Power will be granted access to the following information for existing designs transferred under the BOP TTP.

- Gas Compositions at each position (A/I, A/O, C/I, C/O)
- Temperatures at each position
- Pressures at each position (or pressure drop)
- Stack performance (I-V curve, fuel and oxidant utilization)
- Stack operating windows (in terms of temperature, gas flow rate, pressure, ramp up/down rate and limiting factor, vibration resisting limit, humidity, salinity)
- Information about simulation/pre-post processing tools (CAD, FEA, CFD) for easier information exchange in case of JDP

F. For C1400 and C350 module designs, FCE will transfer available model results describing uniformity or variation of gas flow rates, pressures, and temperatures.

Both parties hereto acknowledge that the foregoing Sections accurately represent the understanding and agreement of the parties regarding technology transfer by FCE to POSCO Power/POSCO Affiliates.

Dated: October 27, 2009

Fuel Cell Energy, Inc.

POSCO Power

By:

By:

List of Exhibits and Attachments

LIST OF EXHIBITS

Exhibit “A” Action Plans for Technology Transfer Program

Exhibit “B” Manufacturing Technology to be transferred by STTP

Exhibit “C” Design Documentation to be transferred by STTP

Exhibit “D” Conditioning Facility Design Documentation to be transferred by STTP

LIST OF ATTACHMENTS

Attachment 1 Payment Standard for Traveling Expenses by FCE’s Supervisors

Attachment 2 Target Schedule for Technology Transfer

EXHIBIT “A”

ACTION PLAN

FOR STACK TECHNOLOGY TRANSFER PROGRAM

The purpose of this Action Plan for Stack Technology Transfer Program (the “Action Plan”) is to describe general understanding and background relating to the technology transfer by FCE to POSCO Power/POSCO Affiliate and to set forth a detail action plan and an outline of the timing for the technology transfer.

1 Technology to be Transferred

FCE shall transfer to POSCO Power the technology, information, and know-how described in Section 1 of the STTP.

2 Schedule

A target schedule for the transfer of technology described in Section 1 this STTP is shown in Attachment 2. The target schedule is subject to modification by the Joint Committee.

Exhibit “B”

16.2 Manufacturing Technology to be transferred by STTP

FCE shall transfer the following technologies, know-how and information to POSCO Power and POSCO Affiliates in accordance with the schedule set forth in Section 3 of this STTP.

1.1.1 Module Assembly Process Information

1.1.1.1 Facility

*

1.1.1.1 Stacking

*

1.1.1.3 Manifolding

*

1.1.1.4 Final Module Assembly

*

1.1.1.5 Instrumentation

*

1.1.1.5 Standard Tooling used throughout Module Assembly Facility

*

1.1.2 Module Conditioning Process Information

*

1.1.3 Module Teardown and Repair Process Information

*

* **Confidential information has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for Confidential Treatment.**

Exhibit “C”

Design Documentation to be transferred by STTP

FCE shall transfer the following technologies, know-how and information to POSCO Power and POSCO Affiliates in accordance with the schedule set forth in Section 3 of this STTP.

C1400 Documentation

*

Exhibit “D”

16.3 Conditioning Facility Design Documentation to be transferred by STTP

FCE shall transfer the following technologies, know-how and information to POSCO Power and POSCO Affiliates in accordance with the schedule set forth in Section 3 of this STTP.

*

Attachment 1

Payment Standard for Traveling Expenses by FCE’s Personnel

1. SCOPE

The present standard shall apply to the standard for traveling expenses by officers or employees of FuelCell Energy, Inc. (“FCE”) for the purposes of transfer of fuel cell stack module assembly technology or construction of manufacturing plant in Korea at POSCO Power or POSCO Affiliate’s request.

2. PAYMENT STANDARD

- 1) Transportation, food, and lodging expenses shall be paid for the traveling personnel except for the amount corresponding to purposes other than the affairs involving POSCO Power or POSCO Affiliate.
- 2) Transportation expenses shall mean airfare in principle, but in the event no airlines in Korea or other reasons not permitting air travel exist, railroad, automobile, or passage fare will be paid for the traveling personnel.
- 3) The standard payment rate for transportation expenses shall follow Schedule A.
- 4) Traveling personnel’s food and lodging expenses shall be paid by the number of days spent for the business trip in case of food expenses and the number of days requiring lodging in case of lodging expenses in accordance with Schedule B. In the case of business trip by air travel, however, lodging and food expenses shall be paid only in the cases requiring lodging due to events beyond one’s control.
- 5) Food and lodging expenses as specified in Schedule B shall be paid as much as the actual expenses within the range specified in Schedule B. Receipts or proof of expenses must be produced for the reimbursement.
- 6) Officers shall mean the employees whose title is Vice President or higher at FCE

* **Confidential information has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for Confidential Treatment.**

Schedule A: Transportation Expenses

(Unit : U\$)

Item	Airfare		Railroad / Auto / Passage Fare
	Domestic	International	
Officer	Business Class	Business Class	Actual Expense
Employee	Economy Class	Business Class	

Note) 1) In the event that no reservation for the designated class above can be made, the designated class can be changed to higher or lower class.

Schedule B: Traveling Expenses

(Unit : U\$)

Item	Food Expenses (Actual Expense)	Lodging (Actual Expenses)
	Actual Expense	Actual Expense (Standard Room)
Officer		
Employee	80	140

Note) Food and lodging expenses for the employees shall be paid as much as the actual expenses within the limit shown above (receipt or proof of expenses is required).

3. PAYMENT METHOD

1) Transportation expenses and traveling expenses shall be calculated in units of one month in principle, and FCE shall bill POSCO Power or POSCO Affiliate for the expenses, accompanied by the proof thereof (original or copy).

2) "POSCO Power or POSCO Affiliate" shall write up and send to FCE the statement of payment based on the bill sent by FCE and directly pay the corresponding amount in US dollars along with the statement of payment by applying the first basic rate of foreign exchange (USD) as of the date the bill is paid.

- ① Payment Date : 30 days within the date on the bill issued by FCE
- ② Payment Method : wire transfer to a bank account designated by FCE

Attachment 2

Target Schedule for Technology Transfer

		2009						2010						2011																							
		11		12		1		2		3		4		5		6		7		8		9		10		11		12		1		2		3			
Infrastructure	Factory and Facility	Joint Committee: Factory Design and Ground-breaking						Factory Construction and Equipments order						Equipments installation and test						Ceremony for the completion																	
	Personnel	FCE Recommendation of organization						1st Employment						2nd Employment																							
	System							Study of FCE process control system						PP system set-up for process control																							
Process	Assembly							Preview of Process						1st OJT in Torrington						2nd OJT in Torrington						3rd OJT in Pohang											
	Conditioning																			1st OJT in Danbury						2nd OJT in Pohang											
	Teardown																			1st OJT in Pohang (or Danbury) at available module																	
	Documents	Documents transfer and Review						Translation of all tech. and education materials in Korean						Study of documents																							
Components	NRC	Documents transfer and Review						Q&A in Danbury						FCE NRC vendor tour						Study of documents and tech. transfer						Korea vendor Qualifying						Prototype Module w/ localized NRC					

EXHIBIT B (U.S. DOE APPROVAL)



U.S. Department of Energy

National Energy Technology Laboratory



October 23, 2009

Mr. R. D. Brdar
President and Chief Executive Officer
FuelCell Energy, Inc.
3 Great Pasture Road
Danbury, CT 06813

Subject: Approval of Transfer of Fuel Cell Technology
Cooperative Agreement DE-FC21-95MC31184

Gentleman:

In accordance with my delegated authority, I accept the "adequate recognition" as set forth in your letter dated October 19, 2009 and October 23, 2009. I hereby approve your request to transfer fuel cell technology from FuelCell Energy, Inc. (FCE) to POSCO of South Korea in accordance with the following conditions identified. FCE will transfer fuel cell stack assembly and conditioning know-how, as well as design drawings and data related to "non-repeating" components of the fuel cell stack module (i.e. components other than the core fuel cell technology). Non-repeating components include stack supporting hardware enclosures, insulation, and piping, but exclude the core fuel cell component designs, materials, and manufacturing processes, as well as designs and manufacturing processes related to FCE's proprietary direct internal reforming technology. Under the proposed new agreement, FCE would continue to manufacture the core fuel cell units in Connecticut, and ship them to POSCO Power in South Korea.

The Adequate Recognition consists of two parts:

- a) Increase Cost Share for Phase II of the Office of Fossil Energy Coal Based Fuel Cell Program from \$5.2 million to \$6.2 million (+ \$1 million).
- b) The increase in U. S. manufacturing of "core fuel cell components" directly related to the increased sales outside the U. S.

This approval is provided pursuant to Cooperative Agreement DE-FC21-95MC31184 between FCE and NETL.

Sincerely,

Carl O. Bauer
Director

626 Cochran's Mill Road, P.O. Box 10940, Pittsburgh, PA 15236
wayne.surdoval@netl.doe.gov@netl.doe.gov • Voice (412) 386-6002 • Fax (412) 386-4822 • www.netl.doe.gov

EXHIBIT C (LIST OF PATENTS)

FCE File No.	U.S. PAT. NO.	TITLE	Country	Issued	Expires
B429-086	7,494,736	Dielectric Frame Assembly and Fuel Cell Manifold	U.S.	2/24/2009	2/25/2027
B429-057	7,393,605	Fuel Cell End Unit with Integrated Heat Exchanger	U.S.	7/1/2008	5/18/2026
CIP					
B429-051	7,323,270	Modular Fuel Cell Stack Assembly	U.S.	1/29/2008	12/1/2025
B429-083	7,294,427	Manifold Gasket Accommodating Differential Movement of Fuel Cell Stack	U.S.	11/13/2007	7/12/2025
B429-085	7,276,304	Fuel Cell System Including a Unit for Electrical Isolation of a Fuel Cell Stack From a Manifold Assembly and Method Therefor	U.S.	10/2/2007	6/20/2025
B429-057	7,070,874	Fuel Cell End Unit with Integrated Heat Exchanger	U.S.	7/4/2006	12/24/2022
B429-046	6,902,840 ZL03815646.6 4146427	Fuel Cell System with Mixer/Eductor	U.S. China Japan	6/7/2005	7/2/2022
B429-058	6,964,825 770810	Compliant Manifold Gasket	U.S. Korea	11/15/2005 10/22/2007	7/24/2023
B429-048	6,887,611 4317132	Flexible Fuel Cell Gas Manifolds	U.S. Japan	5/3/2005 5/29/2009	10/3/2022
B429-054	6,797,425 ZL03825719.X 4153491 1 590 846 603 26 650.0-08	Fuel Cell Stack Compressive Loading System	U.S. China Japan EPO Germany	9/28/2004 8/15/2007 7/11/2008 3/11/2009 3/11/2009	12/24/2022
B429-043	6,531,237 ZL02805816.X 4318667	Manifold and Sealing Assembly for Fuel Cell Stack	U.S. China India	3/11/2003 3/21/2007 5/29/2009	3/1/2021
B429-040	6,514,636 ZL01820569.0 216427	Ultra-Smooth Dielectric Members for Liquid Electrolyte Fuel Cells	U.S. China India	2/4/2003 2/7/2007 9/19/2005	12/13/2020
B429-038	6,461,756 ZL01813533.1 196,113 3736765	Retention System for Fuel Cell Stack Manifolds	U.S. China India Japan	10/8/2002 1/18/2006 9/19/2005 11/4/2005	8/21/2020
B429-035	6,410,161	Metal-Ceramic Joint Assembly	U.S.	6/25/2002	4/15/2019
B429-041	6,413,665 ZL01814724.0 196,112	Fuel Cell Stack Compression System	U.S. China India	7/2/2002 10/5/2005 9/19/2005	8/31/2020
40128	5,110,692 0472152 P69109971.5	Gasket for Molten Carbonate Fuel Cell	U.S. EPO Germany	5/5/1992 5/24/1995 5/24/1995	8/20/2010

- Note: 1. U.S. Patents and foreign counterparts (if any) are grouped together.
2. Expiration dates are the same for U.S. and foreign counterpart patents.

EXHIBIT D (SALES TARGETS)

<u>Year</u>	<u>Business Plan (MW)</u>	<u>Sales Target (50%) (MW)</u>	<u>Cumulative (MW)</u>
Pre-2011	—	—	69.0
2011	*	*	*
2012	*	*	*
2013	*	*	112.0
2014	*	*	*
2015	*	*	*
2016	*	*	*
2017	*	*	*
2018	*	*	*
2019	*	*	*
2020	*	*	568.0

* Confidential information has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for Confidential Treatment.

SCHEDULE A (POSCO Affiliates)

POSCO Affiliates shall include the following companies:

POSCO, a Korean corporation having a place of business at 1 Goedong-dong, Nam-gu, Pohang, Kyungbuk 790-704, Korea

POSCON, a Korean corporation having a place of business at 606 Ho-dong Nam-gu, Pohang, Kyungbuk 790-719, Korea

POSMEC, a Korean corporation having a place of business at 322-4 Janghung-dong Nam-gu, Pohang, Kyungbuk 790-714, Korea

POSCO E&C, a Korean corporation having a place of business at 568-1 Goedong-dong Nam-gu, Pohang, Kyungbuk 790-704, Korea

POSTEEL, a Korean corporation having a place of business at 735-3 Posteel Tower Yeoksam-dong Gangnam-gu Seoul 135-080, Korea

SCHEDULE B (Non-Exclusive Territory)

The Non-Exclusive Territory shall include all countries and jurisdictions, except as noted below:

Western Europe

Andorra

Austria

Belgium

Cyprus

Denmark

Federal Republic of Germany

Finland

France

Great Britain and including, but not limited to Northern Ireland CIS (Commonwealth of Independent States)

Greece

Greenland

Ireland

Iceland

Italy

Liechtenstein

Luxembourg

Malta

Monaco

Netherlands

Norway

Portugal

San Marino

Spain

Sweden

Switzerland

The Vatican State

Eastern Europe

Albania

Bulgaria

Czech Republic

Slovakia

Hungary

Poland

Romania

All states of the former USSR

Yugoslavia

Slovenia

Croatia

Asia

Japan

Middle East

Bahrain

Iran

Iraq

Israel

Jordan

Kuwait

Lebanon

Oman

Qatar

Saudi-Arabia

Syria

Turkey

Yemen, Arab Rep.

Yemen, Peoples Rep.

United Arab Emirates (UAE)

North America

United States

Canada

Mexico

SCHEDULE C (FCE Previously Granted Distribution Rights)

Distributor	Type of Agreement	Effective Date	Expiration	Rights in Korea
BOC Limited (Linde Group)	Market Development Agreement ("MDA")	11/2/2006	11/1/2009	Yes
Caterpillar Inc.	Purchase and Marketing Agreement	4/26/2002	4/25/2012	Yes
Marubeni (Japan)	Alliance Agreement	6/15/2001	6/14/2011	Rights in Korea Waived by Agreement
MTU CFC Solution, GmbH	Cell License	12/15/1999	12/14/2009	No
MTU CFC Solution, GmbH	BOP Cross-License	7/16/1998	7/15/2008	No
Pfister Energy	MDA	6/26/08	6/26/2010	No
American Wind Power & Hydrogen	MDA	1/2/08	1/2/10	No
Enbridge	MDA	11/4/03	10/31/10	No
Logan Energy	MDA	10/28/08	10/27/10	No
Powerhouse Energy	MDA	11/1/07	11/1/09	No
PPL Energy	Distributor Agreement	9/21/00	12/31/10	No
Western Energy Marketers	MDA	11/8/07	11/7/10	No

CONTRACT

FOR THE SUPPLY OF DFC[®] MODULES AND DFC[®] COMPONENTS

FROM FUELCELL ENERGY INC. (SELLER)

TO POSCO POWER (BUYER)

JUNE 9, 2009

Confidential treatment requested as to certain portions of this exhibit marked with an *. Such portions have been redacted and filed separately with the SEC.

PURCHASE AND SALE CONTRACT

This PURCHASE AND SALE CONTRACT (the "Contract") is made and entered into this 9th day of June, 2009, by and between POSCO Power Corporation, a corporation duly organized and existing under the laws of the Republic of Korea having a place of business at Posteel Tower 20th floor, 735-3, Yeoksam-dong, Gangnam-gu, Seoul 135-080, Korea (hereinafter referred to as "POSCO Power" or the "Buyer") and FuelCell Energy, Inc., a corporation duly organized and existing under the laws of the State of Delaware, U.S.A., with its principal office at 3 Great Pasture Rd., Danbury, Connecticut, U.S.A. (hereinafter referred to as "FCE" or the "Seller").

Each of the parties acknowledges and agrees that all aspects of the performance by the parties under the terms of this Contract, and all other dealings between the parties in connection therewith, shall be governed by the principle of good faith and fair dealing. Further, each party agrees that it will perform its functions under this Contract in cooperation with the other party and in accordance with prevailing industry standards.

RECITALS:

WHEREAS, POSCO Power and FCE are parties to the Technology Transfer, Distribution and Licensing Agreement (the "TTA") and the Alliance Agreement (the "AA"), both executed as of February 7, 2007;

WHEREAS, POSCO Power and FCE are additionally parties to the Technology Transfer Program ("TTP") executed as of July 11, 2007;

WHEREAS, POSCO Power and FCE are additionally parties to the Contract for the Supply of DFC Plants and DFC Modules from FuelCell Energy Inc. to POSCO Power (referred to hereunder as the "2008 Purchase Contract") executed as of April 22, 2008;

WHEREAS, POSCO Power and FCE intend to enter into a new technology transfer agreement under which FCE will grant a license to POSCO Power for the assembly and conditioning of DFC Modules incorporating DFC Components (referred to hereunder as the "Module Assembly Technology Transfer Agreement" or "MATTA");

WHEREAS, POSCO Power and FCE additionally intend to execute a new technology transfer protocol agreement describing detailed procedures for compliance with the terms of the MATTA (referred to hereunder as the "Module Assembly Technology Transfer Program or MATTP");

WHEREAS, the Buyer desires to purchase DFC Modules and DFC Components as described hereunder from the Seller for the purpose of integration with Balance of Plant to be procured by the Buyer, either from Seller or from independent third party vendors, for subsequent operation of the resulting Plants, or for resale of the Plants to Third Party Owners, and associated installation the Plants and the Equipment at the Site; and

WHEREAS, the Seller desires to sell the DFC Modules and DFC Components to the Buyer, and to provide technical advisory services and other support services to the Buyer, in accordance with the terms and conditions herein set forth; and

WHEREAS, the Seller and the Buyers acknowledge and agree that the Buyer may, without assuming any obligations set forth in this Agreement and the other Transaction Agreements, assign its rights and obligations to NewCo (which has the meaning assigned in the AA), subject to the requirements of section

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17.1 hereunder. In the event of any other assignment of this Agreement by either party, the assignee shall assume, in writing (in form and substance reasonably satisfactory to the other party), the rights and obligations of the assigning party under this Agreement.

Now, THEREFORE, in view of the foregoing premises and in consideration of the mutual covenants and undertakings hereinafter provided, the parties hereto agree as follows:

1. DEFINITIONS

Unless the context otherwise requires, the following words shall have the following meanings assigned to them in this Article 1. Where the context requires, (i) words importing the singular only also include the plural; (ii) words importing person(s) include corporations and vice versa; (iii) references to statutes or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; (iv) the words “including”, “includes” and “include” shall be deemed to be followed by the words “without limitation”; the words “will” and “shall” shall be deemed to be interchangeable; and (v) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments, extensions and other modifications to those instruments.

1.1 “**Balance of Plant**” or “**BOP**” shall have the meaning assigned in the TTA.

1.2 “**Balance of Plant Skid**” or “**BOP Skid**” means structural skid(s) with all BOP components for the Power Plant with the exception of the Fuel Cell Module.

1.3 “**Buyer’s Carrier**” shall mean the freight forwarder engaged by Buyer at Buyer’s sole discretion, to which Buyer shall assign responsibility for taking delivery of the Equipment.

1.4 “**Buyer’s Receiving Site**” shall mean a location in the same country as the Seller’s Delivery Site for DFC Modules, Non-Repeating Components, and/or Repeating Components; and which location shall otherwise be designated at the sole discretion of the Buyer.

1.5 “**Consumables**” shall mean the water treatment salts, catalysts, adsorbents, purge gases, specialty gases, filters, gaskets, o-rings, fasteners and washers which are specified in the Service Provider’s maintenance manual and necessary for the Power Plant to perform its functions. Specifically excluded from the definition of “Consumables” are Utilities.

1.6 “**Contract**” means this contract and the Annexes hereto, the Specifications and all other agreements and documents, including the amendments and supplements duly made hereto between the Buyer and the Seller to ascertain the rights and obligations of the parties upon agreement.

1.7 “**Contract Price**” means the total amount to be paid by the Buyer to the Seller as provided in Annex A hereof, which shall be subject to any valid adjustments made through the application of the relevant provisions hereof.

1.8 “**Commissioning Discontinuance**” means the conditions that commissioning cannot be proceeded to the next step due to improper conditions of the POSCO Plant itself and the POSCO Plant operation.

1.9 “**Delivery at Site**” means delivery of the Plant and the Equipment, including all drawings and other documents provided by the Seller at the Site pursuant to Article 8.1.2 of this Contract.

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1.10 “ **DFC Components** ” means a quantity of Repeating Components (RC) and Non-Repeating Components (NRC) from which a complete DFC Module may be assembled.

1.11 “ **DFC Power Plants** ” or “ **DFC Plants** ” means the complete power plants manufactured by Seller at the facilities of Seller or its sub-vendors, including BOP and DFC Modules.

1.12 “ **DFC Specifications** ” means the documents prepared by Seller containing performance specifications for the DFC Plants.

1.13 “ **DFC Manuals** ” means the documents normally prepared and routinely provided by Seller which contain, but are not necessarily limited to, instructions for installation, operation, initial start-up, field procedures, instrumentation and controls, and maintenance of the DFC Plants.

1.14 “ **POSCO Plant** ” or “ **Plant** ” shall mean the carbonate-based fuel cell power plant which is manufactured by Buyer or POSCO Affiliate using the Direct FuelCell ® technology of the Seller .

1.15 “ **Engineer** ” means the person designated by the Buyer as engineer, with notification of such designation being sent to the Seller, for the purpose of the inspection and testing stipulated in Article 9 hereof, or in absence of such notification, the word Engineer means the Buyer or its duly authorized representatives.

1.16 “ **Equipment** ” means the DFC Modules, Repeating Components, Non-Repeating Components, and any machinery, equipment, apparatus, instruments, ship loose items, materials and other items which are supplied by Seller pursuant to this Contract.

1.17 “ **Facilities** ” means the connections, interfaces, and supporting equipment for the Plant, including the support system, slab or pedestal on which the Plant is located, fuel supply, electrical distribution system, and equipment connected to the Plant’s interface points but excluding the Plant itself.

1.18 “ **EXW** ” or “ **Ex Works** ” shall have the meaning assigned as published by the United Nations Commission on International Trade Law in the “International Commercial Terms (INCOTERMS 2000) ” as amended, except as may be otherwise provided herein.

1.19 “ **Force Majeure** ” shall mean unforeseen circumstances beyond the reasonable control and without the fault or negligence of either party and which such party is unable to prevent or provide against the exercise of reasonable diligence including, acts of God, any acts or omissions of any civil or military authority, earthquakes, strikes or other labor disturbances, wars (declared or undeclared), terrorist and similar criminal acts, epidemics, civil unrest and riots.

1.20 “ **Fuel Cell Module** ”, “ **DFC Module** ” or “ **Module** ” shall mean those components manufactured by Seller, which comprise the fuel cell stack itself, including the stack enclosure vessel, the fuel cell stack, ship loose items related to the module end post and its supporting hardware, including individual fuel cells and cell assemblies, anodes, cathodes, current collector plates, matrixes, manifolds, instrumentation, assembly and compression hardware and/or the stack enclosure vessel, purchased by the Buyer pursuant to this Contract, the description and the quantity of which are set forth in Appendix A to this Contract.

1.21 “ **DFC Module Components** ” or “ **DFC Components** ” shall mean one set of RC and NRC components necessary for the assembly of one complete DFC Module.

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1.22 “**Service Agreement**” means a long term service agreement in respect of the Plant between Seller and the Buyer or, in the case the Plant is resold to the Third Party Owner, among Seller, Buyer (or its designee) and the Third Party Buyer.

1.23 “**Site**” means the land upon which the Plant and the Facilities will be located, installed and erected in accordance with the specifications and requirements of which are set forth in Appendix A (Specifications).

1.24 “**Module Specifications**” mean the Specifications attached to this Contract as Appendix A.

1.25 “**Non-Repeating Components**” or “**NRC**” means parts and components of the DFC Modules other than RC, necessary to assemble a DFC Module.

1.26 “**POSCO Affiliate**” shall have the meaning assigned in the AA.

1.27 “**POSCO Plant Specifications**” means the documents prepared by Buyer or POSCO Affiliate which contain performance specifications for the POSCO Plant, as further described in paragraph 3.4.6 hereunder.

1.28 “**POSCO Plant Manuals**” means the documents prepared by Buyer or POSCO Affiliate which contain instructions for installation, operation, and maintenance of the POSCO Plant.

1.29 “**Pre-Shipment Tests**” shall mean the testing procedures to be carried prior to delivery from FCE facilities, as indicated in Article 9 hereunder.

1.30 “**Repeating Components**” or “**RC**” shall consist of discrete fuel cell packages assembled from active components, excluding NRC, which are necessary for the assembly of DFC Modules.

1.31 “**Seller’s Delivery Site(s)**” shall mean the point of EXW delivery of the Equipment.

1.32 “**Site Technical Advisory Services**” means the services to be performed by the Site Technical Advisors in connection with the installation, erection, commissioning and acceptance test of the Equipment in accordance with Article 5 hereof.

1.33 “**Site Technical Advisors**” means the persons authorized by the Seller to perform the Seller’s obligations regarding the Site Technical Advisory Services under the Contract.

1.34 “**Target Date**” means, the day on which, in accordance with the construction schedule, the POSCO Plant/Facilities are to be put into initial operation.

1.35 “**Third Party Owner**” means any company or other entity that purchases the Equipment from the Buyer and operates the Facilities at the Site.

1.36 “**Utilities**” shall mean air, water, wastewater, fuel and electric startup power required to operate the Power Plant.

2. EFFECTIVE DATE OF CONTRACT

The Contract shall become fully effective and binding upon both parties hereto on the date (the “Effective Date”) this Contract is executed by their duly authorized representatives.

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3. SCOPE OF CONTRACT

3.1 The division of responsibility between Seller, Buyer and POSCO Affiliate for the manufacture, testing, and warranty of the DFC Plants and POSCO Plants for which equipment shall be supplied under to this Agreement, shall be as described in this section.

Manufacturing Category 3 (MC-3) : Shall be as described in the 2008 Purchase Contract.

Manufacturing Category 4 (MC-4) : Seller Supplies DFC Module Components, Buyer and/or POSCO Affiliate assembles DFC Module Components into DFC Modules under separate license from Seller, POSCO Affiliate supplies BOP. In this stage Buyer and/or POSCO Affiliate will establish a facility in Korea for stack assembly and conditioning activities to complete the manufacture of DFC Modules using DFC Module Components and technical assistance provided by Seller.

3.2 [Reserved]

3.3 Responsibilities of the Parties Under Manufacturing Category 3 (“MC-3”) shall be as described in section 3.3 of the 2008 Purchase Contract.

3.4 Responsibilities of the Parties Under Manufacturing Category 4 (“MC-4”)

3.4.1 The Seller agrees to sell the DFC Components as set forth in Annex A hereunder, and the Buyer agrees to purchase and take delivery of the DFC Components according to the schedule indicated in Annex A. In addition, the Seller shall provide the following materials, parts, documents, supplies, assistance, support and advisory services as specifically set forth herein:

- A. Design, engineer, and manufacture the DFC Components, in the quantities and shipped to Buyer according to the schedule indicated in Annex A, conforming to the DFC Components Specifications provided in Appendix B;
- B. Transfer technology and provide technical assistance in accordance with the MATTA and the MATTP for the assembly and conditioning of DFC Modules using DFC Components purchased from Seller;

3.4.2 As a prerequisite of Seller’s guarantees under Paragraphs 3.4.4 and 3.4.5 hereunder, all work performed by Buyer in the procurement of BOP components and in the assembly and test of DFC Modules shall be performed in accordance with Seller drawings, manufacturing practices, instructions and quality plans; and all variations therefor which may have an impact on performance shall be subject to prior written approval by Seller. Failure to strictly adhere to the above requirement shall void Seller’s warranties.

3.4.3 During all stages of manufacture of DFC Modules by Buyer, Seller shall have the right to have its technical representative (s) present at Buyer’s Plant for the purpose of inspecting the materials used and the work performed by Buyer. The Seller technical representative(s) shall have the right to reject and require correction of any work and procedures which do not meet Seller quality standards. The performance of the aforesaid functions by the Seller technical representative(s) shall in no way relieve Buyer of its obligations under this Agreement.

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3.4.4 With respect to DFC Components provided to Buyer by Seller under this Agreement, Seller shall be responsible to Buyer as set forth hereunder. In the event that the results of tests made under conditions to be agreed upon in advance between Seller and Buyer indicate that any DFC Components manufactured and assembled into a complete DFC Module by Buyer under this Agreement, fails to perform as stipulated by Seller in Appendix B, and if any such failure is due solely to the improper performance of components supplied by Seller, then Seller's sole responsibility to Buyer, and Buyer's sole remedy, shall be as set forth in the performance guarantee described in section 9.2, and the warranty referred to in Article 10.

3.4.5 With respect to each DFC Module assembled by Buyer incorporating DFC Components manufactured by Seller, and consistent with the provisions of section 7.1(vi) of the TTA, Seller shall be responsible to Buyer as set forth hereunder. In the event that the results of tests made under conditions to be agreed upon in advance between Seller and Buyer indicate that any DFC Module fails to achieve the performance levels indicated by the DFC Module Specifications provided in Appendix A of this Contract, and if any such failure is due solely to incorrect drawings or data furnished and specified to Buyer by Seller, then Seller's sole responsibility to Buyer, and Buyer's sole remedy, shall be to furnish corrected drawings or data to Buyer, and to consult with Buyer with respect to correcting the performance of the DFC Module. In the event that the Parties are not able to agree as to the cause of failures, then the procedures outlined in Article 15 hereunder shall apply.

3.4.6 In no event shall Seller's liability under this Article exceed the price of the DFC Components paid by Buyer to Seller for the POSCO Plant involved.

3.4.7 Seller's Responsibility Under End User Long Term Service Agreements.

- A. DFC Modules Manufactured by Seller : Seller's obligations for complete DFC Modules manufactured by Seller shall be as described in the 2008 Purchase Contract.
- B. DFC Modules Assembled by Buyer from DFC Components Supplied by Seller : For DFC Modules assembled by Buyer and/or POSCO Affiliate from DFC Components supplied by Seller, Buyer shall be responsible to the end user for warranty, performance guarantees, and service obligations related to the DFC Modules. Seller shall have no obligations under the service agreements which Buyer may execute with end users, beyond the performance guarantee described in section 9.2, and the warranty referred to in Article 10.

3.5 General Conditions

3.5.1 The Parties may change the designation of manufacturing categories shown in Annex A, by mutual agreement, up to the time of material purchasing.

3.5.2 The Seller's services, including its design and engineering services, shall be performed (i) with care and diligence, (ii) in accordance with generally accepted international professional standards, and (iii) as expeditiously as is consistent with the preceding standards of professional skill, care and diligence. The Seller represents, covenants and agrees that all persons who will perform or be in charge of the professional, architectural and design work under the Contract shall have experience with a type of project similar to the Facilities and that whenever required by applicable law, such persons shall be licensed to practice under such law.

3.5.3 Independent Contractor. In performing its duties and obligations hereunder, the Seller shall, at all times, act in the capacity of an independent contractor, and shall not in any respect be deemed (or act as) an agent of the Buyer, except as otherwise provided under this Contract.

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3.5.4 Seller agrees to provide Documentation (Seller's operating instruction manuals, drawings, graphs, tables, exhibits and other documentation) in metric units to the extent available and in use at Seller's factory.

3.5.6 Buyer shall be responsible for establishing the POSCO Plant Specifications and the POSCO Plant Manuals. Buyer agrees that the POSCO Plant Specifications and Manuals shall use as a guide the DFC Specifications and Manuals. Buyer additionally agrees that the POSCO Plant Specifications and Manuals shall not exceed the performance levels established in the DFC Specifications and Manuals, nor shall such POSCO Plant Specifications and Manuals allow operating conditions any less stringent than contained in the DFC Specifications and Manuals, without the prior written approval of Seller.

4. CONTRACT PRICE AND PAYMENT TERMS

4.1 The Contract Total Price set forth in Annex A covers the Scope of Contract set forth in Article 3 above.

4.2 Expected Output. The expected MW output rating for the DFC Modules and DFC Components to be sold to Buyer under this Contract is shown in Annex A. Seller expects to introduce new technology resulting in an increase in power output per Module from 1.2 MW to 1.4 MW beginning with shipments commencing in 2009. In the event that the increase in power output from 1.2 MW to 1.4 MW is not achieved according to the anticipated schedule, Seller and Buyer agree that the pricing indicated in Annex A will be adjusted proportionally to reflect the increase or the shortfall in output.

4.3 Payment Terms

4.3.1 Initial Downpayment. Buyer agrees to make a downpayment to Seller in the amount of 10% of the Contract Total Price indicated in Annex A, which shall be received by Seller within 30 days after the Effective Date.

4.3.2 Payments for DFC Modules and DFC Components sold to Buyer as indicated in Annex A, shall be made by the Buyer to the Seller in accordance with the following schedule:

- A. The first payment in the amount of ten percent (10%) of the price of individual DFC Modules or DFC Components shall be allocated from the Initial Downpayment.
- B. The second payment in the amount of twenty percent (20%) of the price of individual DFC Modules or DFC Components shall be invoiced at time of Seller's actual material order, but no sooner than five(5) months after the Effective Date of this Contract.
- C. The third payment in the amount of twenty percent (20%) of the price of individual DFC Modules or DFC Components shall be invoiced twelve (12) weeks prior to EXW shipment date.
- D. The fourth payment in the amount of twenty-five percent (25%) of the price of individual DFC Modules or DFC Components shall be invoiced four (4) weeks prior to EXW shipment date.
- E. The fifth payment in the amount of twenty-five percent (25%) of the price of individual DFC Modules or DFC Components shall be invoiced at the EXW shipment date.

4.4 Payment Default Rate. Payments invoiced by Seller shall be due within 30 days after the date of invoice. In the event that any payment due from Buyer under this Contract is not paid when due, Buyer shall pay Seller interest on such overdue payment during a period commencing on such due date until the date that such overdue payment is actually made to Seller, the annual rate of interest being equal to two percent (2%) above the highest commercial prime rate as published in the Wall Street Journal on the day the payment first became due. Nothing in this paragraph shall prevent the Seller from exercising other remedies available under this Contract.

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5. TECHNICAL ADVISORY SERVICES

5.1 Buyer acknowledges that technical advisory services provided by the Seller are not included in the price indicated in Annex A. Seller agrees to provide a reasonable amount of such services at the request of Buyer, subject to payment by Buyer at Seller's then current per diem rates, and otherwise subject to the provisions of the MATTA.

6. DELIVERY; TITLE TRANSFER; INSPECTION

6.1 Delivery.

6.1.1 Shipment Terms for the Equipment. Seller agrees to supply, and Buyer agrees to purchase, the Equipment in the quantities and prices as indicated in Annex A hereunder, on the basis of EXW Seller's Delivery Sites. For the avoidance of doubt, Seller shall be responsible for crating and/or otherwise preparing the Equipment for shipment in compliance with Article 7 of this Contract; and the cost for preparing the Equipment for such shipment is included in the pricing as indicated in Annex A hereunder.

6.1.2 Shipment in Place. In the event that Buyer's Carrier has not been designated by Buyer or otherwise is unready to take delivery of the Equipment on the EXW delivery dates as indicated in Annex A, Seller may ship any such shipment in place, or ship to storage at Buyer's expense; and, Buyer agrees to make payments for such shipments according to the payment schedule indicated in Article 4 hereunder.

6.1.3 Designation of Seller's Delivery Sites. Seller agrees to notify Buyer within 60 days after the Effective Date of this Contract, of the Seller's Delivery Sites for the Equipment. The Seller's Delivery Sites shall not exceed four (4) physical locations (including the location(s) in FuelCell Energy Site in Connecticut). Any and all deliverables to the Buyer shall be shipped to such four (4) locations at Seller's expense. After the execution of this Contract, the parties shall negotiate in good faith to minimize any inland shipping expenses and ensure the quality of the Equipment during the inland shipping.

6.1.4 Additional Shipping Services. At the request of Buyer, Seller agrees to provide additional shipping services to Buyer, including trucking and insurance services necessary to transport the Equipment from the Seller's Delivery Site to the Buyer's Receiving Site. For the avoidance of doubt, such additional shipping services are not included in the pricing indicated in Annex A, and shall only be arranged by Seller upon receipt of written request from Buyer, which shall include costs which Buyer shall reimburse to Seller upon completion of the additional shipment services.

6.1.5 Partial shipments shall be permitted.

6.1.6 If either the Buyer or the Seller wishes to adjust the delivery schedule set forth in Annex A, the parties shall, after agreeing to an appropriate price adjustment in a good faith and commercially reasonable manner, cooperate to adjust the delivery schedule.

6.1.7 Liquidated Damages for Delayed Delivery. In the event the EXW delivery date of the Equipment is delayed more than 30 days beyond the EXW shipment dates indicated in Annex A, solely through the fault of the Seller, and unless the parties mutually agreed to an extension thereto, the Buyer is entitled to claim liquidated damages per day of delay in an amount equivalent to 0.15% of the price for the delayed Equipment. Such liquidated damages shall not exceed five percent (5%) of the price of the affected unit(s). In the event that the liquidated damages under this section reach 5% of the price of the affected unit(s), Buyer shall have recourse to Article 16.4 below. Prior to implementing the provisions of Article 16.4 pursuant to this section, Buyer agrees that it shall discuss with Seller alternate remedies in good faith.

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6.3 Communication

6.3.1 The Seller shall provide to the Buyer, by facsimile or email, the information necessary for the Buyer's vessel arrangement and necessary insurance pursuant to Article 6.6 at least 40 days prior to each shipment, including the name of Equipment, the approximate number of packages, total weight and measurement, the loading date, the loading port and other pertinent information (including information for customs clearance and inland transportation). The Buyer shall inform, by email or telefacsimile, the Seller of the status of vessel arrangement seven (7) days prior to the date of shipping.

6.3.2 The Seller shall, immediately after the completion of each shipment, notify the Buyer by facsimile or email of the contents of cargo shipped and expected date of arrival and other pertinent information.

6.4 Title Transfer. Title to the Equipment and risk of loss shall transfer to Buyer at the time EXW delivery is completed at the Seller's Delivery Site, provided, that nothing in this Contract shall (i) limit the Buyer's right to reject defective or deficient Equipment or (ii) otherwise limit the Buyer's rights under Articles 9 and 11.

6.5 Inspection; Rejection

6.5.1 The Seller or its designated representative shall inspect the Equipment at the loading port for quality assurance. The Buyer will have the right to be present at the time of such inspection, and the Seller shall provide Buyer with reasonable prior notice of any such inspection.

6.5.2 The Buyer may reject from any shipment any Equipment which is defective or deficient, or which does not otherwise conform to the Specifications.

6.6 Insurance. Seller shall bear the cost of insuring the Equipment prior to the time that it passes the ship's rail in the loading port. Buyer shall bear the cost of insuring the Equipment from the time that it passes the ship's rail in the loading port.

7. PACKING

7.1 The Equipment to be shipped to the Buyer shall be packed and shipped in accordance with the Specifications and if not specified therein, shall be packed in sea-worthy packing conditions according to usual international commercial and industrial practice; that is, the packing of the DFC Modules and DFC Components shall utilize proper anti-corrosion and/or anti-rust compounds or coatings and protective water proof wrapping and/or packing as the case may be. In case of wood packaging materials, the Seller shall comply with the quarantine requirements set forth in Article 7.3 hereof. Such packing shall be sufficiently strong including skids so that it will not break or fall apart under normal handling.

Interior blocking, bracing and cushioning shall be provided where necessary to absorb shocks, prevent rattling and relieve destructive forces. Additionally the Equipment should have proper devices on it to record any shock during transportation. Packing containing fragile materials should be so marked in bold stout letters.

In accordance with good packing practices, the Equipment shall be packed in the smallest possible approved containers since steamship freight is usually based on cubic measurements.

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7.2 Marking shall include the following information and any other information reasonably requested by Buyer:

- A. For: POSCO Power;
- B. Contract number or name of Contract;
- C. Port of destination;
- D. Item number, package number in sequence and quantity per package;
- E. Commodity description;
- F. Net weight, gross weight, dimension and cubic measurement;
- G. Shipper's marks;
- H. Origin of the Equipment/Port of Export;
- I. Caution marks, if necessary; and
- J. Shipping mark.



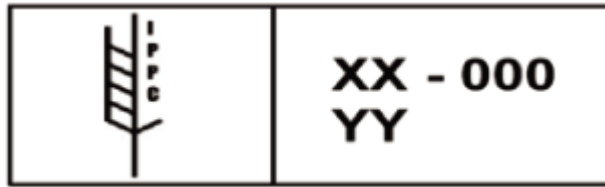
7.3 Wood Packaging. In case of wood packaging materials, the following conditions should be met:

The Quarantine Requirements on Wood Packaging Materials of Imported Consignments Respective packing list shall be attached on each wood packing container.

- Regulated Articles: All non-manufactured wood packaging materials such as pallets, crating, dunnage, packing blocks, etc.
- Exempted Articles: Manufactured wood packaging materials such as plywood, particle board, oriented strand board, veneer, etc.
- Regulated Areas : All countries.
- Requirements: All imported wood packaging materials should be treated by following methods, and present the mark which certifies the approved treatment on two opposite sides of the article.
 - Treatment methods : Heat Treatment (HT) or Methyl Bromide (MB) fumigation according to the Annex I of ISPM No. 15.

ISPM 15 mark

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- The mark should contain the valid symbol approved by IPPC, country code, unique number of the producer/treatment facility assigned by the NPPO of exporting countries, treatment methods (HT, MB).
- Only HT is accepted as a proper treatment for coniferous wood packaging materials from pine wood nematode distributed countries.
 - Subjected countries : Japan, China, Taiwan, US, Canada, Mexico, Portugal, Vietnam (pine wood)

- Non-compliance Measures

Treatment, Disposal or Return to the origin at the expense of the Seller.

7.4 In case that special arrangements are required for unloading, packing, handling, storage and operation of the Equipment, Seller shall recommend to Buyer the required method and procedures to facilitate Buyer's suitable arrangement. In that case Buyer may, if necessary, establish the method and procedures under consultation with Seller.

8. DRAWINGS AND DOCUMENTS

The Seller shall provide to the Buyer:

- A. In the case of manufacturing category MC-4, appropriate drawings, reports, guidelines, manuals, programs, software, and data which are described in the MATTA and the MATTP for assembly of the DFC Components into DFC Modules;
- B. All drawings, manuals and reports shall be complete, neat and legible, for the purpose of their use to permit adequate review, and operation as applicable;
- C. All drawings, manuals and reports shall be in accordance with the Specifications provided in Appendix A.

9. PERFORMANCE GUARANTEES AND ACCEPTANCE TESTS

9.1 Standard Pre-Shipment Factory Inspection and Testing Procedures

9.1.1 Pre-Shipment Factory Test Procedures for DFC Modules . The Seller agrees to provide 30 days advance written notice to Buyer for pre-shipment testing of Modules to be shipped to Buyer pursuant to this Contract. The Seller also agrees to provide written procedures documenting the Seller's standard pre-shipment factory test for DFC Modules.

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The Seller shall conduct normal and standard tests of all materials and the workmanship of all DFC Modules to be supplied under this Contract in accordance with Seller's standard pre-shipment factory test for DFC Modules. Seller shall prepare a Test Report documenting results of the standard pre-shipment factory test for DFC Modules, documenting pass/fail status for each Module as compared with standard acceptance test criteria. The Engineer shall be entitled, at all reasonable times, to witness the Test and to inspect the procedures and results of the Test for the Modules to be supplied under the Contract, and to inspect the packing and marking of such Equipment. The Engineer(s) have the right to reject the failed DFC Stack Module as per the test results. One copy of the Test Report for each Module provided pursuant to this contract shall be supplied to Buyer prior to shipment. A standard form of the Test Report is included hereunder as Appendix C. Such inspection, examination or testing, if made, shall not relieve the Seller from any obligations under the Contract.

9.1.2 Pre-Shipment Factory Inspection Procedures for DFC Components. The Seller agrees to provide 30 days advance written notice to Buyer for pre-shipment inspection of Repeating Components to be shipped to Buyer pursuant to this Contract. The parties shall negotiate in good faith to agree on the standard pre-shipment factory inspection procedures for DFC Components which will be included in the MATTA.

The Seller shall conduct normal and standard inspections of all materials and the workmanship of all DFC Components to be supplied under this Contract in accordance with the standard pre-shipment factory inspection procedures for DFC Components. Seller shall prepare an Inspection Report documenting results of the standard pre-shipment factory inspections for DFC Components. One copy of the Inspection Report for each set of DFC Components provided pursuant to this contract shall be supplied to Buyer prior to shipment. A standard form of the Inspection Report is included hereunder as Appendix D. Such inspection, examination or testing, if made, shall not relieve the Seller from any obligations under the Contract.

9.2 Performance Guarantee for DFC Modules and DFC Components

9.2.1 The guaranteed power output and efficiency for the POSCO Plant final acceptance test at the customer site ("FA Test") shall be set forth in the POSCO Plant Specifications. If after repeated FA Tests over a period of six (6) months from the first FA Test, the POSCO Plant fails to achieve the guaranteed power output and/or efficiency set forth in the POSCO Plant Specifications, for causes solely attributable to the DFC Module or the DFC Components provided by Seller, but achieves at least 95% of the guaranteed power output and/or efficiency, the Contract Price for the DFC Module or DFC Components shall be reduced to reflect the shortfall in either the power output or the efficiency proportionally, whichever shortfall amount is higher.

9.2.2 Liquidated Damage. In the event the POSCO Plant fails to achieve at least 95% of the guaranteed power output and/or efficiency solely due to the fault of the DFC Module or DFC Components after repeated FA tests, Seller shall notify Buyer in writing of the reason for such failure. If the reason is solely attributable to causes related to DFC Module or DFC Components provided by Seller, then Seller shall have a period of six (6) months from the first FA test to take necessary corrective actions and repeat the FA test to achieve greater than 95% of the guaranteed power output and/or efficiency. If at the end of such time period 95% of the guaranteed power output and/or efficiency is still not achieved, then Buyer shall have recourse to Article 16.1 below.

9.2.3 Additional Liquidated Damage Applicable Only to DFC Modules Wholly Manufactured by Seller. In the event that during the commissioning period, excluding the FA test, the commissioning of the POSCO Plant is discontinued due to causes solely attributable to defects of DFC Modules wholly

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manufactured by Seller, the Buyer is entitled to claim liquidated damages per day of Commissioning Discontinuances in an amount equivalent to 0.15% of the price for the total Equipment (e.g in case of 2.4 MW plant, the total equipment is two DFC Modules) provided by Seller. The total amount of liquidated damages payable by Seller to Buyer under this paragraph shall not exceed five percent (5%) of the price of the total Equipment. In the event of Commissioning Discontinuance caused by the defects of DFC Modules wholly manufactured by Seller, Seller should exercise commercially reasonable efforts to eliminate the defects at Seller's own cost; and Buyer shall support Seller to eliminate defects in the most efficient manner. Seller shall provide Buyer with action plans, root causes and corrective actions before and after taking actions.

10. WARRANTIES

10.1 Warranties Against Defects, Etc. The Seller warrants, for a period of eighteen (18) months from the date of EXW shipment, or twelve (12) months from the date of first operation at the installation site, whichever occurs first, that (i) the DFC Modules and DFC Components to be delivered hereunder shall be free from defects in material and workmanship; and (ii) the DFC Modules and DFC Components conform to the DFC Module Specifications and DFC Component Specifications and other requirements set forth in this Contract. If the DFC Modules experience reduction in power output below 90% of rating, averaged over any consecutive 30-day period during the warranty period, for causes solely attributable to Seller, Seller shall use its reasonable best efforts to take corrective actions as provided by the warranty provisions hereunder, to increase the average power output above 90% of rating.

10.2 Remedies for Breach of Warranties Against Defects, Etc.

10.2.1 If any DFC Modules or DFC Components delivered do not meet the warranties set forth in Article 10.1 during the warranty period, the Buyer shall promptly notify the Seller in writing. The Seller shall, at its own expense and cost, correct the defects by: (i) repairing the defective parts of the Equipment, (ii) replacing the defective parts if repair is impossible; or (iii) providing an equitable adjustment of the Contract Price. For the avoidance of doubt, the Seller shall bear all costs and expenses incurred in connection with any of the above corrective measures, including customs clearance at a Korean port, inland transportation from the port to the Site and field labor.

10.2.2 If the Seller does not commence the correction of such defects within 30 days from the date of receipt of notice from the Buyer, and Seller's acceptance of such notice, or does not complete the said correction with reasonable diligence and within a reasonable time, the Buyer may, at its option, correct the defects at the Seller's risk and expense. The Seller shall reimburse the expense incurred by the Buyer for remedy of such defects within thirty (30) days from the date of receipt of the Buyer's invoice.

10.3 Downtime Warranty. If a complete DFC Module wholly manufactured by Seller is forced to continuously or intermittently decrease power output below 50% of the power output at final acceptance ("Downtime"), and if such Downtime is due to causes solely attributable to Seller, then Seller shall be subject to liquidated damages as outlined in this section.

- (A) In the event that the cumulative number of days of Downtime for the DFC Module exceeds forty-five (45) days during the warranty period, Seller shall pay to Buyer an amount of zero point one percent (0.1%) of the applicable individual unit price as indicated in Annex A, for each day of such Downtime exceeding forty-five days as liquidated damages. Liquidated damages for Downtime pursuant to this section shall not exceed ten percent (10%) of the applicable individual unit price as indicated in Annex A. Seller agrees to pay such liquidated damages within thirty (30) days after receiving Buyer's invoice reflecting such claims. Buyer

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agrees that the Liquidated damages shall not be duplicated with the Liquidated damages of the Performance Guarantee of LTSA. During the Warranty period, only the Liquidated damages of Downtime shall be applied.

- (B) Any Downtime attributable in part or in full to the following causes shall not be considered as Downtime attributable to Seller: (i) corrections, modifications and repairs undertaken pursuant to Seller's maintenance obligations; (ii) causes not attribute to Seller which delay commencement or execution of corrective measures; (iii) causes which cannot clearly be identified or proven by the Parties; (iv) failure of the Third Party Owner to comply with the Specifications, Manuals, or with the conditions of the warranty; or outage time wholly or partially due to causes beyond the reasonable control of the Seller.

10.4 General Warranty Provisions

10.4.1 Title Warranty. Seller shall warrant that the Plant(s) and any Equipment and related services are delivered hereunder free from any and all rightful, legitimate and proven claims, demands, liens and/or encumbrances of title. If any failure to comply with this warranty appears at any time, Buyer will give prompt written notice to Seller, and Seller shall defend the title thereto and save Buyer harmless from or reimburse all losses, damages and liabilities of every kind, arising in connection with such failure. This warranty shall be extended during the period of such title defense without limit as to time.

10.4.2 Assignment of Warranty. This warranty may be assigned by the Buyer to the Third Party Owner upon final sale, provided that the terms of the warranty shall be determined in accordance with this Article without regard to any such sale.

10.4.3 Seller shall not be responsible for removal or replacement of any structure or part of the Facility required to perform Seller's warranty obligations under this Contract.

10.5 The Seller does not warrant the DFC Module or DFC Components or any repaired or replacement parts against normal wear and tear including that due to expected degradation in accordance with the Module Specifications, environment or operation, including excessive operation at peak capability, frequent starting/stopping, type of fuel, or erosion, corrosion or material deposits from fluids. The warranties and remedies set forth herein are further conditioned upon (i) the proper storage, installation, operation, and maintenance of the Module and conformance with the Module Specifications and instruction manuals (including revisions thereto) provided by the Seller and/or its subcontractors; (ii) the proper operation and maintenance of the POSCO Plant in accordance with the POSCO Plant Manuals, or in the absence of such POSCO Plant Manuals, the DFC Plant Manuals as applicable; and (iii) repair or modification pursuant to Seller's instructions or approval. Buyer shall keep proper records of operation and maintenance during the warranty period. These records shall be kept in the form of logsheets and copies shall be submitted to Seller upon its request. Seller does not warrant any equipment or services of others designated by Buyer where such equipment or services are not normally supplied by Seller.

10.6 The Seller shall have no obligation to correct, repair and/or replace the DFC Plants, DFC Modules, DFC Components, or any Equipment to the extent a defect or non-conformance is the result of improper assembly, installation or damage resulting from the Buyer's failure to comply with the Specifications, instructions and documentation regarding installation, operation and maintenance of the Module.

10.7 Changes, modifications or alterations by the Buyer or its vendors, suppliers, employees or agents, to the Buyer Plant or its components provided herein, without the written approval of Seller, shall void all

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Seller's obligations and warranties hereunder, and may void third party equipment certifications, including safety, environmental and interconnection.

10.8 Exclusive Remedy. Except as otherwise set forth herein, the remedies set forth in this Article 10 are the exclusive remedies for all claims based on failure of or defect in the Equipment provided under this Contract, whether the failure or defect arises before or during the warranty period and whether a claim, however instituted, is based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES AND GUARANTEES WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

11. LIMITATION OF LIABILITY

11.1 Each party (Indemnitor) agrees to indemnify and hold harmless the other party (Indemnitee) from and against any and all losses, obligations, liabilities, damages, claims which may be asserted against or sustained or incurred by the Indemnitee arising out of or related to any breach of any of the representations, warranties, agreements and covenants made by Indemnitor in this Contract; any bodily injury or death suffered by anyone; any property damage of any third parties; or any wrongful and negligent act of Indemnitor that occurs under this Contract, in an amount not to exceed such plant's Contract Price; provided, any claim under Section 15.1 shall not be subject to any such limitations set forth in this Article 13.1. In no event, whether as a result of breach of contract, warranty, tort (including negligence), strict liability, indemnity, or otherwise, shall either party or its subcontractors or suppliers be liable to the other party for loss of profit or revenues, loss of use of the Plant or any associated equipment, cost of capital, cost of substitute equipment, facilities, services or replacement power, claims of Indemnitor's customers for such damages, or for any special, consequential, incidental, indirect or exemplary damages.

If Seller furnishes Buyer with advice or assistance concerning any products, systems or work which is not specifically required by the Specification, the furnishing of such advice or assistance will not subject Seller to any liability, whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

11.2 If Buyer transfers title to the Facilities to a third party, Buyer shall obligate such third party to be bound by the provisions of this Article to the same extent as Buyer is obligated. In the event Buyer cannot obtain the foregoing for Seller, Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims described in the preceding paragraphs of this Article made by any such third party against Seller.

11.3 The provisions of this Article shall prevail over any conflicting or inconsistent provisions contained in any of the documents comprising this Contract, except to the extent that such provisions further restrict any party's liability.

12. COSTS AND CHARGES

12.1 In case the repair, making good, replacement or modification is required hereunder, the Seller shall at its own expense make available at the Site the replacement parts necessary for the performance of the above.

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12.2 In the event that non-commercial cargo must be shipped due to reasons attributable to Seller's error, e.g. errors in preparation of transport documents, or incorrect negotiation against the transport documents; the Seller shall deliver such cargo to the Site and shall pay all costs including the ocean freight, premium, expenses for inland transportation to the Site, importation taxes, and custom duties.

12.3 In case any vessel arrangement made by the Seller without prior consent by or consultation with the Buyer, the Seller shall bear all associated costs and expenses including the ocean and/or air freight. In cases where Buyer is arranging shipment of equipment, Seller agrees to submit to Buyer in a timely manner the packing lists necessary for Buyer to arrange ship and/or shore cranes.

13. PATENTS, INTELLECTUAL PROPERTY AND CONFIDENTIALITY

13.1 The Seller shall indemnify and hold the Buyer or the Third Party Owner, its employees, engineers and agents harmless against all proximate costs, actions, claims and demands brought by a third party by reason or in consequence of any infringement by the Module or parts thereof, or by the use of process that have been supplied by the Seller as a result of engineering services, any patent, design patent, trade mark or copyright.

13.2 In the event that any claim is made or action is brought against the Buyer or the Third Party Owner, including its employees, engineers and/or agents, relating to such infringement, the Buyer shall promptly notify the Seller thereof and the Seller at its expense and option may request the assistance of the Buyer and shall conduct, on behalf of the Buyer all negotiations for settlement of such dispute or litigation as may arise therefrom.

13.3 If, in such a suit or proceedings, the Module or parts thereof are held to constitute an infringement and the use thereof is enjoined, Seller promptly shall, at its option and expense, either procure for Buyer the right to continue using such Module, or replace such infringing Module with non-infringing Module which are equal to or better than the previous Module, or modify the infringing Module so that they become non-infringing without impairing the quality, performance or any guarantee on the original Module, provided, however, that nothing contained herein shall be deemed to relieve Seller from its warranty obligations under the Contract.

13.4 Intellectual property and confidentiality

A. Terms and conditions for ownership of intellectual property will be according to Article III of the TTA.

B. Use of Confidential Information. Confidential Information may be exchanged between the parties in accordance with Article XI of the TTA.

C. FCE Fuel Cell Stack Module Integrity. The provisions of Section 2.6(e) of the AA shall apply to all Fuel Cell Stack Modules provided hereunder.

14. FORCE MAJEURE

14.1 Should either party be prevented wholly or in part from fulfilling any of its obligations under the Contract for reasons of force majeure, such obligation shall be suspended to the extent and for as long as such obligation is affected by Force Majeure and the party claiming under this Article shall be entitled to

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such extension of time to fulfill such obligation as may be reasonably necessary in view of circumstances, subject to the provisions of notifying the other by fax or email of the date when such delay commenced, and reasons therefore within a reasonable period. The party so affected shall try to use its commercially reasonable efforts to avoid or remove such causes of the force majeure, and to complete performance of its obligations under the Contract with the reasonable promptness whenever such causes are removed.

14.2 If, after ninety (90) days from the date of giving the aforesaid notice, the notifying party shall still be prevented, for the reasons beyond its control, from continuing to perform its obligations under the Contract, then either party shall be entitled to terminate this Contract, without any liability to each other.

14.3 In the event of change in the Contract and/or termination of the Contract under Article 16.3 hereof, the Buyer and the Seller shall agree upon the costs to be borne by either party.

15. DISPUTES AND ARBITRATION

15.1 Any dispute, action, claim or controversy of any kind arising from or in connection with this Contract (the "Dispute") whether based on contract, tort, common law, equity, statute, regulation, order or otherwise, shall be resolved as follows:

(i) Upon written request of any Party, the Parties shall meet and attempt to resolve any such Dispute. Such meetings may take place via teleconference or videoconference. The Parties shall meet as often as the Parties reasonably deem necessary to discuss the problem in an effort to resolve the Dispute without the necessity of any formal proceeding.

(ii) Formal proceedings for the resolution of a Dispute may not be commenced until the later of (i) the Parties concluding in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or (ii) the expiration of a sixty (60) day period immediately following the initial request by either party to resolve the Dispute; provided, however, that this Section will not be construed to prevent a party from instituting formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors or to seek temporary or preliminary injunctive relief.

15.2 If the parties are unable to resolve any Dispute pursuant Section 15.1, shall be finally settled under the Rules of Arbitration (the "Rules") of the International Chamber of Commerce ("ICC") by three (3) arbitrators designated by the parties. Each party shall designate one arbitrator. The third arbitrator shall be designated by the two arbitrators designated by the parties. If either party fails to designate an arbitrator within thirty (30) days after the filing of the Dispute with the ICC, such arbitrator shall be appointed in the manner prescribed by the Rules. An arbitration proceeding hereunder shall be conducted in London UK and shall be conducted in the English language. The decision or award of the arbitrators shall be in writing and is final and binding on both parties. The arbitration panel shall award the prevailing party its attorneys' fees and costs, arbitration administrative fees, panel member fees and costs, and any other costs associated with the arbitration, the enforcement of any arbitration award and the costs and attorney's fees involved in obtaining specific performance of an award; provided, however, that if the claims or defenses are granted in part and rejected in part, the arbitration panel shall proportionately allocate between the parties those arbitration expenses in accordance with the outcomes; provided, further, that the attorney's fees and costs of enforcing a specific performance arbitral award shall always be paid by the non-enforcing party, unless the applicable action was determined to be without merit by final, non-appealable decision. The arbitration panel may only award damages as provided for under the terms of this Agreement and in no event may punitive, consequential and special damages be awarded. In the event of any conflict between the Rules and any provision of this contract, this Contract shall govern.

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16. TERMINATION AND ASSURANCE

16.1 Termination by Breach

16.1.1 If either the Buyer or the Seller should substantially breach the provisions of this Contract, which breach is not cured within sixty (60) days following receipt from the other party of notice of such breach, the other party may, at its sole discretion, immediately terminate this Contract by providing written notice of the party in breach. In addition, if there exist reasonable grounds to doubt either the Buyer's or the Seller's ability to perform its obligations under this Contract in full, then the other party shall have the right to demand assurances for adequate performance. If no such assurances are provided within sixty (60) days of the request, then the party demanding assurances may terminate this Contract on written notice to the other party.

16.1.2 In the event of a payment-related material breach of this Contract by Buyer which extends longer than thirty (30) days after the date payment is due, then Seller may, at its option and subject to stay pending the outcome of any dispute resolution proceeding initiated pursuant to the Article entitled "Disputes and Arbitration" hereunder, either (i) stop work, terminate the Contract for breach and initiate suit for collection of outstanding balances; or (ii) stop work, invoice Buyer in advance for all remaining payments due under this Contract, and continue performance of this Contract upon receipt of such payments from Buyer, with appropriate schedule adjustments needed for any delay;

16.2 The Buyer may terminate all or part of this Contract (or cancel any purchase orders) in the event the parties, in their exercise of good faith and commercially reasonable efforts, fail to enter into the MATTA within 60 days from the date hereof, unless such 60-day period is extended by mutual agreement. In the event of termination (or cancellation) under this Section 16.2:

- (A) Buyer acknowledges and agrees that the Initial Downpayment described in section 4.3.1 hereunder shall be non-refundable;
- (B) Seller acknowledges and agrees that in the event that only part of the Contract is terminated (or cancelled) pursuant to Section 16.2, the Initial Downpayment may be used to set off any payments required for any portion of the Contract that is not terminated (or cancelled) by the Buyer; and
- (C) Seller further agrees that with the exception of the Initial Payment as described in this Section, the Buyer shall not be liable for any costs incurred by the Seller or any other payments required under this Contract.

16.3 When termination of the Contract due to the breach attributable to the Seller becomes effective, Seller shall be responsible for direct costs and non-cancelable commitments (if any) related to installation and assembly of the Module into a complete Plant, which is incurred by Buyer prior to the date of termination. Buyer shall take all reasonable steps to minimize termination costs. In no event, however, shall Seller be obligated to pay Buyer any amount in excess of the total estimated costs up to the time of termination to support the work.

16.4 In the event that the liquidated damage due to the delay in delivery of any Module(s) or any Equipment under Article 6.1.4 has reached the maximum amount, then the Buyer may terminate this Contract upon at least thirty (30) days' written notice to Seller. In full discharge of any obligations to Buyer in respect of this Contract and such termination, Seller shall refund to Buyer all payments theretofore made to Seller. Buyer shall take all reasonable steps to minimize Seller's expenses and shall cooperate with Seller.

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17. ASSIGNMENT AND SUB-CONTRACTING

17.1 Neither party shall, without the consent in writing of the other party, which shall not be unreasonably withheld, assign or transfer the Contract or the benefits or obligations thereof or any part thereof to any person. Any such placing of sub-orders shall not relieve the Seller from its obligations under the Contract.

18. TAXES AND DUTIES

18.1 The Seller shall pay all the taxes, charges, customs duties and tariffs for sale or export of the Modules assessed or imposed on the Seller by the government or other competent authorities of the Seller's country in relation to the Contract, subject to the provisions of Article 6.1.1 above.

18.2 The Buyer shall pay and bear all the taxes, charges, customs, duties and tariffs for the purchase or import of the Modules assessed or imposed on the Buyer by the government or other competent authorities of the Republic of Korea in relation to the Contract.

18.3 In case the Seller is required to collect the VAT from the Buyer, the Seller shall invoice to the Buyer. The Buyer shall then pay such VAT amount to the Seller within thirty (30) days after receipt of the invoice, or shall reimburse the Seller within thirty (30) days after receipt of the Seller's invoice and evidence of payment in case the Seller is required to pay the VAT in advance.

18.4 The Buyer shall bear and pay any kind of taxes, charges and/or commissions (fees) levied on the Seller by Korean Tax Authority in relation to the Modules and/or materials and related services of the Seller. The Buyer shall bear any and all import duties and related taxes imposed by the Korean Government on the imported Modules and/or Materials, and it shall be responsible for any and all matters relating to customs clearance.

19. GOVERNING LAW

The Contract shall be governed, interpreted and construed under the laws of the State of New York.

20. LOCAL LAW COMPLIANCE

20.1 Local Law Compliance

20.1.1 The Seller shall comply with, and cause the Site Technical Advisors to comply with, all applicable laws of the Republic of Korea and any political subdivision thereof, in the performance of its duties under this contract in the Republic of Korea.

20.1.2 The Buyer shall be responsible for obtaining the necessary licenses, permits and authorizations from the applicable Korean governmental authorities to perform its obligations under this Contract.

20.1.3. The Buyer shall be responsible for obtaining all the permits, licenses and authorizations required by the applicable Korean governmental authorities to perform its obligations under this Contract. The parties acknowledge and agree that the FCE Technology (as the term is defined in the TTA) is a new generating technology, with codes and standards still under development; therefore, securing the applicable permits and other authorizations may require significant interaction with and education of the applicable Korean regulatory authorities. The Seller agrees to provide commercially reasonable cooperation to Korean regulatory authorities pursuant to this section.

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21. ADDITION AND AMENDMENT

No modification, alteration, addition or change in the terms hereof shall be binding on the parties hereto, unless it is reduced to writing in the English language and duly executed by the parties hereto in the same manner as the execution of the Contract and subject to such government approval as may be required under the applicable laws and regulations of the countries concerned.

22. NOTICE

All notices pursuant to this Contract including daily communication to be given to either party will be deemed to have been duly given if delivered personally or by internationally recognized courier service, or by facsimile, to the addresses set forth below. Either party may change its address by giving prior notice to the other party in the same manner set forth hereinabove.

For the Buyer:

Commercial Matters
Mr. Tae-Hyoung Kim
Dept. Manager
Strategic Planning Department
POSCO Power
Posteel Tower 20th floor, 735-3, Yeoksam-dong
Gangnam-gu, Seoul 135-080, Korea
phone 82-2-3469-5950
facsimile 82-2-3469-5959
tahykim@poscopower.co.kr

Technical Matters
Mr. Ki Suk Chung
Dept. Manager / Ph. D.
Research & Development Department
POSCO Power
Posteel Tower 20th floor, 735-3, Yeoksam-dong
Gangnam-gu, Seoul 135-080, Korea
phone 82-2-3469-5966
facsimile 82-2-3469-5959
kisukch@poscopower.co.kr

For the Seller:

Mr. Ross Levine, Esq.
Director of Contracts
FuelCell Energy Inc.
3 Great Pasture Road
Danbury, CT 06813
phone 203 825 6000
facsimile: 203 825 6100
rlevine@fce.com

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23. ENTIRE AGREEMENT

The Contract sets forth the entire agreements and understandings between the parties as to the subject matter of this Contract. It supersedes upon effectiveness of the Contract all prior discussions, agreements and understandings of any and every nature between them.

24. PUBLICITY

Neither party shall engage in any advertising, sales promotion, press releases, public announcements, articles for journals or any other publications, or presentation material for any meeting, seminar or conference, or any other publicity matter relating to this Contract wherein the name of the other party, its logo and/or trademark, or that of its parent company or any of its affiliates is mentioned or otherwise identifiable; or wherein any aspect of this project is mentioned or identified, without the prior written consent of the other party.

25. CONSEQUENTIAL DAMAGES

In no event shall either Party be liable to the other for any incidental, indirect, special or consequential damages, however caused, and based on any theory of liability, arising out of or related to the performance of this Contract.

26. INSURANCE

Each Party shall maintain the following insurance coverage written with carriers authorized to insure risks at the Site location, with the other Party named as additional insured, providing thirty (30) days written notification of cancellation:

27.1 Worker's Compensation providing statutory limits and coverage and Employer's Liability, in an amount not less than \$500,000 policy limit; and,

27.2 Commercial General Liability covering bodily injury (including death) and property damage in an amount not less than One Million Dollars (\$1,000,000) per occurrence; including Premises Operations, Contractual Liability, Products and Completed Operations, and Broad Form Property Damage.

27.3 Commercial Automobile Liability in an amount not less than One Million Dollars (\$1,000,000) combined single limit per accident, covering all owned, non-owned, leased, rented or hired autos used in connection with the performance of this Contract.

27. COUNTERPARTS

This Contract may be executed by the parties hereto in separate counterparts, by facsimile or electronically, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

28. SEVERABILITY

In case any one or more of the provisions contained in this Contract is adjudged to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, except to the extent necessary to avoid an unjust or inequitable result.

29. WAIVER

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No waiver shall be deemed to have been made by any party of any of its rights under this Agreement unless the same shall be in a writing that is signed on its behalf by its authorized officer. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the party granting such waiver in any other respect or at any other time.

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

POSCO Power Corporation

FuelCell Energy, Inc.

Soung-Sik Cho
President & CEO
POSCO Power Corporation

R. Daniel Brdar
President & CEO
FuelCell Energy, Inc.

CONFIDENTIAL

ANNEX A

Equipment Description, Contract Price and Delivery Schedule

Item #	Description	EXW Delivery Date	EWX Price (USD per kW)	EWX Price (USD)
1	DFC Module (1.4MW)	01-Jan-10	*	*
2	DFC Module (1.4MW)	01-Jan-10	*	*
3	DFC Module (1.4MW)	01-Mar-10	*	*
4	DFC Module (1.4MW)	01-Mar-10	*	*
5	DFC Module (1.4MW)	01-Mar-10	*	*
6	DFC Module (1.4MW)	01-Apr-10	*	*
7	DFC Module (1.4MW)	01-Apr-10	*	*
8	DFC Module (1.4MW)	01-Jun-10	*	*
9	DFC Module (1.4MW)	01-Jun-10	*	*
10	DFC Module (1.4MW)	01-Jun-10	*	*
11	DFC Components Kit (1.4MW)	01-Aug-10	*	*
12	DFC Components Kit (1.4MW)	01-Aug-10	*	*
13	DFC Components Kit (1.4MW)	01-Sep-10	*	*
14	DFC Components Kit (1.4MW)	01-Sep-10	*	*
15	DFC Components Kit (1.4MW)	01-Oct-10	*	*
16	DFC Components Kit (1.4MW)	01-Oct-10	*	*
17	DFC Components Kit (1.4MW)	01-Nov-10	*	*
18	DFC Components Kit (1.4MW)	01-Nov-10	*	*
19	DFC Components Kit (1.4MW)	01-Jan-11	*	*
20	DFC Components Kit (1.4MW)	01-Jan-11	*	*
21	DFC Components Kit (1.4MW)	01-Feb-11	*	*
22	DFC Components Kit (1.4MW)	01-Feb-11	*	*
			Contract Total Price:	\$58,209,200.00

APPENDIX A

Specifications for DFC® Stack Modules

C1400 Stack Module Specification

1.0 Introduction

This specification document describes the interfaces and functional operation of the C1400 Direct FuelCell ® (DFC®) stack module. The C1400 stack module is comprised of four DFC stack modules, and the associated enclosure and process and electrical connections. *

2.0 Scope

This document describes one C1400 module. The specification provides preliminary dimensional and interface data that can be used for planning and design. Final drawings will be provided as part of formal project data submittal.

3.0 Specifications

3.1 Dimensions and Weights

*

3.2 Mechanical Interfaces

*

3.3 Civil Interfaces

*

Figure 1

Module Foundation Bolt Details from FCE Drawing 12-01

Preliminary, For Planning and Design. Final drawing to be issued during project data submittals

3.4 Electrical and Control Interfaces

*

3.5 Performance Specification

Table 1 summarizes the projected output from the stack module at rated load. *

Table 1

Nominal Stack Module Output at Rated Load

* Confidential information has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for Confidential Treatment.

*

Table 2 (to be modified)

Fuel and Air Gas Flows Needed to Produce Specified DC Output

*

* Confidential information has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for Confidential Treatment.

Table 3

Contaminant Limits for Fuel and Air Process Streams

*

3.6 Stack Module Life

*

Table 4

Life Impacts of Stack Operation Transients

*

* Confidential information has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for Confidential Treatment.

APPENDIX B

Specifications for DFC® Components

C1400 Stack Module Kit Scope Specification

1.0 Introduction

This specification describes scope of supply for Direct FuelCell stack module component kits, which will be used in the assembly of C1400 stack modules.

2.0 Scope

This document describes the component kit for one C1400 module.

3.0 Specifications

3.1 Dimensions and Weights

*

3.2 Component and subassembly listing.

*

APPENDIX C

Standard Pre-Shipment Factory Test Report for DFC® Modules

*

* Confidential information has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for Confidential Treatment.

APPENDIX D

Standard Pre-Shipment Factory Inspection Report for DFC® Components

*

* Confidential information has been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for Confidential Treatment.