

ATTACHMENT E

SAMPLE

SUPPLY CONTRACT FOR O‘AHU FUEL

This O‘ahu fuel supply contract (“Contract”) is made this ____ day of _____, 2018, by and between Hawaiian Electric Company, Inc., a Hawai‘i corporation, (“Hawaiian Electric”), and _____, a _____ corporation (“Seller”), with its principal place of business and mailing address at _____. Hawaiian Electric 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, Hawaiian Electric is in the business of generation, transmission and distribution of electrical power on the island of O‘ahu, State of Hawai‘i; and

WHEREAS, Hawaiian Electric desires up to approximately 5.7 million barrels of low sulfur fuel oil (“LSFO”) per year for three years, along with the ability to acquire sufficient quantities of 0.1% sulfur diesel (“Diesel”) (collectively, “Product”), which will be used to reduce the amount of carbon residue in the LSFO for use at its Kahe Power Plant (“Kahe”) located in Kapolei, Hawai‘i and Waiau Power Plant (“Waiau”) located in Pearl City, Hawai‘i; and

WHEREAS, Seller represents that it is equipped and has the ability to supply, transport and deliver such Product to Hawaiian Electric sufficient to meet Hawaiian Electric’s requirements; and

WHEREAS, Seller desires and is willing to supply, transport and deliver Product to Hawaiian Electric and Hawaiian Electric is willing to purchase and receive the same 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 “affiliate”, except where otherwise expressly provided, means a corporation controlling, controlled by or under common control with Seller or Hawaiian Electric, as the case may be.
- 1.2 “API” means American Society for Testing and Materials, a long-established petroleum industry organization.



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- 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 Government Authority.
- 1.4 “ASC” is defined in Section 17.10(a) below.
- 1.5 “ASTM” means the American Society for Testing and Materials, a long-established source of standard testing and evaluation methods for petroleum.
- 1.6 “barrel” means 42 American bulk gallons at 60 DF.
- 1.7 “BPTF” means Hawaiian Electric’s Barbers Point Tank Farm, a fuel receiving, storage and distribution facility located at the Campbell Estate Industrial Park, O’ahu, Hawai‘i.
- 1.8 “BTU” and “BTU content” means British Thermal Unit and refers to the standard assessment of fuel’s gross heating value or gross heat content.
- 1.9 “business day” shall mean Monday through Friday, except for a day as to which physical locations of commercial banks in Honolulu, Hawai‘i are closed for business to the public due to a scheduled holiday.
- 1.10 “Certificate of Quality” or “Quality Certificate” means the formal document recording the Seller’s laboratory determination of quality and BTU content of a particular sample which represents a specific Delivery, said laboratory determinations having been performed in accordance with the test methods described herein.
- 1.11 “Commission” means the Public Utilities Commission of the State of Hawai‘i
- 1.12 “Commission Approval Order” is defined in Section 2.2 below.
- 1.13 “Commission Approval Order Date” is the date the Commission files the Commission Approval Order.
- 1.14 “Consumer Advocate” means the Division of Consumer Advocacy of the Department of Commerce and Consumers Affairs of the State of Hawai‘i.
- 1.15 “Contract” means this O’ahu Fuel Supply Contract between Seller and Hawaiian Electric.
- 1.16 “Cover Costs” is defined in Section 15.1(b) below.
- 1.17 “Cover Supplies” is defined in Section 15.1(b) below.
- 1.18 “day” or “days” means a calendar day.
- 1.19 “Defaulting Party” is defined in Section 15.1(a)
- 1.20 “Deliver”, “Delivery”, “Deliveries” or “Delivered” refers to the transfer of title or physical movement of Product by Seller as purchased by Hawaiian Electric.
- 1.21 “DF” means degrees Fahrenheit.
- 1.22 “Diesel” means the 01. % sulfur diesel, of the quality specified herein, which if necessary will be blended with LSFO to reduce the amount of carbon residue in the LSFO.
- 1.23 “DOT” means the Department of Transportation of the State of Hawai‘i and/or of the United States, as the case may be.
- 1.24 “Effective Date” is defined in Section 2.3 below.
- 1.25 “ETA” means estimated time of arrival.
- 1.26 “Extension” means any Contract term in addition to and after the Original Term, each of which is a consecutive 12-month period beginning on January 1.



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- 1.27 "Failure to Supply Position" is defined in Section 6.4 below.
- 1.28 "gallon" means a United States liquid gallon of 231 cubic inches.
- 1.29 "Governmental Authority" means any international, foreign, federal, state, regional, county, or local Person having governmental or quasi-governmental authority or subdivision thereof, including recognized courts of Law, or other body or entity of competent jurisdiction.
- 1.30 "G.S.V." means gross standard volume in U.S. Barrels at 60 DF.
- 1.31 "Independent Inspector" means a qualified third-party petroleum inspection contractor acceptable to both parties providing petroleum sampling, measurement and other services before, during and after a Delivery.
- 1.32 "Hawaiian Electric's Facility" means the facilities designated for receipt of Product at BPTF, Campbell Industrial Park, O'ahu, Hawai'i.
- 1.33 "HEI" means Hawaiian Electric Industries, Inc.
- 1.34 "HSE Data" is defined in Section 12.4 below.
- 1.35 "Information" is defined in Section 17.10(a) below.
- 1.36 "Law" means any law, decree, directive, judgment, order, decision, interpretation, enforcement, statute, code, ordinance, rule, regulation, treaty, convention or any action, direction or intervention or other requirement of any Governmental Authority.
- 1.37 "LSFO" means low sulfur fuel oil produced in conformity with the provisions of the quality specified herein.
- 1.38 "month" means a calendar month.
- 1.39 "Nominated" and "Nomination" means the amount of Product specified by Hawaiian Electric to be sold and Delivered by Seller and purchased and received by Hawaiian Electric for a specified month.
- 1.40 "Non-Defaulting Party" is defined in Section 15.1(a) below.
- 1.41 "Offsetting Party" is defined in Section 17.13 below.
- 1.42 "Original Term" is defined in Section 2.1 below.
- 1.43 "Person" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity.
- 1.44 "Party" and "Parties" are defined in the first paragraph above.
- 1.45 "Pipeline Blend" means a mixture of Seller's Pipeline Fill and Product.
- 1.46 "Pipeline Delivery" or "Pipeline Deliveries" means a Delivery of Product and/or the components thereof, including blend stock, all or part of which are Delivered by Seller to Hawaiian Electric's receiving and storage tanks at BPTF.
- 1.47 "Pipeline Fill" means the petroleum residing in the pipelines through which Seller makes Delivery of Product to Hawaiian Electric.
- 1.48 "Product" means fuel suitable for use as a boiler fuel of the quality specifications described in Article IV of this Contract.
- 1.49 "Ratable" means a volume that is proportional, able to be rated or estimated.



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- 1.50 “Representatives” of a party shall mean the respective officers, directors, members, managers, employees, and agents of such party or its Affiliates.
- 1.51 “Reverse Line Displacement” means an operation where Hawaiian Electric pumps Hawaiian Electric’s fuel into the pipeline which Seller uses to Deliver Product to Hawaiian Electric in order to displace Seller’s Pipeline Fill.
- 1.52 “SOX 404” is defined in Section 19.11(a) below.
- 1.53 “Specification” means the fuel quality specifications applicable to Product as described herein.
- 1.54 “Tank Final Sample” is defined in Section 6.5 below.
- 1.55 “USD” means currency denominated in U.S. dollars.
- 1.56 “Year” means a calendar year.

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, and shall continue in succession thereafter as an Extension, unless Hawaiian Electric or Seller gives written notice of termination at least one hundred twenty (120) days before the beginning of an Extension.

Section 2.2: Regulatory Approval.

(a) Hawaiian Electric 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 Hawaiian Electric, in its sole discretion; and (iii) allows Hawaiian Electric to include the reasonable costs incurred by Hawaiian Electric pursuant to this Contract in its revenue requirements for ratemaking purposes and for the purposes of determining the reasonableness of Hawaiian Electric’s rates and/or for cost recovery above those fuel costs included in base rate through Hawaiian Electric’s Energy Cost Adjustment Clause, hereinafter, the “Commission Approval Order”.

(b) Without limiting the foregoing, Seller understands that the decision and order may not be in a final form deemed to be reasonable to Hawaiian Electric if it (i) contains terms and conditions deemed to be unacceptable to Hawaiian Electric, in its sole discretion, (ii) denies or defers ruling on any part of the Commission application, or (iii) is not final (or deemed to be final by Hawaiian Electric, in its sole discretion), because the decision and order has been appealed or Hawaiian Electric is 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.



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(c) If Hawaiian Electric has not received the Commission Approval Order within three hundred sixty-five (365) days of the date of this Contract, or if Hawaiian Electric's request for Commission approval of this Contract is denied in whole or in part, then either Seller or Hawaiian Electric 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.

Section 2.3: Effective Date. This Contract shall become effective (the "Effective Date") upon (a) receipt by Hawaiian Electric of the Commission Approval Order and (b) written notice of the same from Hawaiian Electric 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), 11.1 (Force Majeure), 12.1 (Compliance with laws and regulations), 14.1 (Indemnity) and all provisions in Article 17.

ARTICLE III **QUANTITY**

Section 3.1: Quantity of Product To Be Supplied/Delivered. Subject to the terms and conditions herein, Seller shall sell and Deliver to Hawaiian Electric, and Hawaiian Electric shall purchase and receive from Seller, Product as ordered by Hawaiian Electric. It is estimated that the total quantity of Product will equal up to approximately 6.5 million barrels (roughly 18,000 barrels per day) per each full calendar year for three (3) years (Original Term), with nominations to begin as early as October 2019 for Delivery as early as January 1, 2020. For any partial year of this Contract, the total annual quantity for that particular year shall be calculated up to the maximum rates set forth in Section 3.2 for that particular year, multiplied by the number of days remaining through December 31 in that partial year. Hawaiian Electric will provide Seller with forty-five (45) days advance notice of any significant demand changes (+/- 20%). Seller will make its best effort to accommodate such a request but may reject requests for significant increases in demand under this Contract.

Section 3.2: Purchase Volumes. During each year that this Contract is in effect, Seller shall sell and Deliver to Hawaiian Electric, and Hawaiian Electric shall purchase and receive from Seller, Product at a reasonably uniform rate during each month up to approximately 5.7 million barrels (roughly 15,600 barrels per day) of LSFO per each full calendar year for three (3) years. Maximum volumes of LSFO and Diesel blended together to make Product are described below:



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LSFO: up to 5.7 million barrels per year, for three years.

Diesel: up to 2 million barrels per year, for three years.

The average daily maximum rates for the Original Term shall apply for each year of any Extension, and the annual volumes of Product to be sold and Delivered by Seller and to be Nominated, purchased and received by Hawaiian Electric during each year of any Extension shall be determined by multiplying the days of the Extension year by the maximum rates indicated for 2020, unless mutually agreed otherwise in writing. Subject to availability, Seller will sell and Deliver and Hawaiian Electric shall purchase and receive such additional volumes as are mutually agreed upon.

Section 3.3: Nomination and Designation of Delivery Amounts: Hawaiian Electric shall notify Seller when Hawaiian Electric needs Product by Delivering to Seller an order ("Order"). The Order shall specify the quantity/percentage of LSFO and Diesel and the applicable price for such LSFO and Diesel calculated in accordance with this Contract. Upon receipt by Seller of an Order, Seller shall have up to sixty (60) days to Deliver Product as ordered to BPTF.

ARTICLE IV **QUALITY**

Section 4.1: Quality of Product To Be Supplied/Delivered. The quality of Product to be sold and Delivered hereunder shall comply with the Specifications for LSFO and Diesel, attached herein, and made a part hereof ("Specification"), and meet all Applicable Laws. If the quality does not comply with the Specification, Seller will bear all costs associated with its failure to comply as determined by Hawaiian Electric in its sole and absolute discretion.

ARTICLE V **PRICE**

Section 5.1: Pricing. To be determined.

Section 5.2: Rounding. All prices, price formula component value averages and other sums payable with respect to Product purchased hereunder shall be stated in the nearest hundredths of a dollar unless specifically provided otherwise.

Section 5.3: Fees, Taxes, Assessments, Levies and Imposts. To be determined.



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ARTICLE VI **DELIVERY**

Section 6.1: Notification.

(a) Subject to maximum quantities specified in Section 3.2, Hawaiian Electric shall provide written notification to Seller of the nominated rate of Delivery for each month sixty (60) days prior to the first day of said month. Seller agrees to notify Hawaiian Electric within five (5) days of such notification if it cannot comply with Hawaiian Electric's nominated rate of Delivery.

(b) The Parties shall mutually coordinate the Delivery. Seller shall provide Hawaiian Electric with a proposed three (3) day shipment period or window for Delivery no later than thirty-five (35) days prior to the first day of the proposed shipment period ("35-Day Notice"). Hawaiian Electric shall use reasonable efforts to accommodate Seller's proposed three (3) day shipment period, however, should Hawaiian Electric be unable to accommodate Seller's proposed three (3) day shipment period:

1. Hawaiian Electric may reject Seller's proposed three (3) day shipment period upon providing Seller with notice no later than three (3) business days following Hawaiian Electric's receipt of Seller's notification.
2. Seller may propose an alternate three (3) day shipment period, provided that such alternate shipment period is within five (5) days of the date of Seller's first proposed three (3) day shipment period.
3. Seller shall provide to Hawaiian Electric the intended volume of Product to be Delivered to Hawaiian Electric subject to a variation of plus or minus five (5) percent with respect to the actual physical volume Delivered and a proposed one (1) day shipment period or window which is to be within the previous three (3) day shipment period no later than fifteen (15) days prior to the proposed one (1) day shipment period.

Notices given pursuant to this Section 6.1(b) may be provided by electronic mail or telephone.

Section 6.2: Coordination.

(a) No later than ten (10) days prior to the beginning of each month, Seller shall provide Hawaiian Electric with a proposed schedule of Pipeline Deliveries ("Delivery Schedule") to be made by Seller for the following two (2) months. The proposed Delivery Schedule shall specify the approximate quantities of LSFO and Diesel, the approximate date and a characterization of the approximate viscosity, either low, 100 – 200 SSU at 210 DF, medium, 201 – 350 SSU at 210 DF, or high, 350 – 450 SSU at 210 DF, for each individual Delivery. The Deliveries are to be made at reasonably regular intervals.



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(b) SELLER shall immediately notify Hawaiian Electric of any change in the proposed Delivery Schedule when such change becomes known to Seller. In particular, Seller shall provide a detailed and specific notice to Hawaiian Electric if a change in the proposed Delivery Schedule is due to any of the following causes:

1. A change in the volume of an individual Pipeline Delivery if such change is in excess of 10,000 barrels of the previously advised Delivery volume; or
2. A change in the date of an individual Delivery, if such change is greater than two (2) days from the previously advised date; or
3. A change in the previously advised viscosity characterization of a Delivery.

Section 6.3: Delivery Rates.

(a) Hawaiian Electric shall not be required to take Delivery, and Seller shall not be required to make Delivery of more than fifty (50) percent of a Monthly Nomination in any ten (10) consecutive day period. Seller shall make good faith efforts to plan its Pipeline Deliveries such that it shall have a Ratable Delivery status of approximately zero at month-end for the third month of the accepted Delivery schedule.

(b) Unless waived in advance by Hawaiian Electric, and subject to Hawaiian Electric tank availability, the physical volume of Seller's Deliveries shall be limited to 100,000 barrels for any individual Pipeline Delivery.

Section 6.4: Failure to Supply.

(a) Except in the event of Force Majeure or an agreement by the parties to the contrary, if Seller's anticipated Pipeline Deliveries shall reasonably indicate that the cumulative quantity of its Deliveries to Hawaiian Electric shall result in a Delivery status on a month-to-date ratable basis in excess of minus (-) 90,000 barrels, Seller shall be in a Failure to Supply Position and shall give prompt written notice of same to Hawaiian Electric.

(b) In the event that the Seller is in a Failure to Supply Position, both Hawaiian Electric and Seller shall attempt to minimize the impact of any Failure to Supply Position such that it does not impose an unreasonable risk to Hawaiian Electric. If, while in a Failure to Supply Position, the status of Seller's Delivery is deficient in excess of minus (-) 100,000 barrels on a month-to-date ratable basis, Hawaiian Electric may, at its option, purchase an amount of Product equal to Seller's deficiency from another vendor at the then prevailing market rates. Hawaiian Electric will invoice to Seller, and Seller shall pay to Hawaiian Electric within thirty (30) days of such invoice issue date, the cost difference between the Product so purchased and the cost of the Product as it would have been Delivered by Seller. If Hawaiian Electric elects to purchase Product from another vendor as provided under this Section 6.4, then the annual purchase requirement referenced in Section 3.2 for the year in question shall be reduced



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correspondingly. This Section 6.4 is without prejudice to any other remedies Hawaiian Electric may have under this Contract with respect to Seller's failure to comply with Section 3.2.

Section 6.5: Pipeline Delivery

(a) Pipeline Deliveries shall be made by Seller from Seller's on-island supply through Seller's pipelines to Hawaiian Electric at Hawaiian Electric's BPTF. If Buyer decides to purchase LSFO and Diesel fuel as a blended product, Pipeline Deliveries shall be of Product blended accordingly and not as separate deliveries of LSFO and Diesel. Title to Product and the risk of loss of Product Delivered by Pipeline Delivery shall pass from Seller to Hawaiian Electric pursuant to Article IX.

(b) The Parties shall mutually coordinate Pipeline Deliveries into BPTF to minimize operational difficulties and costs.

(c) All samples, measurements and determinations drawn, taken and made, respectively, under this Section 6.5 shall be for LSFO and Diesel prior to blending, and if necessary, for the Product as blended in Seller's tank prior to Pipeline Delivery. All samples described above shall be under the supervision of the Independent Inspector. Seller and Hawaiian Electric shall share equally the cost of the Independent Inspector.

(d) The quality and BTU Content of the Product Delivered by Pipeline Delivery shall be determined on the basis of a volumetric weighted average composite of samples drawn by the Independent Inspector from Seller's issuing tank(s) in such manner as to be representative of each individual Pipeline Delivery ("Tank Final Sample").

(e) The Tank Final 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 quality including BTU Content per barrel.
2. One part shall be provided to Hawaiian Electric for the purpose of verifying Seller's determinations.
3. At least one part shall be sealed and provided to the Independent Inspector to be retained for a period of at least three (3) months.

(f) Seller shall provide Hawaiian Electric and the Independent Inspector with a copy of Seller's preliminary laboratory analyses of LSFO and Diesel prior to blending, and if necessary, the final blended Product Tank Final Sample ("Pre-shipment Report"), and shall provide this Pre-shipment Report prior to shipment of the Product.

(g) Seller agrees to provide Hawaiian Electric and the Independent Inspector with the Certificate of Quality representing the samples of LSFO and Diesel prior to blending or if



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necessary, samples of the blended Product Tank Final Sample, and will make a good faith effort to provide this Certificate of Quality no later than twenty-four (24) hours after the completion of the Pipeline Delivery. If the completed Certificate of Quality is not available within said 24-hour period, Seller will advise Hawaiian Electric and the Independent Inspector of the same and, within said 24-hour period, Seller will provide to Hawaiian Electric and the Independent Inspector the final determination of API gravity, flash point, sulfur content and sediment and water representing the Tank Final Sample.

(h) Hawaiian Electric shall have the right to perform laboratory analyses in order to verify the results of Seller's laboratory analyses; provided however, that such verification analyses shall be performed in a timely manner. Seller and Hawaiian Electric will make reasonable good faith efforts to evaluate BTU Content and exchange results within three (3) business days of the completion of the Pipeline Delivery.

(i) In order to eliminate or minimize the volume of Seller's Pipeline Fill received by Hawaiian Electric in the course of a Pipeline Delivery operation, Hawaiian Electric shall have the option to perform a Reverse Line Displacement whereby Seller's Pipeline Fill is displaced to Seller using Hawaiian Electric's fuel at the commencement of Pipeline Delivery operations.

(j) If Hawaiian Electric elects not to commence Pipeline Delivery operations by displacing Seller's Pipeline Fill with Hawaiian Electric's fuel, or if such displacement is operationally unfeasible or impractical for any other cause, Seller and Hawaiian Electric recognize that the Product received by Hawaiian Electric in a Pipeline Delivery may be a blend which includes some amount of Seller's Pipeline Fill ("Pipeline Blend"). In such instance, the specification of Seller's Pipeline Fill shall be determined by Seller on the basis of Seller's samples representative of the contents of the storage tank from which Seller's Pipeline Fill was issued. Seller shall provide Hawaiian Electric, Hawaiian Electric's representative and the Independent Inspector with a copy of its laboratory analysis of the quality of Seller's Pipeline Fill prior to commencing the Pipeline Delivery.

(k) To provide an early warning of any quality problems with the Product Delivered as a result of a Pipeline Blend, Seller shall perform a pre-shipment computer blend simulation representing the quality of Seller's LSFO and Diesel from the issuing tank(s) as indicated in the relevant Certificates of Quality or preliminary laboratory analyses of the Tank Final Samples and the quality of Seller's Pipeline Fill as indicated in the relevant laboratory analyses. The computer blend simulation shall provide preliminary confirmation of the Pipeline Blend's conformance with the limits for API gravity, viscosity and percent by weight sulfur content specified in Article IV. Seller shall provide to Hawaiian Electric or Hawaiian Electric's representative and the Independent Inspector a copy of the computer blend simulation results prior to shipment. Seller agrees that under no circumstances shall it make a Pipeline Delivery of Product to Hawaiian Electric should the computer blend simulation or any other information



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available to Seller indicate a quality problem with the Product or Pipeline Blend, without Hawaiian Electric's express written permission.

(l) The quantity of Product in a Pipeline Delivery shall be determined at the time of each Pipeline Delivery by gauging Seller's issuing tank(s) immediately before and after pumping under the supervision of the Independent Inspector. Should Hawaiian Electric elect to perform a Reverse Line Displacement, the total quantity of Product Delivered to Hawaiian Electric shall be reduced by reference to the rise in Seller's tank(s) receiving Seller's Pipeline Fill, determined by gauging such tank(s) immediately before and after pipeline displacement under the supervision of the Independent Inspector. Both Hawaiian Electric and Seller agree that if measurement of Seller's tank(s) is, in the opinion of the Independent Inspector, considered to have been rendered inaccurate for reasons including, but not limited to, operational constraints or inadvertent transfer of Product or of Seller's Pipeline Fill within Seller's facilities, then the quantity of Product or Seller's Pipeline Fill may be determined by gauging Hawaiian Electric's receiving tank(s) before and after pumping under the supervision of the Independent Inspector.

(m) Quantities of Product sold and Delivered by Seller and purchased and received by Hawaiian Electric hereunder shall be calculated in accordance with the current measurement standards adopted by industry, ASTM, API and other recognized standard-setting bodies as are applicable in the opinion of the Independent Inspector and shall be expressed in U.S. barrels @ 60 DF.

Section 6.6: Disputes Regarding Quality or Quantity.

(a) **Quantity Disputes.** If Hawaiian Electric or Seller has reason to believe that the quantity of Product in a particular Delivery is incorrect, the Party claiming an incorrect Delivery quantity shall, within five (5) days of the date of Delivery, present the other Party with documentation supporting such claim 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, in the Delivery in question as specified in this Section 6.6, Section 8.2, and Section 17.4 of this Contract.

(b) **Quality Disputes.**

(1) The quality of Product sold and Delivered to Hawaiian Electric shall be determined on the basis of Seller's Certificate of Quality of the LSFO and Diesel provided by the Seller. Each shipment of Product to Hawaiian Electric shall comply with the Specification subject to Section 4.1.

(2) The official BTU Content determination shall be as reported in Seller's Certificate of Quality, provided that the arithmetic difference between Seller's and Hawaiian Electric's laboratory results is equal to or less than the then existing ASTM reproducibility standard (currently 0.4 MJ/kg, which the parties shall deem to be equivalent to a fixed standard



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of 60,000 BTU per barrel) for test D-240. If the difference between Seller's and Hawaiian Electric's determinations of BTU Content should fall outside the ASTM reproducibility standard for ASTM test D-240, the sealed sample in the possession of the Independent Inspector shall be provided to an independent laboratory for an official determination, which shall be binding upon the parties. Seller and Hawaiian Electric shall share equally the costs of independent tests and determinations.

(3) If Seller or Hawaiian Electric has reason to believe that the quality of Product stated for a specific Delivery fails to conform to the Specification in Article IV or the fuel specifications in Attachment B from the RFP, that Party shall within five (5) days after the later of the date of the completed Certificate of Quality or the date of the final determination of BTU Content, 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 and adjust the quality, if justified, for the Delivery in question. In the event of an unresolved difference between Seller and Hawaiian Electric, the sealed part of the representative sample in the possession of the Independent Inspector shall be provided to an independent laboratory for an official determination, which shall be final. Seller and Hawaiian Electric shall share equally the cost for such independent laboratory determination.

(4) If the quality of the Product received by Hawaiian Electric fails to conform to the quality Specification in Article IV or the fuel specifications in Attachment B from the RFP, both Hawaiian Electric and Seller shall attempt to minimize the impact of any quality problem. At Hawaiian Electric's reasonable discretion, such efforts may include (i) a Specification waiver if the use of the Product will not unreasonably cause harm to Hawaiian Electric. Or, Seller may attempt to remedy the quality problem by Delivering higher quality Product in a timely manner to produce a Specification quality blend in Hawaiian Electric's storage tank(s) at BPTF or at Hawaiian Electric's O'ahu generating plants. If all such and similar efforts fail to resolve the quality problem, then Hawaiian Electric may return the non-conforming Product to Seller, in which case Seller shall replace the non-Specification Product by Delivering an equal volume of Hawaiian Electric verified on-Specification Product to Hawaiian Electric in a timely manner. Notwithstanding the preceding, Hawaiian Electric shall always have the right to refuse Delivery of any Product with prior written notice to Seller or its permitted agents if Hawaiian Electric in good faith shall have reason to believe that the Product does not meet the Specification. Hawaiian Electric may, at its option, seek other supplies of Product if in Hawaiian Electric's reasonable discretion the Delivery of non-conforming Product may not be remedied in time to prevent a possible interruption of Hawaiian Electric's operations. All costs and expenses of remedying the Delivery of non-conforming Product, or arising from non-conforming Product (including, without limitation, the testing, transportation, re-refining, and handling costs incurred in returning, replacing or otherwise correcting non-conforming Product, the emptying and cleaning of storage tanks containing non-conforming Product) shall be paid by Seller. Any remedy of non-conforming Product accepted by Hawaiian Electric under this



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Section shall not operate or be construed to remedy any similar non-conforming Product or to change the Specification of Product acceptable to Hawaiian Electric under the terms of this Contract.

(5) Seller shall be solely responsible for all reasonable costs and expenses, including testing, transportation, re-refining, and handling costs incurred by Hawaiian Electric in returning, replacing or otherwise correcting non-conforming Product .

Section 6.7: Records/Right to Audit. Seller shall retain any and all documents and records regarding the Delivery, quantity and quality of Product sold and purchased under the terms of this Contract for the twelve (12) months after the date of the invoice for such Product, or until any dispute regarding such Delivery, quantity and quality is resolved. Seller shall promptly make such records available at a location designated by Hawaiian Electric for review at Hawaiian Electric's request.

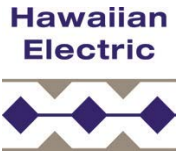
Section 6.8: Inspection. Hawaiian Electric may be represented and participate in all sampling, quality, inspection, measurements and tests of Product which may be conducted pursuant to this Contract and to inspect any equipment owned or controlled by Seller and used in determining the quantity, quality or heat content of Product, provided that any such participation by Hawaiian Electric shall not materially interfere with or otherwise disrupt such inspection, measurement and tests conducted by Seller. Hawaiian Electric may, upon reasonable notice to Seller and during normal business hours and at Hawaiian Electric's expense, inspect and audit any sample analysis of Product, including records and data used in the preparation of such analysis.

Section 6.9: Independent Inspector. Hawaiian Electric and Seller shall agree on the Independent Inspector. All samples, measurements, and determinations samples as provided in this Contract shall be drawn, taken, and made, under the supervision of the Independent Inspector, who shall attend designated Deliveries. All charges for services rendered by the Independent Inspector shall be borne equally by the Companies and Seller unless as otherwise provided in this Contract.

ARTICLE VII **SELLER'S REPRESENTATIONS AND WARRANTIES**

Section 7.1: Seller's Representations and Warranties. Seller agrees, represents and warrants as follows:

(a) Ability to Supply: Throughout the Original Term, Seller shall maintain in full force and affect the ability to supply Product sufficient to meet all of Seller's obligations under this Contract. Upon Hawaiian Electric's reasonable request, Seller shall provide Hawaiian Electric assurances of Seller's ability to perform under this Contract.



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(b) Quality: All Product Delivered hereunder will be so Delivered in compliance with the terms of this Contract.

(c) Ability to Deliver: Throughout the Original Term, for Pipeline Deliveries, Seller shall own, lease or otherwise have the legal right to use facilities sufficient to meet Seller's Delivery obligations under this Contract.

ARTICLE VIII **INVOICING AND PAYMENT**

Section 8.1: Invoicing.

(a) Invoices, which will show the price per physical barrel of Product, will be prepared and dated following Delivery and shall be tendered from time to time each month. All invoices shall include full documentation, as approved by both parties, including the Certificate of Quality, report of the Independent Inspector, and price calculation; such documentation may, however, be provided by Seller to Hawaiian Electric separately.

(b) Invoices will be prepared and dated following Delivery of Product to Hawaiian Electric and shall be sent by mail to Hawaiian Electric at the following address:

Hawaiian Electric Company
P.O. Box 2750
Honolulu, HI 96840-0001
Attn: Director of Fuel Operations, mailstop CIP3-IF

(c) Invoices, invoice documentation, laboratory analyses and other documents having to do with the quality, quantity and Delivery of Product or otherwise with the Product sold and purchased hereunder may be sent by first class mail, postage prepaid, by electronic transmission (facsimile or electronic mail) or by personal delivery. The parties may substitute other addresses upon the giving of proper notice. Correspondence and documents of a similar nature may be sent to Seller to the following address or as otherwise instructed:

Seller's name and address:

Section 8.2: Payment.



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(a) Payment of Seller's invoices shall be made by bank wire transfer of immediately available funds in U.S. Dollars ("USD"). 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. 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.

(b) If Seller's final laboratory result for BTU Content is unavailable or if said laboratory result is disputed by Hawaiian Electric pursuant to Section 6.6, Seller may issue a provisional invoice calculated on the basis of the heat-content standard of 6.2 million BTU per barrel. Hawaiian Electric shall make payment for such provisional invoice in accordance with Section 8.3.

(c) If an invoice incorporating an item, other than a heat rate adjustment which is disputed, has been sent to Hawaiian Electric, then Hawaiian Electric shall make payment in accordance with Section 8.3 for such invoice items or that portion of the invoiced Delivery which is not disputed by Hawaiian Electric and in which case Hawaiian Electric shall make such adjustment to taxes and other value-dependent items as are reasonable under the circumstances.

(d) The provisional invoice or invoice incorporating items in dispute shall be adjusted in accordance with the terms of Article V by subsequent invoicing or by issuing a credit or debit with respect to the original invoice within seven (7) business days of receipt of the independent laboratory determination pursuant to Article VI or other resolution of the issue in dispute. Hawaiian Electric shall make payment for such subsequent invoices or debits in accordance with Section 8.2. Hawaiian Electric 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 seven (7) business days, Hawaiian Electric shall be able to receive said credit in immediately available funds within three (3) business days of Seller's receipt of Hawaiian Electric's written instructions.

Section 8.3: Method of Payment. Payment shall be made without discount in USD within thirty (30) days from the receipt of invoice by wire transfer of immediately available funds to:

Seller's Bank
Bank routing number
Account number:



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ARTICLE IX **TITLE, CUSTODY AND RISK OF LOSS**

Section 9.1: Title, Custody and Risk of Loss.

(a) Title to Product and the risk of loss of Product Delivered by Pipeline Delivery shall pass from Seller to Hawaiian Electric at the property line at BPTF.

ARTICLE X **INSURANCE**

Section 10.1: Insurance Requirements. 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 term of this Contract the following insurance and all other forms of insurance that may be required by any applicable law, rule, ordinance or regulation of any governmental authority:

- (a) Cargo insurance, which is to remain in force during the period of transportation until title to and risk of loss of the Product passes to Hawaiian Electric in accordance with Section 9.1. Such insurance shall be in an amount of no less than the purchase price including freight and 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),
- (b) Hull and Machinery Insurance shall be placed and maintained with reputable marine underwriters and insured for no less than the full replacement value of the vessel and subject to The American Institute Hull Clauses (June 2, 1977).
- (c) Protection & Indemnity Insurance ("P&I Insurance") shall be placed and maintained with full P&I indemnity cover in the ordinary course from a P&I Club that is a member of the International Group of P&I Clubs, including pollution liability standard for vessel and Certificate of Financial Responsibility. Such coverage shall include misdirected arrow protection in favor of Hawaiian Electric.
- (d) Standard Workers Compensation and Employers Liability Insurance endorsed to be applicable to the State of Hawai'i as well as the Longshore Act, with statutory limits for workers compensation and Employer's liability with minimum limits of \$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease each policy limit.
- (e) Commercial General Liability Insurance covering liability for bodily injury and



property damage arising from premises, operations, products-completed operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) for damages arising out of the agreement and shall, at a minimum, include coverage for (i) all operations and premises of Seller; (ii) all products and completed operations of Seller; (iii) explosion, collapse and underground (XCU) hazards; and (iv) duty to defend, with minimum limits of \$10,000,000 each occurrence; and \$10,000,000 general aggregate.

- (f) Pollution Legal Liability Insurance with minimum limits of \$5,000,000 per occurrence and \$5,000,000 general aggregate for the full scope of the Seller's operations (ongoing and completed) as described within the scope of work for this Contract. Coverage to include but not be limited to: third party liability for bodily injury to persons, property damage resulting from any spill, leak, or discharge into the air, surface water, ground water, land surface or subsurface strata, and defense arising from the operations; diminution of value and Natural Resources damages; contractual liability. Such insurance shall include coverage for clean-up and remediation expenses that are not subject to sub-limits.
- (g) Automobile Liability Insurance on all owned, hired, rental and non-owned vehicles used in conjunction with the Delivery of Product to Hawaiian Electric and shall include uninsured/underinsured motorist and no-fault insurance provisions wherever applicable and otherwise comply with applicable law, with minimum limit of \$5,000,000 combined single limit each accident. Such policy shall include endorsement CA 9948 Pollution Legal Liability Broadened coverage. Further, where required by law, Seller and its subcontractors and sub-subcontractors coverage shall include the MCS 90 endorsement.
- (h) 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 term of this Contract on all owned, non-owned and hired vehicles used in conjunction with the Delivery of Product to Hawaiian Electric, 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.

Section 10.2: Insurance Paid. Premiums for all necessary insurance policies are included in the Delivered price of Product as determined in Section 5.1. No special payments shall be made by Hawaiian Electric to Seller in respect to such premiums.



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Section 10.3: Waiver of Subrogation. Seller and anyone acting under its direction or control or on its behalf will cause its insurers (except for Workers Compensation insurance) to waive all rights of subrogation which Seller or its insurers may have against Hawaiian Electric, Hawaiian Electric's agents, or Hawaiian Electric's employees.

Section 10.4: Hawaiian Electric As Additional Insured. Insurance policies (except for Workers Compensation insurance) providing the insurance coverage required in this Contract will name Hawaiian Electric, Hawaiian Electric's agents or Hawaiian Electric's employees as an additional insured. Coverage must be primary in respect to the additional insured. Any other insurance carried by Hawaiian Electric will be excess only and not contribute with this insurance.

Section 10.5: Certificates of Insurance. Before performance of this Contract, Seller shall file with Hawaiian Electric's designated representative certificates of insurance, or other documentary evidence acceptable to Hawaiian Electric, certifying that each of the foregoing insurance coverages is in force, and further providing that Hawaiian Electric 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 10.6: 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 10.7: Performance Bond/Letter of Credit. A Performance Bond or an Irrevocable Standby Letter of Credit in the form reasonably acceptable to Hawaiian Electric shall be furnished by Seller and deposited with Hawaiian Electric 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 Hawaiian Electric no later than thirty (30) days following the Effective Date.

ARTICLE XI **FORCE MAJEURE**

Section 11.1: Force Majeure.



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(a) Neither Party shall be liable in any manner for failure to Deliver or to receive Product 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; tsunami, war, rebellion, insurrection, lockout; fire, explosion, or destruction from any involuntary cause of Seller's vessel, Terminal, container or of Hawaiian Electric's 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 Hawaiian Electric's 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.

(b) 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 arising there from. 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.

(c) 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 Hawaiian Electric to buy Product from a supplier other than Seller for the quantities of Product which Seller does not Deliver; and Hawaiian Electric shall not be obligated to buy, after the period of suspension or reduction, the undelivered quantity of Product which normally would have been sold and Delivered hereunder during the period of suspension or reduction.

Section 11.2: Option to Terminate. If Delivery of Product is suspended or reduced pursuant to an event or act of force majeure for more than thirty (30) days, Hawaiian Electric shall have the option while such suspension or reduction continues to terminate this Contract on written notice to Seller. If Hawaiian Electric terminates this Contract pursuant to this Section 11.2, then 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 XII

COMPLIANCE WITH LAWS AND REGULATIONS

Section 12.1: Compliance with Laws and Regulations.

(a) This Contract is subject to all applicable present and future laws, statutes, orders, rules, and regulations of governmental or quasi-governmental authorities having jurisdiction over



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the Parties. The Parties shall fully comply with all statutes, ordinances, rules, regulations, and requirements of all city, county, state, federal and other applicable government authorities which are now or may hereafter be in force.

(b) 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 Hawaiian Electric with the Product under this Contract and Hawaiian Electric shall have no obligation to purchase or receive the Product under this Contract. Hawaiian Electric, in Hawaiian Electric's discretion, may elect to complete and file any and all required federal or state regulatory forms to permit, facilitate, or enable the supply of Product to Hawaiian Electric under this Contract. Seller shall fully cooperate with Hawaiian Electric in the completion and filing of the foregoing forms. Notwithstanding the foregoing, if Hawaiian Electric's purchase, receipt or use 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, Hawaiian Electric shall have no obligation to purchase and receive the Product under this Contract.

Section 12.4: 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 the Product. Seller shall furnish to Hawaiian Electric health, safety and environmental information (including without limitation Material Safety Data Sheets, "HSE Data") concerning health, safety and environmental aspects of Product purchased by Hawaiian Electric, 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 Product 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 LSFO and Diesel, and the safe and proper methods of handling and storing LSFO and Diesel. Compliance by the Seller with recommendations in HSE Data shall not excuse the Seller from its obligations under Article XIV and this Section 12.4.

Section 12.5: Permits and Licenses. Seller shall secure and pay for all required permits and licenses, and shall comply with all 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 Hawaiian Electric 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.



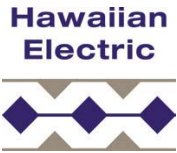
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Section 12.6: Renegotiation. It is understood and agreed that the Parties entered into this Contract in reliance on the Applicable Laws and Governmental Authority in existence or in effect on the Effective Date of this Contract and on the execution date of any subsequent amendments hereto, to the extent that they directly or indirectly affect the terms under which Product is sold by Seller or purchased by Hawaiian Electric hereunder. If at any time any of the said Applicable Laws or Governmental Authority are changed, or if new Applicable Laws or Governmental Authority come into existence and become effective after the Effective Date of this Contract and after the execution date of any subsequent amendment hereto, and such new or change in Applicable Laws or Governmental Authority has a significant adverse economic effect on a Party's ability to continue to perform under this Contract or cause a material and adverse financial effect upon either Party such that performance of this Contract would be inequitable or cause substantial financial hardship to the affected Party, then the affected Party shall have the option to call for renegotiation of the price for Product sold to Hawaiian Electric, or renegotiation of any other provision of this Contract the performance of which by the affected party would be affected. Such option shall be exercised by the affected party no later than one hundred eighty (180) days after such Changes in Law or Contingency comes into existence and becomes effective, by giving written notice to the other part of the call to renegotiate. Within ten (10) days after the date of such notice, the Parties shall enter into negotiations and in the event that the Parties do not agree upon a new price of Product or other provision satisfactory to both Parties within forty (40) days after the date of such notice, the affected Party shall have the right to terminate this Contract effective thirty (30) days after giving written notice of termination to the other Party. Such notice of termination shall be given within thirty (30) days immediately following the forty (40) day negotiation period. Until a mutually satisfactory new price of Product or other provision has been agreed upon, or until this Contract is terminated as provided herein, the price of Product or other provision that was in effect when the request for renegotiation was made shall continue in full force and effect.

ARTICLE XIII RELEASES

Section 13.1: Spills/Environmental Pollution. In the event any spill or discharge occurs from any nominated vessel, vehicle, pipeline, or tank utilized by Seller in the performance of this Contract, or if any spill, discharge, or pollution damage is caused by or is threatened in connection with the loading, transportation or Delivery of Product by Seller, then all regulatory notifications and filings, as well as all efforts and costs of containment and clean up shall be the sole responsibility of Seller; provided that Seller's aforesaid responsibility shall not be applicable to any liability directly attributable to the sole negligence, gross negligence, or willful misconduct of Hawaiian Electric.

Section 13.2: Pollution Mitigation.



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(a) When an escape or discharge of oil or any polluting substance occurs in connection with or is caused by Seller's or its agent's vessel 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 negligence or willful misconduct of Seller's equipment or Seller or Hawaiian Electric or others. Failing such action by Seller or its agents, Hawaiian Electric, 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 shall, in good faith, 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.

(b) The cost of all such measures taken shall be borne by Seller unless as otherwise provided in this Contract, and prompt reimbursement shall be made as appropriate.

(c) Notwithstanding any other provision in this Contract, the foregoing provisions shall be applicable only between Seller and Hawaiian Electric and shall not affect, as between Seller and Hawaiian Electric, any liability that either Seller or Hawaiian Electric shall have to any third parties, including the State of Hawai'i and the U.S. Government, if either Party shall have such liability.

Section 13.3: Release Liability. Should Hawaiian Electric incur any liability under Chapter 128D of the Hawai'i Revised Statutes as a result of a spill from Seller's nominated vessel during discharge, Seller shall indemnify, defend and hold Hawaiian Electric harmless to the extent not caused by Hawaiian Electric's gross negligence or willful misconduct.

Section 13.4: 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	_____	_____	_____	_____
SELLER				
Primary	_____	_____	_____	_____



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Backup

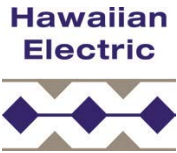
ARTICLE XIV **INDEMNITY**

Section 14.1: Indemnity. To the fullest extent permitted by applicable law, Seller shall forever indemnify, defend and hold harmless Hawaiian Electric, its 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) Product which does not meet the Specification or is contaminated; (b) operation of any motor vehicle used in the Delivery of Product to Hawaiian Electric 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 Hawaiian Electric.

ARTICLE XV **DEFAULT**

Section 15.1: Default.

(a) Breach by Seller of any of its representations and warranties in this Contract or failure of either Party to promptly perform any obligation under this Contract shall constitute default. If Hawaiian Electric or Seller, as the case may be, 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 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 its obligations under 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.



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(b) Notwithstanding the foregoing, if Seller's default is not Delivering Product as required by this Contract, Seller's time to cure shall be five (5) days from Hawaiian Electric's notice of default. Without limiting any other right or remedy, if Seller does not cure the default in such time by Delivering compliant Product to Hawaiian Electric and Seller fails to provide alternative arrangements reasonably approved by Hawaiian Electric, Hawaiian Electric may immediately acquire substitute Product from another supplier, and if Product is not obtainable, may acquire any liquid substitute fuel acceptable for use at Kahe and Waiau ("Cover Supplies"), and, except as otherwise provided in this Contract, Seller shall be liable to Hawaiian Electric for the difference in cost between the fuel acquired from the other supplier and the price Hawaiian Electric 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 Hawaiian Electric in obtaining such replacement fuel, including any penalty fees associated with Hawaiian Electric not being able to utilize Product ("Cover Costs").

Section 15.2: Consequential Damages. Except with respect to indemnification obligations, claims arising out of breach of confidentiality obligations or claims due to the fraud of a party, neither party shall be liable to the other Party for any prospective profits, or special, indirect, incidental or consequential damages of any kind, whether based in contract, tort (including negligence or strict liability) or otherwise.

ARTICLE XVI **NOTICE**

Section 16.1 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's Address:

Hawaiian Electric Company, Inc.
PO Box 2750
Honolulu, Hawai'i 96840-0001
Attention: Director of Fuels Operations – mailstop CIP3-IF

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



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ARTICLE XVII **GENERAL PROVISIONS**

Section 17.1: 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 17.2: Assignment. This Contract shall extend to and be binding upon the successors and assigns of Hawaiian Electric and Seller, provided, however, that no assignments of this Contract shall be made by Hawaiian Electric or Seller without the prior written consent of the other Party.

Section 17.3: Conflicts of Interest. Conflicts of interest related to this Contract are strictly prohibited. Except as otherwise expressly provided herein, no 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, no Party nor 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 17.4: Applicable Law/Venue. This Contract shall be construed in accordance with, and all disputes arising hereunder shall be determined in accordance with, the law of the State of Hawai'i, U.S.A. Hawai'i shall be the exclusive venue for any litigation arising hereunder. 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 Hawai'i in a court of competent jurisdiction.

Section 17.5: 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 hereto.



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Section 17.6: Contract Is Not an Asset. 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 17.7: 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 Hawaiian Electric nor Seller is authorized to take any action in any way whatsoever for or on behalf of the other.

Section 17.8: 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 17.9: 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



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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, Hawaiian Electric may disclose Confidential Information to the Commission, the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs of the State of Hawai'i ("Consumer Advocate"), and/or any other governmental regulatory agency with notice to, but without need of prior consent by Seller, provided that Hawaiian Electric 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 17.10 Financial Compliance/Capital Lease/No Consolidation:

(a) Seller shall provide or cause to be provided to Hawaiian Electric on a timely basis, as reasonably determined by Hawaiian Electric, all information, including but not limited to information that may be obtained in any audit referred to below (the "Information"), reasonably requested by Hawaiian Electric for purposes of permitting Hawaiian Electric and its parent company, Hawaiian Electric Industries ("HEI"), to comply with the requirements (initial and on-going) of (a) 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"), (b) Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX 404"), (c) FASB ASC 840 Leases ("FASB ASC 840"), and (d) 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 Hawaiian Electric in order to meet its compliance obligations, Seller shall allow Hawaiian Electric 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 Hawaiian Electric 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 Hawaiian Electric's balance sheet, and such consolidation is not attributable to Hawaiian Electric's 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, Hawaiian Electric (and/or Hawaiian Electric's affiliates or HEI) in their good faith analysis and sole discretion are



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required to consolidate Seller into its financial statements in accordance with U.S. generally accepted accounting principles, then Hawaiian Electric 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 Hawaiian Electric's 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, Hawaiian Electric (and/or Hawaiian Electric's 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 Hawaiian Electric 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) Hawaiian Electric shall, and shall cause HEI to, maintain the confidentiality of the Information as provided in this Section 17.10. Hawaiian Electric may share the Information on a confidential basis with HEI and the independent auditors and attorneys for Hawaiian Electric and HEI. (Hawaiian Electric, HEI, and their respective independent auditors and attorneys are collectively referred to in this Section 17.10 as "Recipient.") If either Hawaiian Electric 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, Hawaiian Electric and HEI each shall have the right to disclose such of the Information as Hawaiian Electric 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 Hawaiian Electric or HEI disclose Information pursuant to the preceding sentence, Hawaiian Electric and HEI shall, without limitation to the generality of the preceding sentence, have the right to disclose Information to the Commission and the Consumer Advocate in connection with the Commission's rate making activities for Hawaiian Electric 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 Hawaiian Electric nor HEI shall use the Information for any purpose other than as permitted under this Section 17.10.

(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



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disclosure so that Seller may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Section 17.10. If such protective order or other remedy is not obtained, or if Seller waives compliance with the provisions of this Section 17.10, 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 17.10 shall not extend to any portion(s) of the Information which (a) was known to such Recipient prior to receipt, or (b) without the fault of such Recipient is available or becomes available to the general public, or (c) is received by such Recipient from a third party not bound by an obligation or duty of confidentiality.

Section 17.11: Miscellaneous. No use of the pipelines, facilities or equipment used in connection with this Contract shall be construed as having been dedicated to public use and it is hereby acknowledged by the Parties that the owner of any pipelines used to transport Product under this Contract retains the rights to determine who, other than the Parties to this Contract, shall use said pipelines, facilities, and equipment.

Section 17.12: 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 Hawaiian Electric 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:

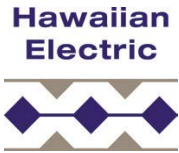
- (a) Any final non-appealable order, judgment or decree is entered in any proceeding, which final order, judgment or decree provides for the payment of money in excess of five Hundred Thousand Dollars (\$500,000) by Seller, and Seller shall not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereon within (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 thereof and cause the execution thereof to be stayed during such appeal.
- (b) Seller shall have received any notice that 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 17.13: 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 attorneys' fees and costs.



Section 17.13: 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 17.14: 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 any 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 an “original” signature for purposes of this Contract.



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

HAWAIIAN ELECTRIC COMPANY, INC.

By _____
Its _____

By _____
Its _____

[SELLER]

By _____
Its _____

By _____
Its _____