

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT
(RFP)

This Mutual Confidentiality and Non-Disclosure Agreement (this “Agreement”) is effective as of _____, 20____ (the “Effective Date”) between _____ (“Bidder”) and Hawaiian Electric Company, Inc., a Hawai‘i corporation (“Company”). In consideration of the mutual promises contained in this Agreement, including the provision of Confidential Information (as defined below) by either party to the other hereunder, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Background

The Company has or intends to issue Request for Proposals (“RFP”) for renewable energy generation on the islands of O‘ahu, Hawai‘i, Mau‘i, and Moloka‘i, State of Hawai‘i. The Bidder has or intends to submit a proposal in response to one or more of the RFPs (the “Proposal”). This Agreement supplements the RFP and is intended to be read and construed in harmony with and in support of the RFP. Terms in the RFP relating to confidentiality remain in full force and effect.

In connection with the Bidder’s Proposal, the Company may conduct an interconnection requirements study (“IRS”) to establish the requirements for interconnection of the Bidder’s proposed renewable energy generation facility to the Company’s electric grid. The RFP process may also result in the award of a potential power purchase agreement, the terms of which must be negotiated and agreed upon by the parties (“PPA negotiations”). For purposes of this Agreement, the term “Project” refers to the RFP, Proposal and potential IRS and PPA negotiations.

As part of the Project, the Company and the Bidder may disclose to each other certain Confidential Information, as defined herein, and the parties are willing to provide such Confidential Information to the other party upon the terms and conditions of this Agreement.

2. Confidential Information

Except as set forth in Section 3 below, “Confidential Information” means all non-public, proprietary or Confidential information disclosed by either party (the “Provider”) to the other party (a “Recipient”) its affiliates and its and their directors, officers, employees, agents, advisors (including, without limitation, financial advisors, counsel and accountants) and controlling entities or individuals (collectively, “Representatives”) whether disclosed orally or disclosed or accessed in written, electronic or other form of media, and whether or not marked or otherwise identified as “confidential”, including, without limitation:

(a) all information concerning the Provider and its affiliates’, and their customers’, suppliers’ and other third parties’ past, present and future business affairs including, without limitation, finances, customer information, supplier information, products, services,

organizational structure and internal practices, forecasts, sales and other financial results, records and budgets, and business, marketing, development, sales and other commercial strategies;

(b) information concerning the Company's generation, transmission, and distribution systems (e.g., engineering and operating characteristics of the Company's transmission lines and substations) ("Critical Infrastructure Confidential Information").

(c) the Provider's unpatented inventions, ideas, methods and discoveries, trade secrets, know-how, unpublished patent applications and other confidential intellectual property;

(d) all designs, specifications, documentation, components, source code, object code, images, icons, audiovisual components and objects, schematics, drawings, protocols, processes, and other visual depictions, in whole or in part, of any of the foregoing;

(e) any third-party confidential information included with, or incorporated in, any information provided by the Provider to the Recipient or its Representatives; and

(f) all notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations and other materials ("Notes") prepared by or for the Provider or its Representatives that contain, are based on, or otherwise reflect or are derived from, in whole or in part, any of the foregoing.

3. Exclusions from Confidential Information

Except as required by applicable federal, state, or local law or regulation, the term "Confidential Information" as used in this Agreement shall not include information that:

(a) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any violation of this Agreement by the Recipient or any of its Representatives; provided, however, that Confidential Information shall not be disqualified as Confidential Information (i) merely because it is embraced by more general or generic information which is in the public domain or available from a third party, or (ii) if it can only be reconstructed from information taken from multiple sources, none of which individually shows the whole combination (with matching degree of specificity);

(b) at the time of disclosure is, or thereafter becomes, available to the Recipient on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information to the Recipient by a contractual or other obligation to the Provider;

(c) was known by or in the possession of the Recipient or its Representatives, as established by documentary evidence, prior to being disclosed by or on behalf of the Provider pursuant to this Agreement; or

(d) was or is independently developed by the Recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Provider's Confidential Information.

The parties acknowledge and understand that the confidentiality obligations of this Agreement apply only to the Confidential Information shared in connection with the Project. The parties may share other information with each other under other agreements, provisions or understandings which are not related to the Project. Such information sharing shall be subject to the provisions of the agreements and confidentiality provisions associated thereto and this Agreement shall not be construed to infringe upon or apply to such agreements or provisions.

4. Non-Disclosure of Confidential Information

Unless otherwise agreed to in writing by the Provider, the Recipient agrees as follows:

(a) except as required by law, not to disclose or reveal any Confidential Information to any person or entity other than its Representatives who are actively and directly participating in the evaluation of the Project or who otherwise need to know the Confidential Information for the purpose of evaluating the Project.

(b) not to use Confidential Information for any purpose other than in connection with its evaluation of the Project or the consummation of the Project.

(c) except as required by law, not to disclose to any person or entity (other than those of its Representatives who are actively and directly participating in the evaluation of the Project or who otherwise need to know for the purpose of evaluating the Project) any information about the Project, or the terms or conditions or any other facts relating thereto, including, without limitation, the fact that discussions are taking place with respect thereto or the status thereof, or the fact that Confidential Information has been made available to the Recipient or its Representatives.

(d) to take reasonable steps to safeguard and protect the confidentiality of the Confidential Information. Before disclosing the Confidential Information to any Representative, the Recipient will inform such Representative of the confidential nature of such information, their duty to treat the Confidential Information in accordance with this Agreement and shall ensure that such Representative is legally bound by the terms and conditions of this Agreement or subject to confidentiality duties or obligations to the Recipient that are no less restrictive than the terms and conditions of this Agreement.

(e) Any provision herein to the contrary notwithstanding, the Company may disclose Confidential Information to the State of Hawai'i Public Utilities Commission ("Commission") and/or the State of Hawai'i Division of Consumer Advocacy (including their respective staffs) provided that such disclosure is made under a protective order entered in the docket or proceeding with respect to which the disclosure will be made or any general protective order entered by the Commission.

5. Required Disclosure and Notice

If the parties or any of their Representatives become legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) or shall be advised by counsel to disclose any of the Confidential Information, the compelled party shall undertake reasonable efforts to provide the other party with prompt notice of such requirement or advice prior to disclosure so that the other party may (a) seek a protective order or other appropriate remedy, (b) consult with the other party with respect to the compelled party taking steps to resist or narrow the scope of such requirement or advice, or (c) waive compliance, in whole or in part, with the terms of this Agreement. If such protective order or other remedy is not obtained, or the other party waives compliance with the provisions hereof, the compelled party agrees to furnish only that portion of the Confidential Information which it is legally required to so furnish and, at the request of the other party, to use reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information, it being understood that such reasonable efforts shall be at the cost and expense of the party whose Confidential Information has been sought. In any event, neither the Bidder nor any of its Representatives will oppose action by the Company to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

6. Return or Destruction of Confidential Information

At any time during or after the term of this Agreement, at the Provider's written request, the Recipient will return to the Provider within thirty (30) business days, all copies of Confidential Information in tangible form received from the Provider in Recipient's or its Representatives' possession or certify within such period that it has destroyed such Confidential Information; provided, however, that the Recipient's sole obligation with respect to the disposition of any Notes shall be to redact or otherwise expunge all such Confidential Information from such Notes and certify to the Provider that it has so redacted or expunged the Confidential Information.

7. No Representations or Warranties

Neither the Provider nor any of its Representatives make any express or implied representation or warranty as to the accuracy or completeness of any Confidential Information disclosed to the Recipient hereunder. Neither the Provider nor any of its Representatives shall be liable to the Recipient or any of its Representatives relating to or arising from the use of any Confidential Information or for any errors therein or omissions therefrom. The Recipient also agrees that it is not entitled to rely on the accuracy or completeness of any Confidential Information and that it shall be entitled to rely solely on such representations and warranties regarding Confidential Information as may be made to it in any final agreement relating to the Project, subject to the terms and conditions of such agreement.

8. No Other Obligations

Neither this Agreement nor the disclosure of the Confidential Information shall result in any obligation on the part of either party to enter into any further agreement with the other with respect to the subject matter hereof or otherwise, to purchase any products or services from the other, or to require either party to disclose any particular information to the other. Nothing in this Agreement shall imply any partnership or joint venture between the parties or be construed as making either party the agent of the other. Either party may offer services which are competitive with products or services now offered or which may be offered by the other. Subject to the express terms and conditions of this Agreement, neither this Agreement nor discussions and/or communications between the parties will impair the right of either party to develop, make, use, procure, and/or market any products or services, alone or with others, now or in the future, including those which may be competitive with those offered by the other. Whether or not the Project is consummated, neither party shall issue a press release or make any statement to the general public concerning such transaction or the absence thereof without the express prior written consent of the other.

9. Property Rights in Confidential Information

All Confidential Information shall remain the sole and exclusive property of the Provider and nothing in this Agreement, or any course of conduct between the parties shall be deemed to grant to the Recipient any license or rights in or to the Confidential Information of the Provider, or any part thereof. Unless otherwise expressly agreed in a separate license agreement, the disclosure of Confidential Information to the Recipient will not be deemed to constitute a grant, by implication or otherwise, of a right or license to the Confidential Information or in any patents or patent applications of the Provider.

10. Publicly Traded Company

The Bidder acknowledges that the Company's holding company is a publicly traded company, and that Confidential Information of the Company may constitute material, non-public information with respect to the Company. The Bidder understands, and will advise its Representatives to whom Confidential Information of the Company is disclosed, of the restrictions imposed by the United States securities laws on (a) the purchase or sale of securities by any person in possession of material, non-public information with respect to such securities, and (b) the communication of material, non-public information with respect to securities to a person who may purchase or sell such securities in reliance upon such information.

11. Remedies

Each party acknowledges and agrees that any breach or threatened breach of this Agreement may give rise to an irreparable injury to the Provider or its Representatives inadequately compensable in damages. Accordingly, in the event of any breach or threatened breach of this Agreement by the Recipient or its Representatives, the Provider shall be entitled to

equitable relief, including in the form of injunctions and orders for specific performance, in addition to all other remedies available at law or in equity.

12. Notice

(a) By delivering written notice, either party may notify the other that it no longer wishes to receive or provide Confidential Information. Any information received or provided by either party following such notice shall not be subject to the protection of this Agreement.

(b) Any notice required or permitted to be given in writing under this Agreement shall be (i) mailed by certified mail, postage prepaid, return receipt requested, (ii) sent by overnight air courier service, (iii) personally delivered to a representative of the receiving party, (iv) sent by facsimile (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 12), or (v) sent by email (provided receipt thereof is confirmed via email or in writing by the recipient) and any such notice shall be deemed given (A) when received if personally delivered or sent by overnight air courier service, (B) on the date of transmission if sent by facsimile transmission, (C) three business days after being deposited in the U.S. mail, certified, postage prepaid and return receipt requested, or (D) when received if sent in an email, the receipt of which has been confirmed by the recipient. All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended, using the contact information provided below or such other contact information as the parties may designate from time to time:

If to the Company:

Hawaiian Electric Company, Inc.
P.O. Box 2750
Attention: Director, Energy Procurement (mail code CP 21 IU)
Facsimile: 808-564-6622
Email: landrfi@hawaiianelectric.com

With a copy to:

Hawaiian Electric Company, Inc.
P.O. Box 2750
Honolulu, Hawai'i 96840
Attention: Legal Department
Email: LegalNotices @hawaiianelectric.com

If to the Bidder:

Bidder: _____
Attention: _____
Telephone: _____
Facsimile: _____

Email: _____

13. No Waiver

No failure or delay by a party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. No waiver of any provision of this Agreement shall be effective unless in writing and executed by the party waiving the right.

14. Governing Law

This Agreement is made under and shall be governed by and construed in accordance with the laws of the State of Hawai'i, and any action brought with respect to the matters contained in this Agreement shall be brought in the federal or state courts located in the State of Hawai'i. Each party irrevocably consents to the exercise of personal jurisdiction over each of the parties by such courts and waives any right to plead, claim or allege that Hawai'i is an inconvenient forum.

15. Assignment Prohibited

This Agreement and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the parties hereto, together with their respective successors and permitted assigns. Neither party shall have the right to assign any of its rights, duties or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of the other party. Any purported assignment in violation of this section shall be null and void.

16. Entire Agreement

This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to each subject matter. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto.

17. Term and Survival

This Agreement shall remain in full force and effect for a period of two (2) years from the Effective Date unless otherwise agreed to by the parties in writing. All confidentiality obligations shall survive following expiration or termination of this Agreement.

18. Severability

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

19. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument binding all parties notwithstanding that all of the parties are not signatories to the same counterparts. For all purposes, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document. This Agreement may also be executed by exchange of executed copies via facsimile or other electronic means, such as PDF, in which case, a party's signature transmitted by facsimile or similar electronic means shall be considered an "original" signature for purposes of this Agreement.

20. Bidder Certification

Bidder hereby certifies the following:

- Bidder is a developer of renewable energy projects or is currently affiliated with a developer of renewable energy projects.
- Bidder is currently licensed to conduct business in the state of Hawai'i .
- Bidder is requesting the Confidential Information solely for the purpose of submitting a proposal in response to one or more of the RFPs to be issued by Company and that such Confidential Information will not be used for any other purpose.

[Signature Page Follows]

IN WITNESS WHEREOF, each party has caused this Agreement to be executed on its behalf by a duly authorized representative, all as of the Effective Date.

Hawaiian Electric Company, Inc.
("Company")

Date: _____

By: _____
Print Name: _____
Its: _____

("Bidder")

Date: _____

By: _____
Print Name: _____
Its: _____