

ATTACHMENT I - Sample Contract (Biodiesel)

SUPPLY CONTRACT FOR BIODIESEL FUEL

This contract ("Contract") is made this _____ day of December 2018 ("Execution Date"), by and between **HAWAIIAN ELECTRIC COMPANY, INC. ("Hawaiian Electric")**, a Hawaii corporation, **HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO")**, a Hawaii corporation, and **MAUI ELECTRIC COMPANY, LTD. ("MECO")**, a Hawaii corporation, (collectively, the "Companies"), and _____ ("Seller"). The Companies and Seller are each a "Party" and collectively the "Parties" to this Contract. This Contract shall become effective as provided in Section 2.3 below.

WHEREAS, the Companies are in the business of generation, transmission and distribution of electrical power on the islands of O'ahu, Hawai'i, Maui, Moloka'i and Lāna'i, State of Hawai'i; and

WHEREAS, Seller is a supplier of Biodiesel with delivery and transportation capabilities that desires to supply and deliver to Hawaiian Electric, HELCO and MECO the Biodiesel that meets the Companies' requirements; and

WHEREAS, Seller represents that it is equipped and has the ability to supply Biodiesel of such suitable type and quality and in a quantity sufficient to meet the Companies' requirements; and

WHEREAS, Seller is willing to sell and deliver such Biodiesel to the Companies, and the Companies are willing to purchase and receive such Biodiesel from Seller, under the terms and conditions set forth hereinafter;

NOW, THEREFORE, it is mutually agreed by the Parties hereto as follows:

ARTICLE I. DEFINITIONS

Except where otherwise indicated, the following definitions shall apply throughout this Contract.

- 1.1. "15-Day Notice" is defined in Section 6.3 below.
- 1.2. "Affiliate", except where otherwise expressly provided, means a corporation controlling, controlled by or under common control with Seller or the Companies, as the case may be.
- 1.3. "Applicable Law" means any and all applicable present and future laws, statutes, rules, regulations, ordinances, orders, codes, judgments, decrees, requirements, grants, concessions, franchises, directives, governmental restrictions or similar norm or decision of or by any Governmental Authority.

- 1.4. "ASC" is defined in Section 19.11(a) below.
- 1.5. "ASTM" means the American Society for Testing and Materials.
- 1.6. "API MPMS" means the American Petroleum Institute's Manual of Petroleum Measurement Standards.
- 1.7. "Batch" is defined in Section 9.2(a) below.
- 1.8. "Batch Lot" means an amount of biodiesel produced and processed into a single holding tank which is capped and sealed for inspection.
- 1.9. "Biodiesel", for purposes of this Contract, shall mean B99 or B100 Biodiesel made or refined from feedstock, which biodiesel meets or is better than the specifications set forth in Attachment E to RFP (Biodiesel Specifications). The biodiesel must not contain petroleum fuels except to the extent required to qualify for an eligible tax credit such as the Alternative Fuels Blenders' Tax Credit. At no time will the biodiesel contain greater than one (1%) petroleum fuel.
- 1.10. "Blender's Credit" is defined in Section 5.3 below.
- 1.11. "Btu" and "Btu content" means the British Thermal Unit and refers to the standard assessment of a fuel's gross heating value or gross heat content.
- 1.12. "Business Day" mean any calendar day that is not a Saturday, a Sunday, or a federal or Hawai'i state holiday.
- 1.13. "B99" means Biodiesel blended with at least 0.1% and no greater than 1% petroleum diesel.
- 1.14. "B100" means 100% Biodiesel with no petroleum diesel added.
- 1.15. "Calendar Month" means the period commencing at 12:01 a.m. on the first day of any month and terminating at 11:59 p.m. on the last day of the same month.
- 1.16. "Certificate of Quality" means the formal document recording Seller's laboratory determinations of the quality and Btu content of a particular sample of Biodiesel which represents a specific Delivery, said laboratory determinations having been performed in accordance with the standard test methods described in this Contract as provided in Section 9.2(a) below.
- 1.17. "Commission" means the State of Hawaii Public Utilities Commission.
- 1.18. "Commission Approval Order" is defined in section 2.2 below.
- 1.19. "Commission Approval Order Date" is the date the Commission files the Commission Approval Order.
- 1.20. "Consumer Advocate" means the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs of the State of Hawai'i.
- 1.21. "Cover Costs" is defined in Section 17.1 below.

- 1.22. "Cover Supplies" is defined in Section 17.1 below.
- 1.23. "Day" or "Days", unless specifically indicated otherwise, refers to calendar days.
- 1.24. "Defaulting Party" is defined in Section 17.1 below.
- 1.25. "Deliver", "Delivery", "Deliveries", or "Delivered" means the delivery of Biodiesel to a Receiving Facility.
- 1.26. "DOT" means the Department of Transportation of the State of Hawaii.
- 1.27. "Effective Date" is defined in section 2.3 below.
- 1.28. "Environmental Credit" means any environmental credit, offset, abatement, or other benefit associated with this Contract, the Production Facility, plantations and/or the Biodiesel and its output allocated, assigned or otherwise awarded by any governmental or international agency to the Companies or Seller based in whole or in part on the fact that the Production Facility and/or any part of the Production Facility is a non-fossil fuel production facility and/or generation facility and/or that Seller produces non-fossil fuel. Such Environmental Credits shall include, but not be limited to, emissions credits, the Alternative Fuels Blenders Tax Credit, any other environmentally related credits and any renewable energy credits
- 1.29. "Event of Default" is defined in Section 17.1 below.
- 1.30. "Execution Date" is defined in the first paragraph above.
- 1.31. "Extension" is defined in Section 2.1 below.
- 1.32. "FASB" is defined in Section 19.11(a) below.
- 1.33. "FASB ASC 810" is defined in Section 19.11(a) below.
- 1.34. "FASB ASC 840" is defined in Section 19.11(a) below.
- 1.35. "First Delivery" means the date of the first delivery of Biodiesel to the Companies under this Contract following the Effective Date.
- 1.36. "Gallon" means a United States liquid gallon of 231 cubic inches.
- 1.37. "GET" means Hawaii State General Excise Tax.
- 1.38. "Governmental Authority" means any nation, government, any state or political subdivision thereof, any federal, state, territorial, municipal or other governmental or quasi-governmental authority, agency, court, or other body or entity of competent jurisdiction.
- 1.39. "Hawaiian Electric" means Hawaiian Electric Company, Inc.
- 1.40. "HECO-NRDC Environmental Policy" means the *Environmental Policy For The Hawaiian Electric Company's Procurement Of Biodiesel From Sustainably Produced Feedstocks* (prepared by Hawaiian Electric and NRDC, revised June 2012), a copy of which is attached hereto as Attachment J to RFP.

- 1.41. "HELCO" means Hawaii Electric Light Company, Inc.
- 1.42. "HEI" means Hawaiian Electric Industries, Inc.
- 1.43. "HSE Data" is defined in Section 14.2 below.
- 1.44. "Independent Inspector" means a qualified third-party fuel inspection contractor acceptable to the Companies and Seller who shall provide fuel sampling and measurement oversight and related services, as set forth in Section 9.8 below.
- 1.45. "Information" is defined in Section 19.11(a) below.
- 1.46. "IRS" is defined in Section 5.3 below.
- 1.47. "MECO" means Maui Electric Company, Limited.
- 1.48. "Non-Defaulting Party" is defined in Section 17.1 below.
- 1.49. "Offsetting Party" is defined in Section 19.12 below.
- 1.50. "Order" is defined in Section 3.2 below.
- 1.51. "Original Term" is defined in section 2.1 below.
- 1.52. "Party" and "Parties" are defined in the first paragraph above.
- 1.53. "Precautionary Sample" is defined in Section 9.2(a) below.
- 1.54. "Production Facility" means any of Seller's Biodiesel processing facilities located in the State of Hawai'i.
- 1.55. "Receiving Facility" means the Companies' nominated delivery site set forth in Attachment A.
- 1.56. "Recipient" is defined in Section 17.10(d) below.
- 1.57. "RFS" is defined in Section 5.4 below.
- 1.58. "RINS" is defined in Section 5.4 below.
- 1.59. "Shelf Life" is defined in Section 4.1 below.
- 1.60. "SOX 404" is defined in Section 19.11(a) below.
- 1.61. "Specification" means the fuel quality specification set forth in Attachment E (Biodiesel Specifications) to RFP.
- 1.62. "Transport Container" is defined in Section 6.2 below.
- 1.63. "USDOT" means the United States Department of Transportation.

ARTICLE II. TERM

Section 2.1 Term: The term of this Contract (the "Original Term") shall be from the Effective Date through and including December 31, 2022 [alternatively, December 31, 2023 may be proposed], and shall continue in succession thereafter for an Extension, each a period of 12-Months, beginning each successive January 1, unless the Companies or Seller give written notice of termination at least one hundred twenty (120) Days before the beginning of any Extension.

Section 2.2 Conditions Precedent: Except as provided in Section 2.3, the Companies' obligation to purchase Biofuel from Seller, and any and all obligations of the Companies which are ancillary to that purchase, are contingent upon the satisfaction of all conditions set forth in this Section 2.2:

(a) Regulatory Approval:

(i) The Companies will file an application with the Commission requesting approval of this Contract following its execution. This Contract is contingent upon the issuance of a decision and order by the Commission that (i) approves this Contract and its pricing and terms and conditions, (ii) is in a final form deemed to be reasonable by the Companies, in their sole discretion; and (iii) allows the Companies to include the reasonable costs incurred by the Companies pursuant to this Contract in their revenue requirements for ratemaking purposes and for the purposes of determining the reasonableness of the Companies' rates and/or for cost recovery above those fuel costs included in base rate through the Companies' respective Energy Cost Adjustment Clause, hereinafter, the "Commission Approval Order".

(ii) Without limiting the foregoing, Seller understands, acknowledges and agrees that the decision and order may not be in a final form deemed to be reasonable to the Companies if it (i) contains terms and conditions deemed to be unacceptable to the Companies, in their sole discretion, (ii) denies or defers ruling on any part of the application before the Commission, or (iii) is not final (or deemed to be final by the Companies, in their sole discretion), because the Companies are not satisfied that no Party to the proceeding in which the decision and order is issued, or other aggrieved person with the right to appeal, intends to seek a change in such decision and order through motion or appeal.

(iii) If the Companies have not received the Commission Approval Order within 360 Days of the date of this Contract, or if the Companies' request for Commission approval of this Contract is denied, then either Seller or the Companies may terminate this Contract by providing written notice of such termination delivered to the other prior to the Effective Date, as it is defined in Section 2.3. In such event of termination, each Party shall bear its own respective fees, costs and expenses incurred prior to termination, if any, in preparation for performance hereunder, and the Parties shall have no further obligation to each other with respect to this Contract except for indemnity and any confidentiality obligations assumed by the Parties hereunder.

(b) Environmental and/or Governmental Approval:

The Companies will seek to obtain any required environmental and/or governmental approvals to use the Biofuel at all facilities for which the Biofuel is intended and Seller shall fully cooperate with the Companies in their effort to obtain such environmental and/or government approvals. This Contract is contingent upon the Companies' receipt of all necessary approvals. If the Companies are not able to obtain all necessary approvals, then the Companies may, at their option and without incurring any liability, immediately terminate this Contract, or reduce the quantity and cost of the Contract by the amount attributable to any facilities for which all approvals were not received.

Section 2.3 Effective Date: This Contract shall become effective (the "Effective Date") upon (a) receipt by the Companies of the Commission Approval Order, (b) receipt by the Companies of all environmental and/or governmental approvals, and (c) written notice of the same to Seller. Alternatively, the Parties may mutually agree in writing that some other date shall be deemed the Effective Date. Except for the obligations and provisions described herein, neither Party shall have any binding obligations under this Contract until the Effective Date, except that the Parties agree upon execution of this Contract to be bound by Sections 2.2 (Regulatory Approval), 13.1 (Force Majeure), 14.1 (Compliance with Laws and regulations), 16.1 (Indemnity) and all provisions in Article 19.

ARTICLE III.
QUANTITY

Section 3.1 Quantity of Biodiesel to be Supplied/Delivered: Subject to the terms and conditions herein, Seller shall sell and Deliver to the Companies, and the Companies shall purchase and receive from Seller, Biodiesel as required by the Companies. The Companies anticipate that the average annual Biodiesel volume required will range up to _____ Gallons during any calendar year of the two (2) year Original Term. The Companies shall have no minimum purchase requirement.

Section 3.2 Nomination and Designation of Delivery Amounts: The Companies shall notify Seller when the Companies need Biodiesel by Delivering to Seller an order that is agreed upon by the Parties. The Companies' Delivery of an Order which complies with this Contract shall bind the Companies to purchase the Biodiesel set forth in the Order. Each Order shall specify the quantity of Biodiesel and the applicable price for such Biodiesel calculated in accordance with this Contract. Seller shall be allowed _____ weeks to Deliver the Biodiesel to _____ upon receipt by Seller of an Order which complies with this Contract.

ARTICLE IV.
QUALITY

Section 4.1 Quality Of Biodiesel To Be Supplied/Delivered: The quality of Biodiesel to be sold and Delivered hereunder shall comply with the Specification attached as Attachment E ("Specification") and meet all Applicable Laws. The Biodiesel shall have at least a six (6) month shelf life from the date of Delivery subject to the Companies' storing and maintaining the Biodiesel at all times in accordance with section X2.7 of ASTM D 6751.

"Shelf Life" is defined as the length of time the Biodiesel will maintain its quality per the Specifications.

All Biodiesel Delivered under this Contract shall comply with Applicable Laws and practices, in accordance with State and Federal requirements, to qualify for any tax-exemptions or tax breaks available for off-road alternative fuels over the Original Term. The Companies shall allow Seller to deduct Seller's reasonable out of pocket costs incurred to qualify for any tax-exemptions or tax breaks available for off-road alternative fuels over the Original Term from the credit amount incorporated into the Biodiesel Price per gallon as defined in Section 5.1. If the quality does not comply with the Specification, Seller will bear all costs associated with its failure to comply. Costs will be determined at the sole and absolute discretion of the Companies.

ARTICLE V. PRICE

Section 5.1 Pricing: **[TBD: See Attachment F to RFP]**

Section 5.2 Alternative Fuel Blender's Tax Credit: In the event that the Internal Revenue Service ("IRS") or any Governmental Authority offers an alternative fuel blender's tax credit or similar credit for using Biodiesel ("Blender's Credit") that is available during the Original Term, Seller agrees to provide the Companies with Biodiesel blended with petroleum diesel as is required to qualify the Biodiesel for the Blender's Credit as long as such blended Biodiesel meets the Specifications. Should such Applicable Law not require blending Biodiesel with diesel to qualify for the Blender's Credit, and there is no reduction in the amount of the Blender's Credit for B100 Biodiesel over B99 Biodiesel, then Seller shall provide the Companies with one hundred percent (100%) Biodiesel from the time of the change through the remaining duration of the Original Term. In the event that the Blender's Credit ceases, then Seller shall provide the Companies with Biodiesel from the time the Blender's Credit expires through the remaining duration of the Original Term. Any Blender's Credit available at the time of Biodiesel receipt at the Companies' Receiving Facility and attributable to and/or based upon the amount of Biodiesel so Delivered to such Receiving Facility shall be passed on to the Companies at one hundred percent (100%) of its value as a reduction to per Gallon Biodiesel Price on Seller's invoice to the Companies. If any Blender's Credit becomes available retroactively and is applicable to Biodiesel already received by the Companies, then one hundred percent (100%) of the credit attributable to and/or based on such Biodiesel shall be passed on to the Companies within thirty (30) Days after Seller receives retroactive credit for the applicable Biodiesel Deliveries as a reduction to the per Gallon Biodiesel Price on Seller's invoice to the Companies.

Section 5.3 Renewable Identification Numbers ("RINS"): Seller will generate RINS for the Biodiesel produced and Delivered pursuant to this Contract. Seller shall give the Companies a discount on the pricing formula as set forth in Attachment F – Pricing Formula in exchange for Seller retaining the RINS associated with such Biodiesel Delivered to the Companies as long as such RINS continue to have value. The Companies agree to waive the right to receive the RINS from Seller and agree to execute any documents necessary to refuse transfer of said RINS. Such RINS shall become the property of Seller upon



application of the discount. The Companies acknowledge that they relinquish all rights of ownership of the refused RINS and all ownership rights shall remain with Seller. Seller shall have the right to dispose of such RINS as Seller determines in its sole discretion within the guidelines of the Renewable Fuel Standards program ("RFS") administered by the Environmental Protection Agency. If the RFS regulations for RINS is modified or terminated, then to the extent that Seller does not and in good faith determine that it will not receive, for any reason, the value from RINS that was taken into account in determining the price per gallon of Biodiesel with respect to any Delivery of Biodiesel, then Seller shall invoice the Companies for the amount of the RINS discount that was deducted in determining the price per gallon of such Biodiesel but that will not be received. The Companies shall pay such invoice amount within thirty (30) Days of the Companies' receipt of such invoice.

Section 5.4 Environmental Credit: To the extent not prohibited by Applicable Law, any current and/or future Environmental Credit that is attributable to and/or based upon the amount of Biodiesel sold and Delivered to a Receiving Facility shall belong to and/or become the property of the Companies. Seller shall use its commercially reasonable efforts to ensure that such portion of such Environmental Credits are vested in the Companies, and shall execute all documents, including, but not limited to, documents transferring such portion of such Environmental Credits, without further compensation, provided, however, that the Companies agree to pay for all reasonable costs associated with such efforts and/or documentation.

Section 5.5 Rounding: All prices, price formula component value averages and other sums payable with respect to Biodiesel purchased hereunder, shall be stated in the nearest hundredths of a dollar unless specifically provided otherwise.

ARTICLE VI. DELIVERY

Section 6.1 Shipping and Transport: Seller shall Deliver, at its cost, Biodiesel using 6000 (approximate) Gallon ISO containers on suitable container chassis (each, a "Transport Container"), or using tanker trucks loaded from a bulk terminalling facility, to the Companies at their Receiving Facility fuel delivery receiving truck manifold for discharge of the fuel upon arrival at the Facility. Seller will be responsible for providing 4" Kamlock fittings on the Transport Containers or tanker trucks capable of connecting to the Companies' 4" male Kamlock fitted hose. The Companies will not provide a storage or staging site for the Transport Containers and will not take ownership of the Transport Containers. All Biodiesel is expected to be Delivered to the Receiving Facility within TBD weeks after Seller's receipt of an Order. Fuel Deliveries to the Companies shall normally occur during the hours of 0600-1800, Monday to Friday, unless otherwise agreed to by the Companies.

Section 6.3 Coordination: Deliveries shall be made by Seller from Seller's Transport Container(s) through and to the Companies Receiving Facility fuel delivery receiving truck manifold. The Parties shall mutually coordinate the Delivery of Biodiesel jointly with Seller's designated transporter(s). Seller shall provide the relevant contact information of the individual person at its designated transporter. The Companies shall copy

such designated person on all communications relating to the transport and logistical details of the Biodiesel Delivery. Transport scheduling shall be flexible in an attempt to meet the Companies' operational requirements. The Companies or their designated shipping agent shall notify Seller and its transporter in writing of the designated receiving arrangements for each Transport Container or tanker truck prior to loading of such Transport Container or tanker truck for Delivery to the Companies' Receiving Facility.

Seller shall provide The Companies a specific (5) Day delivery window upon no less than fifteen (15) Days' notice prior to the first Day of the proposed shipment period ("15-Day Notice") for Delivery of each Transport Container or tanker truck to the Companies' Receiving Facility. The Companies may reject the proposed delivery window upon providing Seller notice, no later than two (2) business days from the receipt of Seller's 15-Day Notice, supply an alternate one (1) Day delivery window, provided that the (1) Day period is within three (3) Days of the date of Seller's first proposed five (5) Day delivery window. Notices may be given by electronic mail, facsimile or telephone.

Seller's Delivery of Transport Containers by ocean going vessel and truck shall comply with all applicable federal, state and local laws, rules and regulations. The Companies shall provide Seller with the Receiving Facility's operations manual, truck and Transport Container acceptance standards and any other applicable safety and operations procedures and acceptance standards, and any amendments thereto, during the term of this Contract.

Section 6.4 Compliance: Seller's Delivery by Transport Containers shall comply with all Applicable Laws. The Companies shall provide Seller with the Receiving Facility's operation manual, Transport Container acceptance standards and any other applicable safety and operations procedures and acceptance standards, and any amendments thereto, during the Original Term.

ARTICLE VII. SELLER'S REPRESENTATIONS AND WARRANTIES

Section 7.1 Seller's Representations and Warranties: The Companies are willing to purchase the Biodiesel on the condition that Seller agrees, represents and warrants as follows:

- (a) Ability to Supply: During the Original Term, Seller shall maintain in full force and effect the capability to supply Biodiesel sufficient to meet Seller's obligations under this Contract. Upon the Companies' reasonable request, Seller shall provide the Companies assurances of Seller's ability to perform under this Contract.
- (b) Quality: All Biodiesel Delivered hereunder shall comply with the terms of this Contract.

- (c) Ability to Deliver: During the Original Term, Seller shall own, lease or have the right to use facilities and Transport Containers sufficient to meet Seller's Delivery obligations under this Contract.
- (d) Seller's Transport Containers Condition/Service: (1) Seller, and if applicable, Seller's nominated transport providers employed to Deliver the Biodiesel to the Receiving Facility, shall comply with all Applicable Laws in their performance hereunder, (2). Seller warrants that all such Transport Containers used for Deliveries shall be roadworthy, in good operating condition, and shall meet best industry, USDOT and DOT, as the case may be, and Commission safety standards, including road and off-road fuel spill and accident emergency response plans; (3) Seller warrants that it has access to adequate and sufficient substitute Transport Containers, and associated equipment, such that Delivery service will not be interrupted by removal from service of the primary Delivery vehicle(s); (4) Seller warrants that its Transport Containers are equipped with quick disconnect Kamlock hose fittings and high flow nozzles for the discharge of Biodiesel at the Receiving Facility; (5) Seller will make every commercially reasonable effort to maintain its Transport Containers and drivers engaged in the Delivery of Biodiesel to the Receiving Facility in a neat, clean and presentable fashion; (6) Seller shall ensure that all drivers of such vehicles shall be equipped with and properly utilize Nomex fire retardant coveralls, hardhat, safety glasses, and gloves; (7) Seller agrees further that all drivers shall be equipped with a functional cellular phone (Note: Cellular phones shall not be used during loading and discharge operations); (8) Seller shall ensure that all Transport Containers shall be equipped with the appropriate oil spill containment equipment, including but not limited to, spill sorbents and spill containment booms; and (9) Seller agrees to use, and cause its transporter to use, all prudent and industry standard operating practices and procedures during the loading, transport and unloading of Biodiesel from the Seller's facility to the Receiving Facility. The Companies reserve the right to periodically inspect and review the Transport Containers, related equipment, and driver records, inspect and review all operations related to the Delivery of Biodiesel to the Receiving Facility (or Receiving Facilities) under this Contract, and review quantities loaded and discharged. Said inspection and review does not substitute for or diminish Seller's own responsibility and liability for compliance with all Applicable Laws. If such inspection and review is to occur at Seller's Production Facility, such inspection and review shall occur during normal business hours and the Companies shall give Seller not less than twenty-four (24) hours prior notice of such inspection and review.
- (e) Transport Container Drivers: All of Seller's truck drivers are required to provide to the Companies their true Social Security number to apply for and to pass a criminal background check and the Parties shall coordinate with each other to accomplish the foregoing. Upon approval, truck drivers will receive an unescorted contractor access badge to Deliver Biodiesel to Receiving Facilities. Unescorted access to Receiving Facilities is granted at the Companies' sole discretion. Annual renewal of the unescorted contractor access badge, which will include an updated criminal background check, is required. If the Companies determine, in their sole and absolute discretion, that participation in the Contract by, or presence on the Companies' premises or premises of a designated

Receiving Facility of, an employee or equipment of Seller is inconsistent with the best interests of the Companies, the Companies shall so inform Seller, stating the reasons for its determination, and Seller shall replace any employee or equipment immediately and replace with an employee or equipment that fully meets the standards under this Contract and at no additional cost to the Companies.

- (f) Security and the Companies' Rules: When on the Companies' premises, on premises of a designated Receiving Facility, or carrying out Seller's duties hereunder, Seller and its personnel shall comply with all applicable provisions of the Companies' Code of Conduct, security regulations and all other applicable Company policies and practices that the Companies' personnel are asked to follow. Promptly following the Execution Date, the Companies shall provide full and complete written sets of such policies and practices. Seller shall advise its employees of these practices and procedures. Unless otherwise agreed to by the Parties, Seller's personnel shall observe the working hours of the designated Receiving Facility while working on the premises of the Receiving Facility. Seller agrees to cooperate fully and to provide any assistance necessary to the Companies in investigation of any security breaches which may involve Seller or Seller's employees in their performance hereunder.

Section 7.2 Environmental Sustainability:

- (a) Feedstock: Seller shall supply Biodiesel that complies with the requirements of the HECO-NRDC Environmental Policy, see Attachment J – Environmental Policy. In addition, Seller shall supply Biodiesel that complies with the Principles and Criteria of the Roundtable for Sustainable Biofuels. Seller must maintain a clear, documented and verifiable chain of custody for all feedstocks.
- (b) Modifications: The Parties may, from time to time hereinafter, mutually agree in writing to utilize additional and/or other criteria, guidelines and/or other regulations with respect to which environmentally sustainable production methods and practices may be evaluated and/or certified for purposes of this Contract.
- (c) Remedy: In addition to any other remedies available under this Contract and at law and/or equity, Biodiesel not certified as required herein, or otherwise not meeting the sustainable environmental standards warranted may be rejected by the Companies in accordance with the terms and procedures set forth in Section 9.4. Seller shall cooperate with any reasonable request by the Companies to provide documentation verifying the source and constituents of the feedstock.
- (d) Certification: Seller represents and warrants and will certify that all feedstock used to produce the Biodiesel Delivered under this Contract complies with the feedstock requirements specified in Section 7.2(a). Any certifications that the Companies may require under this Section 7.2(d) shall be made by an officer of Seller (acceptable to the Companies in their reasonable discretion) for each Delivery of Biodiesel to the Companies. Such certifications shall be in form and substance acceptable to the Companies in their reasonable discretion.

ARTICLE VIII. DETERMINATION OF QUANTITY

Section 8.1 Measurement of Quantity: The quantity of Biodiesel sold and purchased under this Contract shall be determined at the time of the discharging of each Transport Container or tanker truck by the Companies' automated discharge rack control system at the Receiving Facility which shall employ calibrated meters, corrected in each instance to measure volume in U.S. gallons consisting of two hundred thirty-one (231) cubic inches when corrected to sixty degrees Fahrenheit (60° F). All gauging, sampling and testing of the Biodiesel shall be performed in accordance with the latest methods of the American Petroleum Institute's Manual of Petroleum Measurement Standards (API MPMS) and the American Society for Testing and Materials (ASTM). All quantity determinations shall be made in accordance with then currently applicable ASTM methodology. The actual quantity received and Delivered shall be the measured quantity reported in Gallons at 60 degrees Fahrenheit (60° F). However, it is recognized that volume correction factors and other measurement standards for bulk Biodiesel movements have yet to be fully developed or universally adopted. The Parties agree to mutually consider and implement such standards when and as applicable.

The Companies shall perform normal maintenance procedures to maintain the accuracy of the meters used to measure the quantity of Biodiesel discharged from Transport Container(s) or tanker truck(s) for Delivery to the Companies. The Companies, also at their own expense, shall test for accuracy and calibrate the meters on a semi-annual basis or as required and agreed by the Parties. The Companies shall provide Seller with a written schedule of calibration test times and Seller shall have the right to have its representative present to observe each calibration test.

Section 8.2 Quantity Disputes: If Seller or the Companies have reason to believe that the quantity of Biodiesel for a particular Delivery is inaccurate by an amount in excess of 0.5%, that Party shall within five (5) Days of the date of Delivery, present the other Party with documentation supporting such determination and the Parties will confer, in good faith, on the causes for the discrepancy and shall proceed to correct such causes and adjust the quantity, if justified for the transport container or tanker truck Delivery in question. If the period of time for which the material inaccuracy cannot be definitely known and is not mutually agreed upon, the correction shall be prorated on a 50% basis over the time elapsed between the last prior calibration test and the date the inaccuracy is corrected. Any invoice previously issued by the Seller on the basis of an inaccurate volume determination shall be promptly adjusted by Seller.

ARTICLE IX. DETERMINATION OF QUALITY

Section 9.1 Biodiesel Quality: All samples, measurements and determinations referenced in this Article IX shall be drawn, taken and made, respectively, under the supervision of the Independent Inspector. Seller and the Companies shall share equally the cost of independent inspections. The quality of Biodiesel sold and Delivered to the Receiving Facility shall comply with the Specification and Section 4.1.

Section 9.2 Precautionary Sampling Prior to Loading: In order to reduce the likelihood of Seller's Delivery resulting in quality problems arising in the receiving tank(s) at the Receiving Facility, Seller agrees to use, and cause its transporter to use, all prudent and industry standard operating practices and procedures during the loading, transport and unloading of Biodiesel from Seller's facility to the Receiving Facility. Seller shall, or shall cause its transporter to, thoroughly maintain, clean and prepare all Transport Containers or tanker trucks consistent with such industry standard operating procedures.

Testing shall be conducted on Biodiesel and certified on the representative biodiesel lot to be Delivered with sampling performed prior to loading of the biodiesel into Transport Containers or prior to loading of terminalled biodiesel into tanker trucks using the following procedure:

- (a) The quality and Btu content of the Biodiesel Delivered by Seller's Transport Containers to the Receiving Facility shall be determined on the basis of a volumetric weighted average composite of samples drawn from Seller's tank(s) issuing Biodiesel to the truck loading system at Seller's facility in such a manner as to be representative of the Biodiesel contained in said issuing tank since the time of that tank's most recent receipt of Biodiesel ("Batch"). A Sample ("Precautionary Sample") shall be drawn under the supervision of the Independent Inspector from Seller's tanks in such a manner as to be representative of (i) the Biodiesel contained in said issuing tank since the time of that tank's most recent receipt of Biodiesel, and (ii) the Biodiesel after the arrival at Receiving Facility, but prior to commencement of loading from the Transport Container. The Precautionary Sample shall be divided into a minimum of three (3) parts as follows:
 1. One part shall be provided to Seller's laboratory for analysis to determine Btu content per Gallon and quality;
 2. One part shall be provided to the Companies, or at the Companies' option, the Companies' designated laboratory, for analysis for the purpose of verifying Seller's Btu content and quality determinations; and
 3. At least one part shall be sealed and provided to the Independent Inspector to be retained for a period of not less than ninety (90) Days.

Seller agrees to provide the Companies and the Independent Inspector with the results of its determinations (a "Certificate of Quality") representing the quality of the Precautionary Sample no later than the earlier of (i) seventy-two (72) hours after the completion of the loading of Seller's Transport Container(s), or (ii) one (1) business day prior to the first Transport Container Delivery of Biodiesel loaded from said Batch. Should Seller's laboratory be unable to determine the Biodiesel to be Delivered conforms with the Specifications within such a period, the Companies shall not be obligated to receive or store any nonconforming Biodiesel on Seller's behalf. It is expressly understood and agreed that the Companies shall have no obligation to accept any Biodiesel for which Seller has not provided the Certificate of Quality required by this Section 9.2(a).

- (b) Seller agrees that should its laboratory testing of the Precautionary Sample indicate a potential quality problem, including but not limited to, a quality as determined that does not conform to the Specification, the Transport Containers will not ship to the Receiving Facility until such time as the loaded Biodiesel is determined to conform to the Specifications.
- (c) Seller agrees to provide the Companies with the information necessary to reference Seller's Biodiesel Batch lot to the Biodiesel held in each specific Transport Container.
- (d) If Seller's tank(s) issuing Biodiesel to the truck loading system at Seller's Production Facility receive additional Biodiesel or any other material, the loading of Transport Containers for the Delivery of Biodiesel by Seller to the Receiving Facility must stop immediately on the basis that a new, different Batch of Biodiesel will be deemed to have been produced by Seller. In such case, this new Batch shall be sampled, such samples analyzed and quality documented and reported as provided herein before Biodiesel from said new Batch shall be loaded in a truck for Delivery by Seller to the Receiving Facility.
- (e) In addition, the Companies, in their sole and absolute discretion, may, at any time and from time to time, take a sample from any Transport Container prior to the Transport Container Delivering the Biodiesel to the Receiving Facility.

Section 9.3 Tampering: The Transport Containers shall be adequately sealed upon loading at Seller's Production Facility such that tampering which could introduce an outside contaminating substance into the Transport Container(s) of the Biodiesel while en route to the Receiving Facility would be evident upon arrival for Delivery. Should a Transport Container(s) arrive at the Receiving Facility with evidence of tampering, the Companies reserve the right to perform a precautionary sampling with an independent laboratory before accepting Delivery of the Biodiesel and the Companies shall promptly provide Seller written notice that tampering may have occurred. Within five (5) business days of initial attempted Delivery of the Transport Container(s), the Companies must accept Delivery of the Biodiesel or present Seller a certificate of analysis from an independent laboratory representing the quality of the precautionary sampling and reject such Delivery if the Biodiesel quality does not conform to the Specifications. In the event the certificate of analysis indicates the Biodiesel does not conform to the Specifications, the Companies shall have no obligation to receive, store, or pay for such Biodiesel.

Section 9.4 Quality Dispute: If Seller or the Companies have reason to believe that the quality of Biodiesel Delivered does not meet the Specifications or that the quality of Biodiesel stated in the Certificate of Quality is incorrect such as but not limited to a case where the arithmetic difference between the Companies' and Seller's laboratory determination is greater than the then existing reproducibility standard for the appropriate test method specified herein, then that Party shall within three (3) business days after the issuance date of the complete Certificate of Quality, present the other Party with documents supporting such determination and the Parties will confer, in good faith, on the causes for the discrepancy and shall proceed to correct such causes. In the event of an unresolvable difference between Seller and the Companies, the sealed part of the Precautionary Sample

in the possession of the Independent Inspector shall be provided to an independent testing laboratory for an official determination, which shall be final and binding upon both Parties. Seller and the Companies shall share equally the costs of such independent tests and determinations.

Section 9.5 Remedy: If a quality problem occurs or if the quality of the Biodiesel received by the Companies from Seller fails to conform to the Specifications, the Companies shall promptly notify Seller in writing or by telephone call followed up with a written notice, stating the basis for its determination that there is a potential quality problem. Seller and the Companies shall promptly meet and in good faith attempt to minimize the impact of any such quality problem. At the Companies' sole and absolute discretion, such efforts may include Specification waiver. Notwithstanding the preceding, the Companies shall always have the right to refuse Delivery of any Biodiesel that the Companies in good faith shall have reason to believe does not meet Specifications. If all such and similar efforts fail to resolve the quality problem, the Companies may return non-conforming Biodiesel to Seller at the Receiving Facility, in which case Seller shall replace the non-conforming and other downgraded Biodiesel in a timely manner with Biodiesel meeting the required quality Specifications. All costs and expenses of remedying the Delivery of non-conforming Biodiesel, or arising from non-conforming Biodiesel (including, without limitation, the testing, transportation, re-refining, and handling costs incurred in returning, replacing or otherwise correcting off-specification Biodiesel, the emptying and cleaning of storage tanks containing non-conforming Biodiesel or the Companies' Biodiesel downgraded by commingling with the non-conforming Biodiesel if reasonably necessary) shall be paid by Seller. Any remedy of non-conforming Biodiesel accepted by the Companies under this Section shall not operate or be construed to remedy any similar non-conforming Biodiesel or to change the Specifications of Biodiesel acceptable to the Companies under the terms of this Contract. In addition, the Companies shall not be obligated to pay for any Biodiesel that fails to meet the Specifications.

Section 9.6 Records/Right to Audit: Seller shall retain any and all documents and records regarding the Delivery, quantity and quality of Biodiesel sold and purchased under the terms of this Contract for the twelve (12) months after the date of the invoice for such Biodiesel, or until any dispute regarding such Delivery, quantity and quality is resolved. Seller shall promptly make such records available for review to the Companies at their request. Biodiesel records maintained by Seller shall include but not be limited to daily reconciliations of Biodiesel quantities as measured in the issuing tank(s) and as metered at the truck loading system at Seller's Production Facility.

Section 9.7 Inspection: The Companies may be represented and participate in all sampling, quality, inspection, measurements and tests of Biodiesel which may be conducted pursuant to this Contract and to inspect any equipment owned or controlled by Seller and used in determining the quantity, quality or heat content of Biodiesel, provided that any such participation by the Companies shall not materially interfere with or otherwise disrupt such inspection, measurement and tests conducted by Seller. The Companies may, upon reasonable notice to Seller and during normal business hours and at the Companies' expense, inspect and audit any sample analysis of Biodiesel, including records and data used in the preparation of such analysis.

Section 9.8 Independent Inspector: SELLER and the Companies shall mutually



agree on the Independent Inspector. All samples, measurements and determinations samples shall be drawn, taken and made, respectively, with respect to each designated Delivery and any other provision of this Contract shall be under the supervision of the Independent Inspector, who shall attend designated Biodiesel Deliveries. Reasonable charges for services rendered by the Independent Inspector shall be borne equally by the Companies and SELLER.

ARTICLE X. INVOICING AND PAYMENT

Section 10.1 Invoicing: Invoices will be prepared and dated following Delivery of Biodiesel to the Companies and shall be sent by mail to the Companies at the following addresses:

Hawaiian Electric: Hawaiian Electric Co., Inc.
P. O. Box 2750
Honolulu, HI 96840-0001
Attn: Director of Fuel Operations, mailstop: CIP- IF
Facsimile: 808-203-1796

HELCO: Hawaii Electric Light Co., Inc.
P. O. Box 1027
Hilo, Hawaii 96721-1027
Attn: Production Department
Facsimile: 808-969- 0425

MECO: Maui Electric Company, Ltd.
P. O. Box 398
Kahului, Hawaii 96732
Attn: Production Department
Facsimile: 808-422-4975

Invoices shall be accompanied by full documentation, acceptable to the Companies, including quantity documentation and price calculation.

Section 10.2 Payment: Payment of Seller's invoice(s) shall be made by bank wire transfer of immediately available funds in U. S. Dollars. Timing of payments for sales and Deliveries received shall be based upon net thirty (30) Days of the invoice issue date, which shall be the later of the invoice date or the postmarked mailing date of the invoice. Details about the Seller's banking information will be mailed to Hawaiian Electric's Treasury Division in accordance with the notice requirements set forth in section 18.1 below before the first invoice is postmarked.

Due dates are dates payments are to reach Seller. If the due date falls on a Friday, holiday or a Saturday, the payment shall be due on the preceding business day. If such date falls on a Sunday or a holiday falling other than on a Friday, payment shall be due the following business day.

If a debit memo incorporating an adjustment to a previously issued invoice has been sent to the respective Company subsequent to said Company making payment of said original invoice, then said Company shall make payment in accordance with the provisions of this Section 10.2. If a credit memo incorporating an adjustment to a previously issued invoice has been sent to a respective Company subsequent to said Company making payment of said original invoice, the said Company shall have the option to apply such credit against payments to be made subsequent to the receipt of the credit, or if such payments are not expected to be made within twenty (20) Days, said Company shall be able to receive said credit in immediately available funds within three (3) business Days of Seller's receipt of said Company's written instructions.

If an invoice incorporating an item at variance with the documentation, or is disputed, has been sent to the respective Company, the said Company shall hold said invoice without penalty until such error, variance with documentation or dispute is resolved and said Company shall have received a corrected invoice or debit or credit issued subsequently to the original invoice. Said Company shall make payment for such subsequent invoices or debit in accordance with this Section 10.2.

ARTICLE XI. TITLE, CUSTODY AND RISK OF LOSS

Section 11.1 Title, Custody and Risk of Loss: Care, custody, control, title and risk of loss shall pass to the Companies at the point at which the Biodiesel passes into the Companies' receiving/intake flange/hose at the Receiving Facility.

ARTICLE XII. INSURANCE AND BOND

Section 12.1 Seller's Insurance Coverages: Seller shall, at its sole expense including the expense of deductibles, premiums, calls and policy charges, procure and maintain the following insurances for the duration of this Contract:

- (a) Standard Workers Compensation and Employers Liability Insurance endorsed to be applicable to the state of Hawaii as well as the Longshore Act, with statutory limits for workers compensation and limits of \$5,000,000 per occurrence for employers liability.
- (b) Automobile Liability Insurance on all owned, non-owned and hired vehicles used in conjunction with the Delivery of Biodiesel to the Companies with a bodily injury and property damage combined single limit per occurrence of at least FIVE MILLION DOLLARS (\$5,000,000).
- (c) Commercial General Liability Insurance with a bodily injury and property damage combined single limit of liability of at least FIVE MILLION DOLLARS (\$5,000,000) for any occurrence. Such insurance will include coverage in like amount for

products/completed operations, contractual liability, and personal and advertising injury. "Claims made" policies are not acceptable.

- (d) Other Coverage. Seller and anyone acting under its direction or control or on its behalf shall at its own expense procure and maintain in full force and effect at all times during the Original Term on all owned, non-owned and hired vehicles used in conjunction with the Delivery of Biodiesel to the Companies, any other insurance or surety bonding that may be required under the laws, ordinances and regulations of any governmental authority, including the Federal Motor Carrier Act of 1980 and all rules and regulations of the DOT and/or the USDOT.

When Delivery requires carriage over navigable waters, Seller's nominated vessel shall, at its sole expense including the expense of deductibles, premiums, calls and policy charges, procure and maintain the following insurances for the duration of this Contract:

- (e) Cargo insurance, which is to remain in force during the period of time from the moment the Biodiesel is loaded onto Seller's nominated vessel at the loading port until title to and risk of loss of the Biodiesel passes to the Companies in accordance with Section 11.1. Such insurance shall cover all of the risks covered under a standard Lloyd's Maritime Insurance policy, including all the denominated "Institute Cargo Clauses" (Free of Particular Average, F.P.A. and clauses referring to wars, strikes, riots and civil disturbances),
- (f) Marine and War Risk Hull & Machinery coverage (including 4/4ths Collision Liability) subject to an Amount Insured not less than the full value of the vessel.
- (g) Full form Protection & Indemnity Insurance, including Excess Collision, pollution/environmental risk coverage, upon the vessel pursuant to a standard Protection & Indemnity Club entry, with a Club which is a member of the International Group of Protection and Indemnity Clubs, with minimum limits for pollution/environmental risks to be \$ 1,000,000,000 per occurrence or the maximum commercially available, whichever is greater

Section 12.2 Insurance Paid: Premiums for all necessary insurance policies are included in the Delivered price of Biodiesel as determined in Section 5.1. No special payments shall be made by the Companies to Seller in respect to such premiums.

Section 12.3 Evidence of Insurance: Seller agrees to issue, or cause to be issued, to the Companies, Certificates of Insurance evidencing compliance with this Article XII no later than thirty (30) Days prior to the loading of the Biodiesel to be sold and Delivered to the Companies onto Seller's Transport Container.

Section 12.4 Waiver of Subrogation: Seller and anyone acting under its direction or control or on its behalf will cause its insurers (except for Worker's Compensation insurance) to waive all rights of subrogation which Seller or its insurers may have against the Companies, the Companies' agents, or the Companies' employees.

Section 12.4 Hawaiian Electric, HELCO and MECO As Additional Insured: Insurance policies (except for Workers Compensation insurance) providing the insurance coverage required in this Contract will name the Companies, the Companies' agents or the Companies' employees as an additional insured. Coverage must be primary in respect to the additional insured. Any other insurance carried by the Companies will be excess only and not contribute with this insurance.

Section 12.5 Certificates of Insurance: Before performance of this Contract, Seller shall file with the Companies' designated representative certificates of insurance, or other documentary evidence acceptable to the Companies, certifying that each of the foregoing insurance coverages is in force, and further providing that the Companies will be given thirty (30) Days' written notice of any material change in, cancellation of, or intent not to renew any of the required policies. Seller shall provide new insurance certificates reflecting the required policies prior to the expiration date of any coverage. Receipt of any certificate showing less coverage than required is not a waiver of Seller's obligation to fulfill the coverage requirements.

Section 12.5 Failure to Procure Insurance: In the event Seller fails to procure and/or maintain an insurance as required above, an insurance fails for any reason (including, without limitation, breach of policy condition or warranty) and/or an insurer otherwise refuses or is unable to pay, the Party required to procure that insurance shall be deemed an insurer or self-insurer, shall accept and pay claims which would have otherwise been submitted to the failed insurance and shall indemnify and hold harmless (including legal fees and costs) the other Party of and from any loss, damage, expense, claim, liability and/or suit resulting from such failure.

Section 12.5 Performance Bond/Letter of Credit: A Performance Bond or an Irrevocable Standby Letter of Credit in the form reasonably acceptable to the Companies shall be furnished by Seller and deposited with the Companies in the amount of _____ (\$_____), guaranteeing Seller's full compliance with and performance under this Contract. The Performance Bond or Irrevocable Standby Letter of Credit shall remain in effect from the Effective Date until the end of the Original Term. Said Bond is to be submitted to the Companies no later than thirty (30) Days following the Effective Date.

ARTICLE XIII. FORCE MAJEURE

Section 13.1 Force Majeure: Neither Party shall be liable in any manner for failure to Deliver or to receive Biodiesel hereunder or any other failure to perform or delay in performing any obligations herein imposed in this Contract for the time and to the extent such failure or delay is caused by an event or act of force majeure, which shall be defined as an act of God, hurricane, flood, volcanic eruption, earthquake; war, rebellion, insurrection, riot, strike, lockout; fire, explosion, or destruction from any involuntary cause of The Companies' Receiving Facility or any significant part thereof; or compliance, voluntary or involuntary, with a direction or request of any governmental authority or person purporting to act with government authority, including any such direction or request limiting the Companies' recovery of all fuel costs incurred under this Contract; or any other cause or

causes (except financial) not within the control of the affected Party. A Party rendered unable to fulfill any obligation under this Contract due to an event or act of force majeure shall make all reasonable effort to remove such inability in the shortest possible time.

The Party claiming force majeure agrees to give the other Party prompt written notice of an act or event of force majeure, specifying the anticipated effect and duration of any suspension or reduction of Deliveries of Biodiesel arising therefrom. The Party claiming force majeure shall use due diligence to cure any act or event of force majeure, and shall give the other Party prompt notice when it expects the act or event of force majeure to terminate.

If Delivery is suspended or reduced by Seller pursuant to an event or act of force majeure, it shall not be a breach of this Contract for the Companies to buy Biodiesel from a supplier other than Seller for the quantities of Biodiesel which Seller does not Deliver; and the Companies shall not be obligated to buy, after the period of suspension or reduction, the undelivered quantity of Biodiesel which normally would have been sold and Delivered hereunder during the period of suspension or reduction.

Section 13.2 Option to Terminate: If Delivery of Biodiesel is suspended or reduced pursuant to an event or act of force majeure for more than thirty (30) Days, the Companies shall have the option while such suspension or reduction continues to terminate this Contract on written notice to Seller. If the Companies terminate this Contract pursuant to this Section 13.2, then this Contract shall be terminated and this Contract shall be of no further force and effect and the Parties shall each be relieved of any and all further obligations to each other, save and except for any obligations and liabilities incurred by a Party prior to the date of termination.

ARTICLE XIV. COMPLIANCE WITH LAWS AND REGULATIONS

Section 14.1 Compliance with Laws and Regulations: This Contract is subject to all Applicable Laws. Each Party shall comply with all Applicable Laws which are now or may hereafter be in force and shall be responsible for all costs associated therewith. Without limiting the generality of the foregoing, Seller warrants that with respect to: (a) all owned, non-owned and hired Transport Containers utilized in the performance of this Contract shall be a proper container, labeled appropriately, for the Biodiesel loaded therein; (b) all Transport Container operators, whether Seller's employees or contractors, shall possess a valid current Class A commercial driver's license with the Tank Vehicles, Hazardous Materials and Doubles/Triple Trailers endorsements with no restrictions or the most current and applicable license and endorsements required for performance under this Contract; (c) all Biodiesel Delivered to the Receiving Facility under this Contract shall be transported over routes on which Seller is properly authorized and certificated to travel; and (d) each vehicle operator is alert, rested, in full compliance with Seller's Driver Qualification, Drug and Alcohol Policy, and is properly trained and capable of responding to accidents and oil spills.

If the Delivery or supply of Product pursuant to this Contract conflicts with or is limited or prohibited by any federal, state or local regulations, statutes, rules or permits then to the extent of such conflict, limitation or prohibition, Seller shall have no obligation to Deliver or

supply the Companies with the Biodiesel under this Contract and the Companies shall have no obligation to purchase or receive the Biodiesel under this Contract. The Companies, in the Companies' discretion, may elect to complete and file any and all required Federal or State regulatory forms to permit, facilitate, or enable the supply of Biodiesel to the Companies under this Contract. Seller shall fully cooperate with the Companies in the completion and filing of the foregoing forms. If the Companies' purchase, receipt or use of Biodiesel pursuant to this Contract, or the Companies' emissions from the Companies' use of Biodiesel conflicts with or is limited or prohibited by any Federal, State or local regulations, statutes, rules or permits then to the extent of such conflict, limitation or prohibition, the Companies shall have no obligation to purchase and receive the Biodiesel under this Contract.

Section 14.2 Material Safety Compliance: Seller warrants that it is fully informed concerning the nature and existence of risks posed by transporting, storing, using, handling and being exposed to Biodiesel. Seller shall furnish to the Companies health, safety and environmental information (including without limitation Material Safety Data Sheets, "HSE Data") concerning health, safety and environmental aspects of the Biodiesel purchased by the Companies, including health, safety and environmental warnings, if any, required by applicable law. Seller shall not be entitled to rely upon such HSE Data as being an inclusive presentation of all potential health, safety and environmental risks associated with the Biodiesel to be Delivered. Seller shall furnish HSE Data to, and otherwise inform, Seller's nominated vessel of all such risks, and the Master shall advise and instruct all crew, seamen and employees about the hazards, if any, associated with Biodiesel and the safe and proper methods of handling and storing Biodiesel. Compliance by the Seller with recommendations in HSE Data shall not excuse the Seller from its obligations under Article XVI and this Section 14.2

Section 14.3 Permits and Licenses: Seller shall secure and pay for all required permits and licenses, and shall comply with all applicable federal, state and local statutes, regulations and public ordinances applicable to this Contract, (including the provisions of the Occupational Safety and Health Act of 1970 and all amendments thereto, and the DOT Hazardous Materials Regulations), and shall indemnify, defend and save the Companies and hold harmless from any and all liability, fines, damage, cost and expense, including but not limited to reasonable attorneys' fees and costs, arising from Seller's failure to do so.

ARTICLE XV RELEASES

Section 15.1: Spill/Environmental Pollution: In the event any spill or discharge occurs from Seller's Transport Containers, tanker trucks, or other storage vessels, or if any spill, discharge, or pollution damage is caused by or is threatened in connection with the Delivery or discharging of Biodiesel, then all regulatory notifications and filings, as well as all efforts and costs of containment and clean up shall be the responsibility of Seller, except to the extent that such spill, discharge, or pollution damage is directly attributable to the negligence or willful misconduct of the Companies, in which case the Companies shall then to the extent of its negligence or misconduct be responsible for such costs of containment and cleanup.

Section 15.2 Pollution Mitigation: When an escape or discharge of oil or any polluting substance occurs in connection with or is caused by Seller's equipment, or occurs from or is caused by discharging operations, Seller or its agents shall promptly take whatever measures are necessary or reasonable to prevent or mitigate environmental damage, without regard to whether or not said escape or discharge was caused by the gross negligence or willful misconduct of Seller's equipment or Seller or the Companies or others. Failing such action by Seller or its agents, the Companies, on Seller's behalf, may promptly take whatever measures are reasonably necessary to prevent or mitigate pollution damage and notify Seller as soon as practicable thereafter of such actions. Each Party in good faith shall keep the other advised of the nature and results of the measures taken, and if time permits, the nature of the measures intended to be taken.

The cost of all such measures taken shall be borne by Seller except to the extent such escape or discharge was caused or contributed to by the Companies, and prompt reimbursement shall be made as appropriate; provided, however, that should Seller or its agents give notice to the Companies to discontinue said measures (and to the extent government authorities allow the Companies to discontinue said measures) the continuance of the Companies' ' actions will no longer be deemed to have been taken pursuant to the provisions of this clause. Each Party in good faith shall provide written notice to the other of such actions and measures taken.

Notwithstanding any other provision in this Contract, the foregoing provisions shall be applicable only between Seller and the Companies and shall not affect, as between Seller and the Companies, any liability that either Seller or the Companies shall have to any third parties, including the State of Hawaii and the U.S. Government, if either Party shall have such liability.

Section 15.3: Release Liability: Should the Companies incur any liability under Chapter 128D of the Hawaii Revised Statutes as a result of a spill from Seller's nominated vessel during discharge, Seller shall indemnify, defend, and hold the Companies harmless to the extent not caused by the Companies' gross negligence or willful misconduct.

Section 15.4 Operational Contacts: In the event of any accident, spill, or reportable incident incurred under the performance of this Contract, the following individuals shall be immediately contacted:

Hawaiian Electric	Name	Position	Phone	Cellular
Primary	_____	_____	_____	_____
Backup	_____	_____	_____	_____
HELCO				
Primary	_____	_____	_____	_____

Backup	_____	_____	_____	_____
MECO				
Primary	_____	_____	_____	_____
Backup	_____	_____	_____	_____
Seller				
Primary	_____	_____	_____	_____
Backup	_____	_____	_____	_____

ARTICLE XVI. INDEMNITY

Section 16.1 Indemnity: To the fullest extent permitted by applicable law, Seller shall forever indemnify, defend and hold harmless the Companies, their directors, officers, employees, agents (including but not limited to affiliates and contractors and their employees), successors and assigns, from and against all liabilities, losses, penalties, claims, demands, judgments, actions, costs and expenses (including reasonable attorneys' fees and costs of litigation), and proceedings of any nature whatsoever, based upon or arising out of damage to property or injuries to persons (including death), fines or penalties or other tortious acts (collectively, "Injury or Damage"), to the extent that they arise out of, are incident to or result directly or indirectly from (a) Biodiesel which does not meet the Specification or is contaminated; (b) operation of any motor vehicle used in the Delivery of Biodiesel to the Companies and owned or hired by Seller, its agents or contractors; or (c) Seller's performance or failure to perform its obligations under this Contract, including without limitation its obligation to comply with Article XII hereof; except to the extent that such Injury or Damage is directly attributable to the gross negligence or willful misconduct of the Companies.

ARTICLE XVII. DEFAULT

Section 17.1 Default: Breach by Seller of any of its representations and warranties in this Contract or failure of either Party to promptly and completely perform any obligation under this Contract shall constitute default. If the Companies or Seller considers the other Party (the "Defaulting Party") to be in default under this Contract, such Party (the "Non-

Defaulting Party”) shall give the Defaulting Party prompt written notice thereof, describing the particulars of such default. The Defaulting Party shall thereafter have thirty (30) Days from the receipt of said notice in which to remedy such default. If the default is not cured, the Non-Defaulting Party may, without prejudice to any other right or remedy of such Party in respect of such default, immediately terminate this Contract by written notice to the Defaulting Party. Any termination shall be without prejudice to accrued rights, including without limitation the right of either Party to damages arising from such breach or prior breaches hereof. All rights and remedies hereunder are independent of each other and election of one remedy shall not exclude another. The prevailing Party in any action shall be entitled to recover its attorneys’ fees and costs from the other Party.

Notwithstanding the foregoing, if Seller’s default is not Delivering Biodiesel as required by this Contract, Seller’s time to cure shall be five (5) Days from the Companies’ notice of default. Without limiting any other right or remedy, if Seller does not cure the default in such time by Delivering compliant Biodiesel to the Companies and Seller fails to provide alternative arrangements reasonably approved by Buyer, the Companies may immediately acquire substitute Biodiesel from another supplier (“Cover Supplies”), and, except as otherwise provided in this Contract, Seller shall be liable to the Companies for the difference in cost between the fuel acquired from the other supplier and the price the Companies would have paid Seller under this contract for the same amount of fuel Delivered at the same time as the replacement fuel, plus all reasonable costs and expenses incurred by the Companies in obtaining such cover (“Cover Costs”).

Section 17.2 Consequential Damages: Except with respect to indemnification obligations arising out of a breach of confidentiality obligations or claims due to the fraud, gross negligence or willful misconduct of any kind, whether based in contract, tort, warranty or otherwise, In no event shall either Party be liable to the other for any indirect or consequential damages arising from breach of this Contract.

ARTICLE XVIII. NOTICE

Section 18.1 Notices: Except as otherwise expressly provided in this Contract, all notices shall be given in writing, by facsimile, electronic mail or first class mail, postage prepaid, to the following addresses, or such other address as the Parties may designate by notice:

[Seller]

Hawaiian Electric Company, Inc.
PO Box 2750
Honolulu, HI 96840-0001
Attention: Director of Fuel Operations – mailstop CIP-IF
Facsimile: 808-203-1796

Hawaii Electric Light Co., Inc.
P. O. Box 1027
Hilo, Hawaii 96721-1027



Attn: Production Department
Facsimile: 808-969-0425

Maui Electric Company, Ltd.
P. O. Box 398
Kahului, Hawaii 96732
Attn: Production Department
Facsimile: 808-422-4975

Notice shall be deemed to have been delivered upon the earlier to occur of actual receipt or two (2) Days after sending.

ARTICLE XIX. GENERAL PROVISIONS

Section 19.1 Waiver and Severability: If any section or provision of this Contract or any exhibit or rider hereto is held by any court or other competent authority to be illegal, unenforceable or invalid, the remaining terms, provisions, rights and obligations of this Contract shall not be affected. The failure of a Party hereunder to assert a right or enforce an obligation of the other Party shall not be deemed a waiver of such right or obligation. In no event shall any waiver by either Party of any default under this Contract operate as a waiver of any further default.

Section 19.2 Assignment: This Contract shall extend to and be binding upon the respective successors and assigns of the Companies and Seller, provided, however, that no assignments of this Contract shall be made by the Companies or Seller without the prior written consent of the other Party.

Section 19.3 Conflicts of Interest: Conflicts of interest related to this Contract are strictly prohibited. Except as otherwise expressly provided herein, neither Party nor any director, employee or agent of a Party shall give to or receive from any director, employee or agent of the other Party any gift, entertainment or other favor of significant value, or any commission, fee or rebate. Likewise, neither Party, or any director, employee or agent of a Party shall enter into any business arrangement with any director, employee or agent of the other Party (or any affiliate), unless such person is acting for and on behalf of the other Party, without prior written notification thereof to the other Party.

Section 19.4 Applicable Law/Venue: This Contract is made under and shall be governed by and construed in accordance with the laws of the State of Hawaii. Each Party agrees and consents that any dispute, litigation, action or proceeding arising out of this Contract, however defined, shall be brought exclusively in the State of Hawaii in a court of competent jurisdiction.

Section 19.5 Entire Agreement/Modification: This Contract shall constitute the entire understanding between the Parties with respect to all matters and things herein mentioned. It is expressly acknowledged and agreed by and between the Parties that neither Party is now relying upon any collateral, prior or contemporaneous agreement,

assurance, representation or warranty, written or oral, pertaining to the subject matter contained herein. This Contract shall not be modified or changed except by written instrument executed by the duly authorized representatives of the Parties.

Section 19.6 Contract Is Not an Asset/Bankruptcy: This Contract shall not be deemed to be an asset of either Party, and, at the option of a Party, shall terminate in the event of any voluntary or involuntary receivership, bankruptcy or insolvency proceedings affecting the other Party.

Section 19.7 Status of the Parties: Nothing in this Contract shall be construed to constitute either Party as a joint venturer, co-venturer, joint lessor, joint operator or partner of the other. In performing services pursuant to this Contract, Seller is acting solely as an independent contractor maintaining complete control over its employees and operations. Unless otherwise provided in this Contract, neither the Companies nor Seller is authorized to take any action in any way whatsoever for or on behalf of the other.

Section 19.8 Headings: The headings or captions are for convenient reference only and have no force or effect or legal meaning in the construction or enforcement of this Contract.

Section 19.9 No Dissemination (Confidentiality): Seller shall not publish, release, disclose, or disseminate to any third party any confidential information gained from the Companies under or relating to this Contract without prior written consent given by an officer of the Companies.

Section 19.10 Confidentiality and Non-Disclosure:

(a) Each Party may have a proprietary interest or other need for confidentiality in information that may be furnished to the other pursuant to this Agreement ("Confidential Information"). The Party disclosing such information shall be referred to in this section as the "Disclosing Party," and the Party receiving such information shall be referred to as the "Receiving Party."

(b) The Receiving Party will hold in confidence and, without the consent of the Disclosing Party, will not use, reproduce, distribute, transmit, or disclose, directly or indirectly, the Confidential Information of the Disclosing Party except as permitted herein. The Receiving Party may only disclose the Confidential Information to its officers, directors, employees, professional advisors and independent contractors and consultants with a direct need to know the information for the implementation or exercise of rights and/or performance of obligations under or arising from this Contract, provided that such persons/entities (other than officers, directors and employees) are bound by written confidentiality agreements with terms and conditions that are no less restrictive than those contained in this section. Without limiting the foregoing, the Receiving Party agrees that it will exercise at least the same standard of care in protecting the confidentiality of the Disclosing Party's Confidential Information as it does with its own Confidential Information of a similar nature, but in any event, no less than reasonable care.

(c) Confidential Information for purposes of this Contract shall not include information if and only to the extent that the Receiving Party establishes that the information:

(i) is or becomes a part of the public domain through no act or omission of the Receiving

Party; (ii) was in the Receiving Party's lawful possession prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party; or (iii) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure. Confidential Information may also be disclosed by the Receiving Party pursuant to a requirement of a governmental agency, regulatory body or by operation of law, provided that the recipient shall disclose only that part of the Confidential Information that it is required to disclose and shall notify the Disclosing Party prior to such disclosure in a timely fashion in order to permit the Disclosing Party to lawfully attempt to prevent or restrict such disclosure should it so elect, and shall take all other reasonable and lawful measures to ensure the continued confidential treatment of the same by the party to which the Confidential Information is disclosed.

(d) Any provision herein to the contrary notwithstanding, the Companies may disclose Confidential Information to the Commission, the Consumer Advocate, and/or any other governmental regulatory agency with notice to, but without need of prior consent by Seller, provided that the Companies takes reasonable steps to obtain approval to submit the same under seal or under other procedures designed to preserve the confidentiality of the Confidential Information.

Section 19.11 Financial Compliance/Capital Lease/No Consolidation:

(a) Seller shall provide or cause to be provided to the Companies on a timely basis, as reasonably determined by the Companies, all information, including but not limited to information that may be obtained in any audit referred to below (the "Information"), reasonably requested by the Companies for purposes of permitting the Companies and its parent company, Hawaiian Electric Industries ("HEI"), to comply with the requirements (initial and on-going) of (i) identifying variable interest entities and determining primary beneficiaries under the accounting principles of Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 810, Consolidation ("FASB ASC 810"), (ii) Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX 404"), (iii) FASB ASC 840 Leases ("FASB ASC 840"), and (iv) all clarifications, interpretations and revisions of and regulations implementing FASB ASC 810, SOX 404, and FASB ASC 840, Securities and Exchange Commission, the Public Company Accounting Oversight Board, Emerging Issues Task Force or other governing agencies. In addition, if required by the Companies in order to meet its compliance obligations, Seller shall allow the Companies or its independent auditor, to audit, to the extent reasonably required, Seller's financial records, including its system of internal controls over financial reporting; provided that the Companies shall be responsible for all costs associated with the foregoing, including but not limited to Seller's reasonable internal costs.

(b) If there is a change in circumstances during the Term that would trigger consolidation of Seller's finances on to the Companies' balance sheet, and such consolidation is not attributable to the Companies' fault, then the Parties will take all commercially reasonable steps, including modification of the Contract, to eliminate the consolidation, while preserving the economic "benefit of the bargain" to both Parties. Notwithstanding the foregoing, if for any reason, at any time during the Term, the Companies (and/or the Companies' affiliates or HEI) in their good faith analysis and sole discretion are required to consolidate Seller into its financial statements in accordance with U.S. generally accepted accounting principles, then the Companies may take any and all

action necessary to eliminate consolidation, including without limitation, by immediately terminating this Contract without fault or liability.

(c) If there is a change in circumstances during the Term that would trigger the treatment of this Contract as a capital lease under FASB ASC 840, and such treatment is not attributable to the Companies' fault, then the Parties will take all commercially reasonable steps, including modification of the Contract, to eliminate the capital lease treatment, while preserving the economic "benefit of the bargain" to both Parties. Notwithstanding the foregoing, if for any reason, at any time during the Term, the Companies' (and/or the Companies' affiliates, or HEI) in their good faith analysis and sole discretion are required to treat this Contract as a capital lease under FASB ASC 840, then the Companies may take any and all action necessary to eliminate this capital lease treatment, including without limitation, by immediately terminating this Contract without fault or liability.

(d) The Companies shall, and shall cause HEI to, maintain the confidentiality of the Information as provided in this Section 17.10. The Companies may share the Information on a confidential basis with HEI and the independent auditors and attorneys for the Companies and HEI. (The Companies, HEI, and their respective independent auditors and attorneys are collectively referred to in this Section 17.10 as "Recipient.") If either the Companies or HEI, in the exercise of their respective reasonable judgments, concludes that consolidation or financial reporting with respect to Seller and/or this Contract is necessary, the Companies and HEI each shall have the right to disclose such of the Information as the Companies or HEI, as applicable, reasonably determines is necessary to satisfy applicable disclosure and reporting or other requirements and give Seller prompt written notice thereof (in advance to the extent practicable under the circumstances). If the Companies or HEI disclose Information pursuant to the preceding sentence, the Companies and HEI shall, without limitation to the generality of the preceding sentence, have the right to disclose Information to the Commission and the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs of the State of Hawaii ("Consumer Advocate") in connection with the Commission's rate making activities for the Companies, and other HEI affiliated entities, provided that, if the scope or content of the Information to be disclosed to the Commission exceeds or is more detailed than that disclosed pursuant to the preceding sentence, such Information will not be disclosed until the Commission first issues a protective order to protect the confidentiality of such Information. Neither the Companies nor HEI shall use the Information for any purpose other than as permitted under this Section 19.11.

(e) In circumstances other than those addressed in the immediately preceding paragraph, if any Recipient becomes legally compelled under Applicable Law or by legal process (e.g., deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose all or a portion of the Information, such Recipient shall undertake reasonable efforts to provide Seller with prompt notice of such legal requirement prior to disclosure so that Seller may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Section 19.11. If such protective order or other remedy is not obtained, or if Seller waives compliance with the provisions of this Section 19.11, Recipient shall furnish only that portion of the Information which it is legally required to so furnish and shall use reasonable efforts to obtain assurance that confidential treatment will be accorded to any disclosed material.

- (f) The obligation of nondisclosure and restricted use imposed on each Recipient under this Section 19.11 shall not extend to any portion(s) of the Information which (i) was known to such Recipient prior to receipt, or (ii) without the fault of such Recipient is available or becomes available to the general public, or (iii) is received by such Recipient from a third party not bound by an obligation or duty of confidentiality.
- (g) Notwithstanding anything in this Contract to the contrary, if, for any reason, within thirty (30) Days of the Commission Approval Order, the Companies (or HEI) in their good faith analysis and sole discretion are required to (i) consolidate Seller into its financial statements in accordance with U.S. generally accepted accounting principles, (ii) treat this Contract as a capital or operating lease under FASB ASC 840, or (iii) treat this Contract as a lease of any type that would have a material adverse effect on the Companies, then the Companies may immediately terminate this Contract without fault or liability. In such event of termination, each Party shall bear its own respective fees, costs and expenses incurred prior to termination, if any, in preparation for performance hereunder, and the parties shall have no further obligation to each other with respect to this Contract except for Section 16.1 (Indemnity) above and any confidentiality obligations assumed by the Parties relating hereto.

Section 19.12 Notice of Certain Events: To the extent any of the following events occur and could reasonably be likely to have a material adverse effect on Seller's performance under this Contract, the Seller shall provide the Companies with timely notice of the occurrence of such event and the Seller's proposed measures to ensure that such event will not lead to an Event of Default or otherwise materially impair Seller's ability to perform its obligations under this Contract:

(a) Any final non-appealable order, judgment or decree is entered in any proceeding, which final order, judgment or decree provides for the payment of money in excess of five Hundred Thousand Dollars (\$500,000) by Seller, and Seller shall not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereon within sixty (60) Days from the entry thereof, and within such period of sixty (60) Days, or such longer period during which execution on such judgment shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal.

(b) Seller shall have received any notice that it is not in compliance with any of the applicable material permits that enable Seller to operate any of its facilities required for Seller's performance under this Contract.

Section 19.13 Attorneys' Fees: If there is a dispute between the Parties and either Party institutes a lawsuit, arbitration, mediation, or other proceeding to enforce, declare, or interpret the terms of this Contract, the prevailing Party shall be awarded its reasonable attorney's fees and costs.

Section 19.14 Offsets: In the event that a Party owes the other Party ("Offsetting Party") any amount under this Contract, the Offsetting Party owed such amount may at any



time offset any and all amounts that are due and owed to the other Party against such amount that the other Party owes the Offsetting Party. The Offsetting Party asserting an offset shall provide a prompt written explanation of the amount and the basis for the offset.

Section 19.15 Counterparts: This Contract may be executed in as many counterparts as desired by the Parties, any one of which shall have the force and effect of an original but all of which together shall constitute the same instrument. This Contract may also be executed by exchange of executed copies via facsimile or other electronic means, such as PDF, in which case -- but not as a condition to the validity of the Contract -- each Party shall subsequently send the other Party by mail the original executed copy. A Party's signature transmitted by facsimile or similar electronic means shall be considered as an "original" signature for purposes of this Contract.

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

HAWAIIAN ELECTRIC COMPANY, INC.
("Hawaiian Electric")

By _____
Its

By _____
Its

HAWAII ELECTRIC LIGHT COMPANY, INC.

By _____
Its

By _____
Its

MAUI ELECTRIC LIGHT CO., LTD.

By _____
Its

By _____
Its

[SELLER]
("Seller")



By _____

Print Name: _____

Its

By _____

Print Name: _____

Its

SAMPLE