

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In The Matter of the Requests of)
)
HAWAIIAN ELECTRIC COMPANY, INC.,) DOCKET NO. 2017-0352
HAWAII ELECTRIC LIGHT COMPANY, INC.,)
AND MAUI ELECTRIC COMPANY, LIMITED)
)
To Instituting a Proceeding Relating to a)
Competitive Bidding Process to Acquire)
Dispatchable and Renewable Generation)
_____)

**Hawaiian Electric Companies’
Final Stage 2
Renewable and Grid Services RFPs**

Book 2 of 7

Filed August 22, 2019



**Hawaiian
Electric**

*Model
Energy Storage Power
Purchase Agreement*

August 22, 2019 Version

This document indicates, for information purposes only, the terms and conditions that may be negotiated in a contract for the sale of energy storage services to be executed by Hawaiian Electric Company, Inc. The terms and conditions that may be offered by Hawaiian Electric Company, Inc. in an energy storage power purchase agreement may be modified to reflect factors such as different storage technologies, project specifics, changes in applicable rules, guidance from the Public Utilities Commission in proceedings concerning the approval or negotiation of such energy storage power purchase agreements, results of an interconnection requirements study and other negotiated terms and conditions. This document also assumes that the proposed facility will be a battery energy storage system. If a proposal containing technology other than a battery for the energy storage system is selected for the RFP's final award group, replacement provisions accounting for such differing technology will need to be developed for the energy storage power purchase agreement for such project proposal.

[NOTE: TEXT WITHIN THIS DOCUMENT THAT APPEARS IN BOLD AND/OR BRACKETS INDICATES A PROVISION THAT MAY REQUIRE REVISION TO CONFORM TO A SPECIFIC PROJECT.]

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ENERGY STORAGE

POWER PURCHASE AGREEMENT

This Energy Storage Power Purchase Agreement, together with the Attachments (collectively, this “**Agreement**”) is made and entered into as of this [____] day of [Month], [Year] (“**Execution Date**”) by **HAWAIIAN ELECTRIC COMPANY, INC.**, a Hawai‘i corporation (“**Company**,” and [**SELLER**], a [Seller’s business registration] (“**Seller**”). Company and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” Capitalized terms used in this Agreement and not otherwise defined in the context in which they first appear are defined in the Schedule of Defined Terms.

RECITALS

WHEREAS, Company is an operating electric public utility on the Island of O‘ahu, subject to the Hawai‘i Public Utilities Law (Hawai‘i Revised Statutes, Chapter 269) and the rules and regulations of the Hawai‘i Public Utilities Commission (the “**PUC**”); and

WHEREAS, the Company System is operated as an independent power grid and must both maximize system reliability for its customers by ensuring that sufficient generation is available and meet the requirements for voltage stability, frequency stability, and reliability standards; and

WHEREAS, Seller desires to build, own and operate a safe, reliable and operationally flexible battery energy storage system to provide the Company System with those benefits and services associated with the Energy Storage Services, as defined herein; and

WHEREAS, Seller understands the need to use all commercially reasonable efforts to maximize the overall reliability of the Company System; and

WHEREAS, the Facility is proposed to be located at _____, County of Honolulu, State of Hawai‘i, as more fully described in **Attachment A** (Description of Storage Facility) and **Attachment B** (Facility Owned by Seller) attached hereto and made a part hereof; and

WHEREAS, Seller desires to sell to Company, and Company agrees to purchase upon the terms and conditions set forth herein, the availability of the Energy Storage Services provided by the Facility;

NOW, THEREFORE, in consideration of the premises and the respective promises herein, Company and Seller hereby agree as follows:

ARTICLE 1

PARALLEL OPERATION

In connection with its operation of the Facility to provide the Energy Storage Services to Company, Seller shall comply in all respects with any and all requirements and obligations to enable the interconnection and parallel operation of the Facility with the Company System; provided, however, that such interconnection and parallel operation (a) shall not (i) adversely affect Company's property or the operations of its customers and customers' property; (ii) present safety hazards to the Company System, Company's property or employees or Company's customers or the customers' property or employees; or (iii) otherwise fail to comply with any applicable Laws, Governmental Approvals, Company's interconnection requirements or this Agreement; and (b) shall be contingent upon the satisfactory completion, as determined solely by Company, of the Acceptance Test and, to the extent applicable, the Control System Acceptance Test, in accordance with Good Engineering and Operating Practices.

ARTICLE 2

FACILITY OWNED AND OPERATED BY SELLER

2.1 Facility Owned and Operated by Seller.

Seller agrees to design, furnish, install, operate and maintain the Facility in accordance with all applicable Laws, Governmental Approvals, Good Engineering and Operating Practices and the terms and conditions of this Agreement. Seller agrees that no changes or additions to the Facility shall be made without prior written approval by Company and amendment to the Agreement unless such changes or additions to the Facility could not reasonably be expected to have a material effect on the assumptions used in performing the IRS.

2.1. Allowed Capacity.

The net instantaneous MW output from the Facility may not exceed the Allowed Capacity. Seller shall take all necessary affirmative action to limit Discharge Energy to no more than the Allowed Capacity. Company may take appropriate action to limit the Discharge Energy pursuant to, but not limited to, **Article 12** (Dispatching and Charging the Facility; Scheduling); **Article 16** (Personnel and System Safety), **Attachment B** (Facility Owned by Seller) and Good Engineering and Operating Practices. Company shall not be required to pay for any Discharge Energy.

2.2. Interconnection Requirements Study.

If this Agreement is executed prior to completion of the Interconnection Requirements Study, then following the completion of the IRS:

(a) The Parties shall, no later than the ESPPA Amendment Deadline, execute a formal amendment to this Agreement substituting new versions of **Attachment B** (Facility Owned by Seller), **Attachment E** (Single-Line Drawing and Interface Block Diagram), **Attachment F** (Relay List and Trip Scheme), **Attachment G** (Company-Owned Interconnection Facilities), **Attachment K** (Guaranteed Project Milestones), **Attachment K-1** (Seller's Conditions Precedent and Company Milestones) and **Attachment L** (Reporting Milestones) (the “**Interconnection Requirements Amendment**”) to reflect the results of the IRS; or

(b) This Agreement may be declared null and void (i) by either Party upon written notice to the other Party if the Interconnection Requirements Amendment is not executed by the ESPPA Amendment Deadline; or (ii) by Seller upon written notice delivered to Company no later than the Termination Deadline.

ARTICLE 3 TERM OF THE AGREEMENT

3.1. Term

Subject to **Section 3.3** (Effectiveness of Certain Obligations), the initial term of this Agreement shall commence upon the Execution Date, and, unless earlier terminated as provided herein, shall remain in effect for [REDACTED ()] Contract Years following the Commercial Operations Date (the “**Initial Term**”). This Agreement shall automatically terminate upon expiration of the Initial Term. If the Parties desire, the Parties may negotiate terms and conditions of an extension term (“**Extended Term**”), including reduced contract pricing in recognition that Seller will have recovered its capital and financing costs, which terms and conditions (a) shall be submitted to the PUC by Company for approval no later than one (1) year prior to the expiration of the Initial Term and (b) shall have no effect without PUC approval.

3.2. Information Sharing and Shared Learning.

Seller acknowledges that Company is entering into this Agreement, in part, to gain operational and market information regarding the performance, efficiency, operations, maintenance, and uses of energy storage assets as an integral part of Company’s portfolio of assets to meet its customers’ needs. Throughout the Term, Seller agrees to share such information with Company upon Company’s reasonable request, with such information to be treated by Company as confidential if Seller so requests, which will include, without limitation, design logic, and tunable parameters and values, which in total determine the technical and operational characteristics, and historical data to review operational performance.

3.3. Effectiveness of Certain Obligations.

Only **Article 2** (Facility Owned and/or Operated By Seller), this **Article 3** (Term of the Agreement); **Article 6** (Events of Default; Remedies; Termination), **Article 14** (Credit Assurance and Security), as it relates to Development Period Security, **Article 15** (Sale and Assignment), **Article 18** (Representations and Warranties), **Article 19** (Limitations), **Article 20** (Indemnification), **Article 23** (Financial Compliance), **Article 24** (Regulatory Approval), **Article 26** (Dispute Resolution), **Article 27** (Miscellaneous), **Section 3** (Seller Payment to Company for Company-Owned Interconnection Facilities and Review of Facility) of **Attachment G** (Company-Owned Interconnection Facilities) and the Schedule of Defined Terms of this Agreement shall become effective on the Execution Date. Except where obligations of the Parties are explicitly stated as being effective before the Effective Date, all other portions of this Agreement shall become effective on the Effective Date.

3.4. Prior to Effective Date.

Company may, by written notice delivered prior to the Effective Date, declare the Agreement null and void if any one or more of the following conditions applies:

(a) Seller implements a material change to the Facility (i) without following the requirements of **Section 8(b)** of **Attachment A** (Description of Storage Facility); or (ii) in a manner inconsistent with the process established under **Section 2.3** (Interconnection Requirements Study).

(b) Seller is in breach of any of its representations and warranties under this Agreement, including, but not limited to: (i) Seller's representation and warranty in **Section 18.2(c)** and **(d)** that Seller have all Land Rights and Governmental Approvals as provided therein; and (ii) the provisions of **Section 3(b)** (Total Estimated Interconnection Cost) of **Attachment G** (Company-Owned Interconnection Facilities) requiring the payment by Seller to Company of the amounts specified within the time periods provided therein.

(c) Seller, subsequent to making the payment to Company required under **Section 3(b)(ii)** (Company-Owned Interconnection Facilities Prepayment) of **Attachment G** (Company-Owned Interconnection Facilities), or subsequent to making the payment to Company to pay for the IRS, requests in writing that Company stop or otherwise delay the performance of the work for which Company received such payment.

3.5. Agreement Null and Void.

If the Agreement is declared null and void pursuant to **Section 2.3** (Interconnection Requirements Study), **Section 3.4** (Prior to Effective Date), **Section 24.3** (Time Period for PUC Submittal Date), or **Section 24.4** (Time Period for PUC Approval), the Parties hereto shall thereafter be free of all obligations hereunder except as set forth in this **Section 3.5** (Agreement Null and Void) and **Section 14.1(b)** (Return of Development Period Security), and shall pursue no further remedies against the other; provided, however, that if, in response to Seller's request and offer of adequate assurance of reimbursement, Company agrees in writing to incur costs associated with Company-Owned Interconnection Facilities prior to the Non-Appealable PUC Approval Order Date or completion of the IRS: (a) Seller shall pay Company the actual costs and cost obligations incurred by Company as of the date the Agreement is declared null and void for Company-Owned Interconnection Facilities and any reasonable costs incurred thereafter; and (b) Company shall refund to Seller any amounts advanced by Seller in excess of such costs. A declaration that this Agreement is null and void pursuant to **Section 2.3** (Interconnection Requirements Study), **Section 3.4** (Prior to Effective Date), **Section 24.3** (Time Period for PUC Submittal Date), or **Section 24.4** (Time Period for PUC Approval), shall not affect the following provisions, which shall remain in full force and effect: **Section 3.2** (Information Sharing and Shared Learning), **Section 3.3** (Effectiveness of Certain Obligations), this **Section 3.5** (Agreement Null and Void), **Section 23.2** (Confidentiality), **Article 26** (Dispute Resolution), **Section 27.3** (Notices), **Section 27.8** (Governing Law, Jurisdiction and Venue), **Section 27.13** (Settlement of Disputes), **Section 27.16** (Computation of Time), **Section 27.19** (No Third-Party Beneficiaries), **Section 27.20** (Hawai'i General Excise Tax), and **Section 7** (Land Restoration) of **Attachment G** (Company-Owned Interconnection Facilities). Notwithstanding the foregoing, the right of either Party to terminate the Agreement at any time upon the occurrence of any Event of Default described in **Article 6** (Events of Default; Remedies; Termination) shall remain in full force and effect.

ARTICLE 4

COMPENSATION; PERFORMANCE METRICS

[DRAFTING NOTE: For any projects which intend to meet the capacity need for Oahu and which propose a GCOD after March 2022 (but, in no event later than June 1, 2022), such projects shall be required to meet the availability and performance metrics of this Article 4 immediately as of GCOD (i.e., no seasoning period), and liquidated damages would be assessable for failure to satisfy such metrics without taking into account a seasoning period. Conforming revisions to be made based on a project's proposed GCOD and whether such project intends to meet the capacity need for Oahu.]

4.1. Lump Sum Payment.

Commencing on the Commercial Operations Date, Company shall pay to Seller a monthly Lump Sum Payment in consideration for the availability of the Facility's Energy Storage Services to respond to Company Dispatch/Charge in accordance with this Agreement. For purposes of calculating the monthly Lump Sum Payment, the monthly Lump Sum Payment shall be adjusted downward to account for the time the Facility is not available for Company Dispatch/Charge because of a Force Majeure condition (a) at the Facility or (b) that otherwise delays or prevents the Seller from making the Facility available for Company Dispatch/Charge, as more fully set forth in **Attachment J** (Adjustment to Lump Sum Payment) to this Agreement.

4.2. Performance Metrics.

In order to provide Company with reasonable assurances of the Facility's capability to make the Energy Storage Services available for Company Dispatch/Charge: (a) the Capacity Performance Metric shall be used to confirm the capability of the Facility to discharge continuously for four (4) hours at Maximum Rated Output or to discharge continuously for a total energy (MWh) equal to the Contract Capacity if the test is conducted at less than Maximum Rated Output; (b) the EAF Performance Metric shall be used to determine whether the Facility is meeting its expected availability; (c) the EFOF Performance Metric shall be used to evaluate whether the Facility is experiencing excessive unplanned outages; (d) the RTE Performance Metric shall be used to evaluate the Facility's storage efficiency; and (e) the Fast Frequency Response Performance Metric shall be used to measure if the Facility frequency response to Company System frequency is acceptable, consistent with the required Fast Frequency Response and mutually agreed tuning parameters **[SUBJECT TO REMOVAL PER SECTION 4.7 DRAFTING NOTE]**. Seller shall design, operate and maintain the Facility in a manner consistent with the standard of care reasonably expected of an experienced owner/operator with the desire and financial resources necessary to design, operate and maintain the Facility to achieve the Performance Metrics all in accordance with Good Engineering and Operating Practices. The Performance Metrics set forth in **Section 4.3** (Capacity Performance Metric) through **Section 4.7** (Fast Frequency Response Performance Metric) **[SUBJECT TO REMOVAL PER SECTION 4.7 DRAFTING NOTE]** of this Agreement shall be interpreted consistent with the NERC GADS Data Reporting Instructions.

4.3. Capacity Performance Metric.

(a) **Capacity Test and Liquidated Damages.** During commissioning, and for each Measurement Period following the Commercial Operations Date, the Facility shall be required to complete a Capacity Test, as more fully set forth in **Attachment T** (Facility Tests) to this Agreement. For each Measurement Period for which the Facility fails to demonstrate that it satisfies the Capacity Performance Metric, Seller shall pay, and Company shall accept, as liquidated damages for such shortfall, the amount set forth in the following table (on a progressive basis) upon proper demand at the end the Measurement Period in question:

Capacity Ratio	Liquidated Damage Amount
<u>Tier 1</u> 95.0% - 99.9%	For each one-tenth of one percent (0.001) that the Capacity Ratio is below 100% and is above 94.9%, an amount equal to one-tenth of one percent (0.001) of the Lump Sum Payment for the Measurement Period in question; plus
<u>Tier 2</u> 85.0% - 94.9%	For each one-tenth of one percent (0.001) that the Capacity Ratio is below 95% and is above 84.9%, an amount equal to one and a half-tenths of one percent (0.0015) of the Lump Sum Payment for the Measurement Period in question; plus
<u>Tier 3</u> 75.0% - 84.9%	For each one-tenth of one percent (0.001) that the Capacity Ratio is below 85% and is above 74.9%, an amount equal to two-tenths of one percent (0.002) of the Lump Sum Payment for the Measurement Period in question; plus
<u>Tier 4</u> 60.0% - 74.9%	For each one-tenth of one percent (0.001) that the Capacity Ratio is below 75% and is above 59.9%, an amount equal to two and a half-tenths of one percent (0.0025) of the Lump Sum Payment for the Measurement Period in question; plus
<u>Tier 5</u> 50.0% - 59.9%	For each one-tenth of one percent (0.001) that the Capacity Ratio is below 60% and is above 49.9%, an amount equal to three-tenths of one percent (0.003) of the Lump Sum Payment for the Measurement Period in question; plus
<u>Tier 6</u> 49.9% and below ("Lowest Capacity Bandwidth")	For each one-tenth of one percent (0.001) that the Capacity Ratio is below 50%, an amount equal to three and a half-tenths of one percent (0.0035) of the Lump Sum Payment for the Measurement Period in question.

For purposes of determining liquidated damages under this **Section 4.3(a)** (Capacity Test and Liquidated Damages), the starting and end points for the duration of the period that the Facility discharges shall be rounded to the nearest MWh. Each Party

agrees and acknowledges that (i) the damages that Company would incur if the Seller fails to achieve the Capacity Performance Metric for a Measurement Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

EXAMPLE: The following is an example calculation of liquidated damages for the Capacity Performance Metric and is included for illustrative purposes only. Assume the following:

The Maximum Rated Output for the Facility is 25 MW.

A Capacity Test was conducted and the Facility was measured to have discharged 65 MWh

Contract Capacity = 25 MW x 4 hours = 100 MWh

Capacity Ratio = MWh Discharged ÷ Contract Capacity = 65 MWh ÷ 100 MWh = 0.65

LD = [((1 - 0.950) x 1) + ((0.950 - 0.850) x 1.5) + ((0.850 - 0.750) x 2 + ((0.750 - 0.65) x 2.5)] x Lump Sum Payment for the Measurement Period in question

= 0.65 x Lump Sum Payment for the Measurement Period in question

(b) Capacity Test Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under **Section 4.3(a)** (Capacity Test and Liquidated Damages) is to compensate Company for the damages that Company would incur if the Facility fails to demonstrate satisfaction of the Capacity Performance Metric during a Measurement Period, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the Facility is likely to continue to substantially underperform the Company's expectations. Accordingly, and without limitation to Company's rights under said **Section 4.3(a)** (Capacity Test and Liquidated Damages) for those Measurement Periods during which the Facility fails to demonstrate satisfaction of the Capacity Performance Metric, substantial underperformance shall give rise to a termination right as set forth in this **Section 4.3(b)** (Capacity Test Termination Rights). If the Facility is in the Lowest Capacity Bandwidth for any two Measurement Periods during a 12-month period, an **[18-month]** cure period (the "**Capacity Cure Period**") will commence on the Day following the close of the second such Measurement Period. For each Measurement Period during such Capacity Cure Period, Capacity Tests shall continue to be conducted as set forth in **Attachment T** (Facility Tests) to demonstrate satisfaction of the Capacity Performance Metric during such Measurement Period, and liquidated damages paid and accepted as set forth in **Section 4.3(a)** (Capacity Test and Liquidated Damages); provided, however, that if the Seller fails to demonstrate satisfaction of the Capacity Performance Metric prior to the expiration of the Capacity Cure Period, such failure shall constitute an Event of Default under **Section 6.1(c)** of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in **Article 6** (Events of Default; Remedies; Termination).

4.4. Equivalent Availability Factor Performance Metric.

(a) **Annual Equivalent Availability Factor and Liquidated Damages.** For each Measurement Period following the Commercial Operations Date, an Annual Equivalent Availability Factor (“**Annual EAF**”) shall be calculated as set forth in **Attachment U** (Annual Equivalent Availability Factor). If the Annual EAF for such Measurement Period is less than **97%** (the “**EAF Performance Metric**”), Seller shall pay, and Company shall accept, as liquidated damages for such shortfall, the amount set forth in the following table (on a progressive basis) upon proper demand at the end the current Measurement Period:

Annual Equivalent Availability Factor	Liquidated Damage Amount
<u>Tier 1</u> 85.0% - 96.9%	For each one-tenth of one percent (0.001) by which the Annual EAF falls below 97% but equal to or above 85%, an amount equal to one-tenth of one percent (0.001) of the Lump Sum Payment for the Measurement Period in question; plus
<u>Tier 2</u> 80.0% - 84.9%	For each one-tenth of one percent (0.001) by which the Annual EAF falls below 85% but equal to or above 80%, an amount equal to two-tenths of one percent (0.002) of the Lump Sum Payment for the Measurement Period in question; plus
<u>Tier 3</u> 75.0% - 79.9%	For each one-tenth of one percent (0.001) by which the Annual EAF falls below 80% but equal to or above 75%, an amount equal to three-tenths of one percent (0.003) of the Lump Sum Payment for the Measurement Period in question; plus
<u>Tier 4</u> Below 75.0%	For each one-tenth of one percent (0.001) by which the Annual EAF falls below 75%, an amount equal to four-tenths of one percent (0.004) of the Lump Sum Payment for the Measurement Period in question.

Such liquidated damages shall be due within thirty (30) Days after the first to occur of the end of such Measurement Period or the end of Term. In the event Seller fails to pay Company amounts of liquidated damages due under this **Section 4.4(a)** (Annual Equivalent Availability Factor and Liquidated Damages) within thirty (30) Days of receipt of Company’s written demand, Company may, without limitation to any other remedy Company may have, set-off such amounts due against payments it is otherwise obligated to make under this Agreement.

For purposes of determining liquidated damages under this **Section 4.4(a)** (Annual Equivalent Availability Factor and Liquidated Damages), the Annual EAF for the Measurement Period in question shall be rounded to the nearest one-tenth of one percent (0.001). Each Party agrees and acknowledges that (i) the damages that Company would incur if the Seller fails to achieve the EAF Performance Metric for a Measurement Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

(b) Annual Equivalent Availability Factor Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under **Section 4.4(a)** (Annual Equivalent Availability Factor and Liquidated Damages) is to compensate Company for the damages that Company would incur if the Seller fails to achieve the EAF Performance Metric for a Measurement Period, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the Facility is likely to continue to substantially underperform the EAF Performance Metric. Accordingly, and without limitation to Company’s rights under said **Section 4.4(a)** (Annual Equivalent Availability Factor and Liquidated Damages) for those Measurement Periods during which the Seller failed to achieve the EAF Performance Metric, the failure of the Seller to achieve, for each of four (4) consecutive Measurement Periods, an Annual EAF of not less than **75%** shall constitute an Event of Default under **Section 6.1(d)** of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in **Article 6** (Events of Default; Remedies; Termination); provided, however, that if a Measurement Period for which the aforementioned 75% threshold is not achieved falls within a Capacity Cure Period, such Measurement Period shall be excluded from the calculation of the aforementioned “four (4) consecutive Measurement Periods” if the failure to achieve the aforementioned 75% threshold was the result of unavailability caused by the process of carrying out the repairs to or replacements of the Facility and/or Storage Unit(s) necessary to remedy the failure of the Facility to achieve the Capacity Performance Metric.

4.5. Equivalent Forced Outage Factor Performance Metric.

(a) Annual Equivalent Forced Outage Factor and Liquidated Damages. For each Measurement Period following the Commercial Operations Date, the Facility shall maintain an Annual Equivalent Forced Outage Factor (“**Annual EFOF**”) of not more than 4% (the “**EFOF Performance Metric**”) as calculated as set forth in **Attachment V** (Annual Equivalent Forced Outage Factor). If the EFOF for such Measurement Period exceeds the EFOF Performance Metric, Seller shall pay, and Company shall accept, as liquidated damages for exceeding the EFOF Performance Metric, the amount set forth in the following table (on a progressive basis) upon proper demand by the Company at the end of the Measurement Period in question:

Annual Equivalent Forced Outage Factor	Liquidated Damage Amount
0.0% - 4.0%	-0-
4.1% - 6.9%	For each one-tenth of one percent (0.001) that the Annual EFOF is above 4.0% but less than 7.0%, an amount equal to two-tenths of one percent (0.002) of the Lump Sum Payment for the Measurement Period in question; plus
7.0% and above	For each one-tenth of one percent (0.001) that the Annual EFOF is above 6.9%, an amount equal to four-tenths of one percent (0.004) of the Lump Sum Payment for the Measurement Period in question.

Such liquidated damages shall be due within thirty (30) Days after the first to occur of the end of such Measurement Period or the end of Term. In the event Seller fails to pay Company amounts of liquidated damages due under this **Section 4.5(a)** (Annual Equivalent Forced Outage Factor and Liquidated Damages) within thirty (30) Days of receipt of Company's written demand, Company may set-off such amounts due against payments it is otherwise obligated to make under this Agreement.

For purposes of determining liquidated damages under this **Section 4.5(a)** (Annual Equivalent Forced Outage Factor and Liquidated Damages), the Annual EFOF for the Measurement Period in question shall be rounded to the nearest one-tenth of one percent (0.001). Each Party agrees and acknowledges that (i) the damages that Company would incur if the Seller fails to achieve the EFOF Performance Metric for a Measurement Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

For example, if the Annual EFOF was 4.1% as calculated in the example in **Attachment V** (Annual Equivalent Forced Outage Factor) attached hereto and the Lump Sum Payment for the Measurement Period in question is \$1,000,000, the liquidated damages would be \$2,000, calculated as follows:

$$\begin{aligned} 4.1\% - 4.0\% &= 0.1\% \\ \$1,000,000 \times .002 &= \$2,000 \\ \$2,000 \times 1 &= \$2,000 \end{aligned}$$

(b) Annual Equivalent Forced Outage Factor Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under **Section 4.5(a)** (Annual Equivalent Forced Outage Factor and Liquidated Damages) is to compensate Company for the damages that Company would incur if the Seller fails to achieve the EFOF Performance Metric for a Measurement Period, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the Facility is likely to continue to substantially underperform the EFOF Performance Metric. Accordingly, and without limitation to Company's rights under said **Section 4.5(a)** (Annual Equivalent Forced Outage Factor and Liquidated Damages) for those Measurement Periods during which the Seller failed to achieve the EFOF Performance Metric, the failure of the Seller to maintain, for each of four (4) consecutive Measurement Periods, an Annual EFOF of less than **7.0%** shall constitute an Event of Default under **Section 6.1(e)** of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in **Article 6** (Events of Default; Remedies; Termination).

4.6. Round Trip Efficiency Test; Liquidated Damages; Termination Rights.

(a) RTE Test and Liquidated Damages. For each Measurement Period following the Commercial Operations Date, the Facility shall be required to complete a RTE Test or otherwise demonstrate satisfaction of the RTE Performance Metric, as more fully set forth in **Attachment T** (Facility Tests) to this Agreement. For each Measurement Period for which the Facility fails to demonstrate that it satisfies the

RTE Performance Metric, Seller shall pay, and Company shall accept, as liquidated damages for such shortfall, in the amount to be calculated as provided in this **Section 4.6(a)** (RTE Test and Liquidated Damages), upon proper demand at the end the Measurement Period in question.

The RTE Performance Metric is % as measured at the Point of Interconnection. **[DRAFTING NOTE: PERCENTAGE TO BE TAKEN FROM RESPONSE TO RFP.]**

The liquidated damages threshold (“**LDT**”) is equal to the RTE Performance Metric minus 2 percentage points.

The Selected RTE Test is the RTE Test that came closest to satisfying the RTE Performance Metric during the BESS Measurement Period in question.

Seller shall be liable for liquidated damages if:

$$(PM - RTE\ Ratio) * 100 > 2\%$$

Where:

PM = RTE Performance Metric stated as percentage

RTE Ratio = RTE Ratio from Selected RTE Test stated as percentage

For each percentage point by which the RTE Ratio is below the LDT, Seller shall pay, and Company shall accept, liquidated damages in an amount equal to two-tenths of one percent (0.002) of the Lump Sum Payment for the Measurement Period in question.

Each Party agrees and acknowledges that (i) the damages that Company would incur if the Seller fails to achieve the RTE Performance Metric for a Measurement Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

(b) RTE Test Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under **Section 4.6(a)** (RTE Test and Liquidated Damages) is to compensate Company for the damages that Company would incur if the Facility fails to demonstrate satisfaction of the RTE Performance Metric during a Measurement Period, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the Facility is likely to continue to substantially underperform the Company’s expectations. Accordingly, and without limitation to Company’s rights under said **Section 4.6(a)** (RTE Test and Liquidated Damages) for those Measurement Periods during which the Facility fails to demonstrate satisfaction of the RTE Performance Metric, substantial underperformance shall give rise to a termination right as set forth in this **Section 2.11(b)** (RTE Test Termination Rights). If the RTE Ratio for the Selected RTE Test for the Measurement Period in question is more than 15 percentage points below the RTE Performance Metric for any two Measurement Periods during a 12-month period, an **18-month** cure period (the “**RTE Cure Period**”) will commence on the Day following

the close of the second such Measurement Period. For each Measurement Period during such RTE Cure Period, RTE Tests shall continue to be conducted as set forth in **Attachment T** (Facility Tests) and liquidated damages paid and accepted as set forth in **Section 4.6(a)** (RTE Test and Liquidated Damages); provided, however, that if Seller fails to demonstrate satisfaction of the RTE Performance Metric prior to the expiration of the RTE Cure Period, such failure shall constitute an Event of Default under **Section 6.1(f)** of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in **Article 6** (Events of Default; Remedies; Termination).

4.7. Fast Frequency Response Performance Metric.
[DRAFTING NOTE: This section only applies if Facility provides fast frequency response]

(a) Fast Frequency Response Criteria and Liquidated Damages.

Following the Commercial Operations Date, the Facility shall respond appropriately to frequency disturbances in the Company System by operating in a manner consistent with standards and parameters established for Fast Frequency Response. With respect to such frequency disturbances in the Company System, the Facility shall be required to meet all of the following minimum frequency performance criteria (collectively, the “Fast Frequency Response Performance Metric”):

- (i)** Perform per design approved by Company **[DRAFTING NOTE: To be elaborated upon based on Facility design];**
- (ii)** When control is activated, achieve 95% to 105% of control commanded full response at the POI within 200 msec of the initiation of the disturbance; and
- (iii)** Meet all other requirements listed in **Section 3(p)** (Fast Frequency Response) of **Attachment B** (Facility Owned by Seller).

Company will review historical operational data to determine the Facility’s fast frequency response following disturbances and satisfaction of the Fast Frequency Response Performance Metric. To the extent the historical operational data is insufficient or otherwise lacking for purposes of determining the Facility’s satisfaction of the Fast Frequency Response Performance Metric, Company shall review Facility’s performance under structured test conditions no less than once per Contract Year.

After the first Contract Year:

- (1) for each instance of the Facility failing to satisfy the Fast Frequency Response Performance Metric, Seller shall pay, and Company shall accept, as liquidated damages for such failure, an amount equal to **25%** of the FFR Allocated Portion of the Lump Sum Payment upon proper demand by Company; and
- (2) in the event poor Facility fast frequency response performance requires disabling the fast frequency response controls, as determined by Company in its sole discretion (e.g., in the event a Facility response to Company System frequency outside of the FFR deadband contributes to frequency error or worsens the

disturbance), Seller shall pay and Company shall accept, as liquidated damages for such underperformance, an amount equal to **100%** of the FFR Allocated Portion of the Lump Sum Payment upon proper demand by Company, and Seller shall not be entitled to receive further payments of the FFR Allocated Portion of the Lump Sum Payment while the Facility fast frequency response controls remain disabled to allow Seller to perform corrective actions on the Facility to Company's reasonable satisfaction.

Such liquidated damages shall be due within thirty (30) Days of Company's written demand. In the event Seller fails to pay Company amounts of liquidated damages due under this **Section 4.7(a)** (Fast Frequency Response Criteria and Liquidated Damages) within thirty (30) Days of receipt of Company's written demand, Company may set-off such amounts due against payments it is otherwise obligated to make under this Agreement.

Company agrees that, when evaluating performance under this **Section 4.7** (Fast Frequency Response Performance Metric), the available State of Charge shall be taken into consideration and Seller shall not be held to the criteria set forth in this **Section 4.7** (Fast Frequency Response Performance Metric) if there is insufficient charged capacity available for the appropriate response.

(b) Performance Deficiencies; Fast Frequency Response Performance Factor Termination Rights. With respect to any Facility response under this **Section 4.7** (Fast Frequency Response Performance Metric), Company will notify Seller of any discrepancies in the Facility response, and Seller shall respond to and cure all such performance deficiencies in accordance with **Section 1(j)** (Demonstration of Facility) of **Attachment B** (Facility Owned by Seller). The Parties acknowledge that, although the intent of the liquidated damages payable under **Section 4.7(a)** (Fast Frequency Response Criteria and Liquidated Damages) is to compensate Company for the damages that Company would incur if the Facility fails to respond appropriately to Company System frequency, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the Facility is likely to continue to substantially underperform. Accordingly, and without limitation to Company's rights under said **Section 4.7(a)** (Fast Frequency Response Criteria and Liquidated Damages), in the event Seller fails to comply with the terms of **Section 1(j)** (Demonstration of Facility) of **Attachment B** (Facility Owned by Seller), such event shall constitute an Event of Default under **Section 6.2(f)** of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in **Article 6** (Events of Default; Remedies; Termination).

4.8. Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages.

(a) Payment of Liquidated Damages. With respect to the liquidated damages payable under **Section 4.3(a)** (Capacity Test and Liquidated Damages), **Section 4.4(a)** (Annual Equivalent Availability Factor and Liquidated Damages), **Section 4.5(a)** (Annual Equivalent Forced Outage Factor and Liquidated Damages)

Section 4.6(a) (RTE Test and Liquidated Damages) and **Section 4.7(a)** (Fast Frequency Response Criteria and Liquidated Damages) [**SUBJECT TO REMOVAL PER SECTION 4.7 DRAFTING NOTE**] (collectively, the “**Performance Metrics LDs**”), Company shall have the right, at any time on or after the LD Assessment Date for the liquidated damages in question, at Company’s option, to set-off such liquidated damages from the amounts to be paid to Seller under **Section 4.1** (Lump Sum Payment) of this Agreement or, to draw such liquidated damages from the Operating Period Security, as follows:

(i) if the Facility fails to achieve the Capacity Performance Metric for a Measurement Period, Company shall have the right to set-off or draw the amount of liquidated damages owed for such failure as calculated as provided in **Section 4.3(a)** (Capacity Test and Liquidated Damages);

(ii) if the Quarterly Report for the Measurement Period in question shows a failure to achieve one or more of the Performance Metrics required for such period, and Company does not submit a Notice of Disagreement with respect to such Quarterly Report, Company shall have the right to set-off or draw the amount of liquidated damages owed for such failure as calculated as provided in **Section 4.4(a)** (Annual Equivalent Availability Factor and Liquidated Damages), **Section 4.5(a)** (Annual Equivalent Forced Outage Factor and Liquidated Damages) **Section 4.6(a)** (RTE Test and Liquidated Damages) and **Section 4.7(a)** (Fast Frequency Response Criteria and Liquidated Damages) [**SUBJECT TO REMOVAL PER SECTION 4.7 DRAFTING NOTE**], as applicable;

(iii) in all cases in which Company submits a Notice of Disagreement for a given Quarterly Report, Company shall have the right to set-off or draw all or any portion of the amount of liquidated damages for the Measurement Period in question, as applicable, as calculated on the basis of the shortfall(s) in the achievement of the Performance Metric(s) in question, as shown in such Notice of Disagreement; and

(iv) in the event of any disagreement as to the liquidated damages owed under clause (i) and (ii) above:

(A) if the amount set-off or drawn by the Company exceeds the amount of liquidated damages for such Measurement Period that are eventually found to be payable for the LD Period in question as determined under **Section 2** (Quarterly Report Disagreements) of **Attachment S** (Quarterly Reporting and Dispute Resolution by Independent Evaluator) to this Agreement, Company shall promptly (and in no event more than forty-five (45) Business Days from the date of such determination) repay such excess to Seller together with, unless the Parties otherwise agree in writing, interest from the date of Company’s set-off or draw until the date that such excess is repaid to Seller at the average Prime Rate for such period; and

(B) if Company does not exercise its rights to set-off or draw liquidated damages for such Measurement Period, or does not set-off or draw the full amount of the liquidated damages for such period eventually found to be payable for the LD Period in question as determined under **Section 2** (Quarterly Report Disagreements) of **Attachment S** (Quarterly Reporting and Dispute Resolution by Independent Evaluator) to this Agreement, Seller shall promptly, upon such

determination as aforesaid, pay to Company the amount of liquidated damages that are found to be owing together with, unless otherwise agreed by the Parties in writing, interest on the amount of such liquidated damages that went unpaid from the applicable LD Assessment Date for such liquidated damages until the date such liquidated damages are paid to Company in full at the average Prime Rate for such period, and Company shall have the right, at its option, to set-off such interest for the amounts to be paid to Seller under **Section 4.1** (Lump Sum Payment) of this Agreement or to draw from the Operating Period Security.

Any delay by Company in exercising its rights to set-off liquidated damages and/or interest from the amounts to be paid to Seller under **Section 4.1** (Lump Sum Payment) of this Agreement, or to draw such liquidated damages and/or interest from the Operating Period Security, shall not constitute a waiver by Company of its right to do so.

(b) Limitation on Liquidated Damages. Notwithstanding any other provision of this Agreement to the contrary, the aggregate liquidated damages paid by Seller during each Contract Year for the Performance Metrics LDs, such payments by Seller to include but not be limited to any set-offs or draws made by Company during such Contract Year pursuant to **Section 4.8(a)** (Payment of Liquidated Damages), shall not exceed the total of the twelve (12) monthly Lump Sum Payments payable during such Contract Year pursuant to **Section 4.1** (Lump Sum Payment) and **Section 5.4** (Payment Procedures). For avoidance of doubt: A monthly Lump Sum Payment that is invoiced by Seller to Company pursuant to **Section 5.3** (Seller's Preparation of the Monthly Invoice and Quarterly Report) for, e.g., the twelfth (12th) calendar month of Contract Year N but is paid during Contract Year N+1 as provided in **Section 5.4** (Payment Procedures) shall, for purposes of determining the limitation on Performance Metrics LDs under this **Section 4.8(b)** (Limitation on Liquidated Damages), be included in the total of the twelve (12) monthly Lump Sum Payments payable during Contract Year N+1. As a result of the foregoing, the total of the monthly Lump Sum Payments used to establish the limitation on Performance Metrics LDs for the initial Contract Year under this **Section 4.8(b)** (Limitation on Liquidated Damages) will be less than twelve (12). The Parties acknowledge that, because the monthly Lump Sum Payment is subject to adjustment (including downward adjustment) as provided in **Section 4.1** (Lump Sum Payment), it is possible that a downward adjustment in some or all of the monthly Lump Sum Payments payable during a Contract Year might cause the Performance Metrics LDs paid by Seller during the course of such Contract Year to exceed the limitation on the Performance Metrics LDs for such Contract Year established at the close of such Contract Year pursuant to the first sentence of this **Section 4.8(b)** (Limitation on Liquidated Damages). In such case, Company shall promptly upon the determination that the Performance Metrics LDs paid during the course of such Contract Year exceeded the limitation on Performance Metrics LDs for such Contract Year (and in no event more than forty-five (45) Business Days from the end of such Contract Year) repay such excess amount to Seller without interest.

ARTICLE 5 BILLING AND PAYMENT

5.1. No Payments Prior to Commercial Operations Date.

Company shall not be obligated to make any payment for the availability of the Facility's Energy Storage Services prior to the Commercial Operations Date.

5.2. Sales of Electric Energy by Company to Seller; Seller Payments.

Sales of electric energy by Company to Seller (e.g., for Station Use) shall be governed by an applicable rate schedule filed with the PUC and not by this Agreement, except with respect to the reactive amount adjustment (if any) referred to in **Attachment B** (Facility Owned by Seller). Seller shall pay to Company (a) all amounts pursuant to **Attachment G** (Company-Owned Interconnection Facilities); (b) all amounts pursuant to **Section 9.1** (Revenue Metering Package; Station Use Metering Equipment) and **Section 9.2** (Meter Testing); (c) a monthly metering charge of \$25.00 per month, which is in addition to any charges due Company pursuant to the applicable rate schedule pursuant the preceding sentence of this **Section 5.2** (Sales of Electric Energy By Company to Seller; Seller Payments) of this Agreement; and (d) such other costs to be incurred by Company and reimbursed by Seller as set forth in this Agreement.

5.3. Seller's Preparation of the Monthly Invoice and Quarterly Report.

(a) Monthly Invoice. By the tenth (10th) Business Day of each calendar month, Seller shall submit to Company an invoice for the payment obligations incurred by Company and Seller during the preceding month pursuant to **Article 4** (Compensation; Performance Metrics) and **Section 5.2** (Sales of Electric Energy by Company to Seller; Seller Payments), together with all supporting documentation and calculations reasonably necessary to evidence all amounts charged thereunder.

(b) Quarterly Report. Commencing with the month during which the Commercial Operations Date is achieved, and for each Measurement Period thereafter during the Term, Seller shall prepare and provide to Company a Quarterly Report by the tenth (10th) Business Day of the following month in accordance with **Section 1** (Quarterly Report) of **Attachment S** (Quarterly Reporting and Dispute Resolution by Independent Evaluator) of this Agreement. Beginning with the Quarterly Report for the last Measurement Period of the initial Contract Year, Seller shall include calculations of (a) the Capacity Ratio, the RTE Ratio, the Annual EAF and the Annual EFOF for the Measurement Period, as well as (b) any liquidated damages to be assessed, as set forth in the form of Quarterly Report set forth in **Section 1** (Quarterly Report) of said **Attachment S** (Quarterly Reporting and Dispute Resolution by Independent Evaluator). The rights and obligations of the Parties with respect to each Quarterly Report and any disagreements arising out of any Quarterly Report are set forth in **Section 1** (Quarterly Report) and **Section 2** (Quarterly Report Disagreements)

of **Attachment S** (Quarterly Reporting and Dispute Resolution by Independent Evaluator) to this Agreement.

5.4. Payment Procedures.

By the twentieth (20th) Business Day of each calendar month following the month during which the invoice was submitted (i.e., by the twentieth (20th) Business Day of the second calendar month following the calendar month covered by the invoice in question), but, except as otherwise provided in the following sentence, no later than the last Business Day of that month if there are less than twenty (20) Business Days in that month, Company shall, subject to its right to set-off liquidated damages as provided in **Section 4.8** (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages), make payment on such invoice, or provide to Seller an itemized statement of its objections to all or any portion of such invoice and pay any undisputed amount. Notwithstanding the foregoing, the Day by which Company shall make payment to Seller hereunder shall be increased by one (1) Day for each Day that Seller is delinquent in providing to Company either: (a) the Quarterly Report for the Measurement Period in question pursuant to **Section 1** (Quarterly Report) of **Attachment S** (Quarterly Reporting and Dispute Resolution by Independent Evaluator); or (b) the information required under **Section 5.3** (Seller's Preparation of the Monthly Invoice and Quarterly Report) of this Agreement.

5.5. Late Payments.

Notwithstanding all or any portion of such invoice in dispute, and subject to the provisions of **Section 4.8** (Payment of Liquidated Damages for Failure to Achieve Performance Metrics), interest shall accrue on any invoiced amount that remains unpaid following the twentieth (20th) Business Day of each calendar month (or the last Business Day of that month if there are less than twenty (20) Business Days in that month), or following the due date for such payment if extended pursuant to **Section 5.4** (Payment Procedures), at the average daily Prime Rate for the period commencing on the Day following the Day such payment is due until the invoiced amounts (or amounts due to Seller if determined to be less than the invoiced amounts) are paid in full. Partial payments shall be applied first to outstanding interest and then to outstanding invoice amounts.

5.6. Adjustments to Invoices After Payment.

In the event adjustments are required to correct inaccuracies in an invoice after payment, the Party requesting adjustment shall recompute and include in the Party's request the principal amounts due during the period of the inaccuracy together with the amount of interest from the date that such invoice was payable until the date that such recomputed amount is paid at the average daily Prime Rate for the period. The difference between the amount paid and that recomputed for the invoice, along with the allowable amount of interest, shall either be (a) paid to Seller or set-off by Company, as appropriate, in the next invoice payment to Seller; or (b) objected to by the Party responsible for such payment within thirty (30) Days following its receipt of such request. If the Party responsible for such payment objects to the request, then the Parties shall work together in good faith to resolve the objection. If the Parties are

unable to resolve the objection, the matter shall be resolved pursuant to **Article 26** (Dispute Resolution). All claims for adjustments shall be waived for any amounts that were paid or should have been payable more than thirty-six (36) months preceding the date of receipt of any such request.

5.7. Company's Billing Records.

Seller, after giving reasonable advance written notice to Company, shall have the right to review all billing, metering and related records necessary to verify the accuracy of payments relating to the Facility during Company's normal working hours on Business Days. Company shall maintain such records for a period of not less than thirty-six (36) months.

5.8. Set Off.

Company shall have the right to set off any payment due and owing by Seller, including, but not limited to, any payment under this Agreement and any payment due under any award made under **Article 26** (Dispute Resolution), against Company's payments of subsequent monthly invoices as necessary.

ARTICLE 6

EVENTS OF DEFAULT; REMEDIES; TERMINATION

6.1. Events of Default by Seller.

The occurrence of any of the following shall constitute an Event of Default by Seller:

- (a)** Subsequent to the Commercial Operations Date, Seller procures, provides or substitutes Energy Storage Services from any source other than the Facility;
- (b)** Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, any portion or component of the Energy Storage Services (e.g., Discharge Energy), or the availability thereof, to any party other than Company;
- (c)** Subsequent to the Commercial Operations Date, Seller fails to demonstrate satisfaction of the Capacity Performance Metric prior to the expiration of the Capacity Cure Period;
- (d)** Subsequent to the Commercial Operations Date, Seller fails to achieve an Annual EAF of not less than **75%** for each of four (4) consecutive Measurement Periods as provided in **Section 4.4(b)** (Annual Equivalent Availability Factor Termination Rights);
- (e)** Subsequent to the Commercial Operations Date, Seller fails to maintain an Annual EFOF of less than **7.0%** for each of four (4) consecutive Measurement Periods as provided in **Section 4.5(b)** (Annual Equivalent Forced Outage Factor Termination Rights);
- (f)** Subsequent to the Commercial Operations Date, Seller fails to demonstrate satisfaction of the RTE Performance Metric prior to the expiration of the RTE Cure Period;
- (g)** Seller fails to satisfy the requirements specified in **Article 14** (Credit Assurance and Security) of this Agreement;
- (h)** Seller fails to comply with the requirements of **Section 15.1** (Sale of the Facility) and **Attachment P** (Sale of Facility by Seller);
- (i)** During the Term, the Facility Lender declares a default under the Financing Documents and then fails to initiate, within sixty (60) Days thereafter, such actions as may be legally necessary (such as foreclosure) to take possession of the Facility and to thereafter diligently prosecute such actions to conclusion;
- (j)** Seller fails to comply with the Charging Energy obligations under **Article 8** (Charging Energy Obligations);
- (k)** Subsequent to the Commercial Operations Date, the Facility is unavailable to provide the Energy Storage Services to Company in response to

Company Dispatch/Charge pursuant to the terms and conditions of this Agreement for a period of three hundred sixty-five (365) or more consecutive Days; or

(l) Subsequent to the Commercial Operations Date, Seller fails to operate, maintain, or repair the Facility in accordance with Good Engineering and Operating Practices if such failure is not cured within thirty (30) Days after written notice of such failure from Company unless such failure cannot be cured within said thirty (30) Day period and Seller is making commercially reasonable efforts to cure such failure, in which case Seller shall have a cure period of one hundred eighty (180) Days after Company's written notice of such failure.

6.2. Events of Default by a Party.

The occurrence of any of the following during the Term of the Agreement shall constitute an Event of Default by the Party responsible for the failure, action or breach in question:

(a) The failure to make, when due, any payment required to be made to the other Party pursuant to this Agreement, if such failure is not cured within ten (10) Business Days after written notice of such failure is received by the non-performing Party;

(b) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature;

(c) Such Party becomes insolvent, or makes an assignment for the benefit of creditors (other than an assignment to a Facility Lender pursuant to the Financing Documents) or fails generally to pay its debts as they become due; or such Party shall have an order for relief in an involuntary case under the bankruptcy laws as now or hereafter constituted entered against it, or shall commence a voluntary case under the bankruptcy laws as now or hereafter constituted, or shall file any petition or answer seeking for itself any arrangement, composition, adjustment, liquidation, dissolution or similar relief to which it may be entitled under any present or future statute, law or regulation, or shall file any answer admitting the material allegations of any petition filed against it in such proceeding; or such Party seeks or consents to or acquiesces in the appointment of or taking possession by, any custodian, trustee, receiver or liquidator of it or of all or a substantial part of its properties or assets; or such Party takes action looking to its dissolution or liquidation; or within ninety (90) Days after commencement of any proceedings against such Party seeking any arrangement, composition, adjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceedings shall not have been dismissed; or within ninety (90) Days after the appointment of, or taking possession by, any custodian, trustee, receiver or liquidator of any or of all or a substantial part of the properties or assets of such Party, without the consent or acquiescence of such Party, any such appointment or possession shall not have been vacated or terminated;

(d) Such Party engages in or is the subject of a transaction requiring the prior written consent of the other Party under **Section 15.2** (Assignment by Seller) or **Section 15.6** (Assignment by Company), as applicable, without having obtained such

consent;

(e) Such Party fails to comply with either (i) a decision under **Article 26** (Dispute Resolution); or (ii) an Independent Evaluator's decision under **Article 22** (Revisions to Performance Standards), in either case within thirty (30) Days after such decision becomes binding on the Parties in accordance with **Article 26** (Dispute Resolution) or within thirty (30) Days of the issuance of such decision under **Article 22** (Revisions to Performance Standards), as applicable, or, if such decision cannot be complied with within thirty (30) Days, such Party fails to have commenced commercially reasonable efforts designed to achieve compliance within such thirty (30) Days and diligently continues such commercially reasonable efforts until compliance is attained; or

(f) A Party, by act or omission, materially breaches or defaults on any material covenant, condition or other provision of this Agreement, other than the provisions specified in **Section 6.1** (Events of Default by Seller) and **Section 6.2(a)** through **Section 6.2(e)**, if such breach or default is not cured within thirty (30) Days after written notice of such breach or default from the other Party; provided, however, that if the breach or default in question is one that could not be cured within said thirty (30) Day period by an experienced independent power producer or electric utility, as applicable, willing and able to exert commercially reasonable efforts to timely achieve such cure, then, for so long as the non-performing Party is making the same effort to cure such breach or default as would be expected of an experienced independent power producer or electric utility, as applicable, willing and able to exert commercially reasonable efforts to timely achieve such cure, the non-performing Party shall have a cure period equal to the shorter of (i) the duration of the period within which a cure could reasonably be expected to be achieved by an experienced independent power producer or electric utility, as applicable, willing and able to exert commercially reasonable efforts to achieve such cure; or (ii) a period of three hundred sixty five (365) Days beginning on the date of written notice of such breach or default; provided, further, that if the material breach in question involves Seller's failure to meet the operational and performance standards set forth in **Attachment B** (Facility Owned by Seller), the provisions of **Section 1(j)** (Demonstration of Facility) of **Attachment B** (Facility Owned by Seller) shall apply in lieu of the extended cure period provided under the preceding proviso.

6.3. Cure/Grace Periods.

Before becoming an Event of Default, the occurrences set forth in **Section 6.1** (Events of Default by Seller) and **Section 6.2** (Events of Default by a Party) are subject to the following cure/grace periods:

(a) If the occurrence is not the result of Force Majeure, the non-performing Party shall be entitled to a cure period to the limited extent expressly set forth in the applicable provision of **Section 6.1** (Events of Default by Seller) or **Section 6.2** (Events of Default by a Party); or

(b) If the occurrence is the result of Force Majeure, and if and so long as the conditions set forth in **Section 17.4** (Satisfaction of Certain Conditions) are satisfied, the non-performing Party shall be entitled to a grace period as provided in **Section**

17.5 (Termination for Force Majeure), which shall apply in lieu of any cure periods provided in **Section 6.1** (Events of Default by Seller) and **Section 6.2** (Events of Default by a Party).

6.4. Rights of the Non-Defaulting Party; Forward Contract.

If an Event of Default shall have occurred and be continuing, the other Party (the “**Non-Defaulting Party**”) shall have the right to (a) terminate this Agreement by sending notice to the Defaulting Party as provided in this **Section 6.4** (Rights of the Non-Defaulting Party; Forward Contract); (b) withhold any payments due to the Defaulting Party under this Agreement; (c) suspend performance; and (d) exercise any other right or remedy available at law or in equity to the extent permitted under this Agreement, including, without limitation, **Section 6.6** (Equitable Remedies). A notice terminating this Agreement pursuant to this **Section 6.4** (Rights of the Non-Defaulting Party; Forward Contract) shall designate the Day such termination is to be effective (the “**Termination Date**”) which shall be no later than thirty (30) Days after such notice is deemed to be received by the Defaulting Party and not earlier than the first to occur of the Day such notice is deemed to be received by the Defaulting Party or the Day following the expiration of any period afforded the Defaulting Party under **Section 6.1** (Events of Default by Seller) and **Section 6.2** (Events of Default by a Party) to cure the default in question. Without limiting the generality of the foregoing provisions of this **Section 6.4** (Rights of the Non-Defaulting Party; Forward Contract), the Parties agree that, under 11 U.S.C. § 362(b)(6), this Agreement constitutes a “forward contract,” and Company is a “forward contract merchant” such that, upon the occurrence of an Event of Default by Seller under **Section 6.1** (Events of Default by Seller) or **Section 6.2** (Events of Default by a Party), this Agreement may be terminated by Company as provided in this Agreement notwithstanding any bankruptcy petition affecting Seller.

6.5. Calculation of Termination Damages.

In the event of this Agreement is terminated by Company due to one or more Events of Default by Seller of this Agreement, Company shall have the right to collect liquidated damages, calculated in accordance with this **Section 6.5** (Calculation of Termination Damages) (the “**Termination Damages**”). If the Termination Date occurs prior to COD, Company shall be entitled to Termination Damages calculated by multiplying the Contract Capacity by \$50/kW. If the Termination Date occurs after COD, the Company shall be entitled to Termination Damages calculated by multiplying the Contract Capacity by \$75/kW.

6.6. Equitable Remedies.

Seller acknowledges that Company is a public utility and is relying upon Seller’s performance of its obligations under this Agreement, and that Company and/or its customers may suffer irreparable injury as a result of the failure of Seller to perform any of such obligations, whether or not such failure constitutes an Event of Default or otherwise gives rise to one or more of the remedies set forth in **Section 6.5** (Calculation of Termination Damages). Accordingly, the remedies set forth in **Section 6.5** (Calculation of Termination Damages) shall not limit or otherwise affect

Company's right to seek specific performance injunctions or other available equitable remedies for Seller's failure to perform any of its obligations under this Agreement, irrespective of whether such failure constitutes an Event of Default.

ARTICLE 7

COMPANY-OWNED INTERCONNECTION FACILITIES

The terms and conditions related to the Company-Owned Interconnection Facilities are set forth in **Attachment G** (Company-Owned Interconnection Facilities) of this Agreement. In accordance with **Section 8** (Transfer of Ownership/Title) of **Attachment G** (Company-Owned Interconnection Facilities), on the Transfer Date, Seller shall convey title to the Company-Owned Interconnection Facilities that were designed and constructed by or on behalf of Seller by executing a Bill of Sale and Assignment document substantially in the form set forth in **Attachment H** (Form of Bill of Sale and Assignment). In addition, in accordance with **Section 8** (Transfer of Ownership/Title) of **Attachment G** (Company-Owned Interconnection Facilities), on the Transfer Date, Seller shall deliver to Company any and all executed documents required to assign all Land Rights necessary to operate and maintain the Company-Owned Interconnection Facilities on and after the Transfer Date to Company, which documents shall be substantially in the form set forth in **Attachment I** (Form of Assignment of Lease and Assumption).

ARTICLE 8 CHARGING ENERGY OBLIGATIONS

Except as otherwise set forth in this **Article 8** (Charging Energy Obligations) or as expressly set forth in this Agreement, following the Commercial Operations Date, Company shall be responsible for and bear the cost of delivering all of the Charging Energy for the Facility to the Point of Interconnection. So long as the State of Charge is less than 100%, Seller shall take all actions necessary to accept the Charging Energy, as delivered by Company by manual dispatch or automatic signals, at and from the Point of Interconnection as part of making available to Company the Facility's Energy Storage Services in accordance with the terms of this Agreement and Company tariffs, including, without limitation, maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Facility. Seller shall only use the Charging Energy for Company's benefit in accordance with the terms of this Agreement.

ARTICLE 9 METERING; MONITORING AND COMMUNICATIONS

9.1. Revenue Metering Package; Station Use Metering Equipment.

(a) Company shall purchase, own, install and maintain the Revenue Metering Package dedicated exclusively to the Facility and by which all measurable aspects of the Energy Storage Services must be measured to be eligible for payment under this Agreement. The metering point shall be located as close as possible to the Point of Interconnection as allowed by Company, and Seller shall make available a mutually agreeable location for the Revenue Metering Package, to measure the Discharge Energy, the Charging Energy, and, as applicable, Integral Station Use. Seller shall separately meter Station Use, except for Integral Station Use, with the Station Use Metering Equipment, and shall cause the installation, maintenance, operation and replacement (as needed) of the Station Use Metering Equipment. Seller will design, construct, and operate the Facility such that (i) no Station Use is measured and served via the Revenue Metering Package except Integral Station Use; and (ii) Energy Storage Services do not serve Station Use. **[Note: Seller to provide justification for components included in Integral Station Use prior to execution.]**

(b) Seller shall install, own and maintain the infrastructure and other related equipment associated with the Revenue Metering Package and the Station Use Metering Equipment, including but not limited to all enclosures (meter cabinets, meter pedestals, meter sockets, pull boxes, and junction boxes, along with their grounding/bonding connections), CT/PT mounting structures, conduits and ductlines, enclosure support structures, ground buses, pads, test switches, terminal blocks, isolation relays, telephone surge suppressors, and analog phone lines (one per meter), subject to Company's review and approval, as further described in **Section 1(e)** (Other Equipment) of **Attachment B** (Facility Owned by Seller). Seller shall install this infrastructure such that it meets the requirements set forth in Chapter Six (IPP Metering) of the latest edition of the Company's Electric Service Installation Manual (ESIM). Company shall test such meter equipment prior to installation and every fifth (5th) year thereafter. Seller shall reimburse Company for all reasonably incurred costs for the procurement, installation, maintenance (including maintenance replacements) and testing work associated with the Revenue Metering Package and the Station Use Metering Equipment.

9.2. Meter Testing.

Company shall provide at least twenty-four (24) hours' notice to Seller prior to any test it may perform on the revenue meters or metering equipment. Seller shall have the right to have a representative present during each such test. Seller may request, and Company shall perform, if requested, tests in addition to the every fifth (5th) year test and Seller shall pay the cost of such tests. Company may, in its sole discretion, perform tests in addition to the fifth (5th) year test and Company shall pay the cost of such tests. If any of the metering equipment is found to be inaccurate at any time, as determined by testing in accordance with this **Section 9.2** (Meter Testing), Company

shall promptly cause such equipment to be made accurate, and the period of inaccuracy, as well as an estimate for correct meter readings, shall be determined in accordance with **Section 9.3** (Corrections).

9.3. Corrections.

If any test of the metering equipment conducted by Company indicates that the meter readings are in error by one percent (1%) or more, the meter readings shall be corrected as follows: (a) determine the error by testing the meter at approximately ten percent (10%) of the rated current (test amperes) specified for such meter; (b) determine the error by testing the meter at approximately one hundred percent (100%) of the rated current (test amperes) specified for the meter; (c) the average meter error shall then be computed as the sum of (i) one-fifth ($\frac{1}{5}$) of the error determined in the foregoing clause (a) and (ii) four-fifths ($\frac{4}{5}$) of the error determined in the foregoing clause (b). The average meter error shall be used to adjust the invoices in accordance with **Section 5.6** (Adjustments to Invoices After Payment) for the Energy Storage Services made available to Company for the previous six (6) months from the Facility, unless records of Company conclusively establish that such error existed for a greater or lesser period, in which case the correction shall cover such actual period of error.

9.4. Monitoring and Communications Equipment.

Seller shall install and maintain appropriate equipment, including high-resolution data recording equipment, for the purposes of (a) measuring the data required in order for Company to monitor Seller's compliance with the operational and performance standards set forth in **Section 3** (Performance Standards) of **Attachment B** (Facility Owned by Seller) and, if the monitoring equipment is part of the Company-Owned Interconnection Facilities, as set forth in **Attachment G** (Company-Owned Interconnection Facilities); and (b) recording and transferring such data to Company in real time (the "**Monitoring and Communications Equipment**"). Seller shall maintain at the Site sufficient replacement parts to avoid or otherwise minimize any shutdown pursuant to **Section 9.6** (Shutdown for Lack of Reliable Real Time Data) while any of the Monitoring and Communication Equipment is being repaired, replaced or re-calibrated.

9.5. Calibrations, Maintenance and Repairs.

(a) **Documentation Requirement.** Seller shall provide to Company (i) the manufacturer's recommended schedule for the calibration and maintenance of each component of the Monitoring and Communication Equipment; and (ii) subject to the limitation set forth in **Section 1(a)(ii)** (As-Builts) of **Attachment B** (Facility Owned by Seller) of this Agreement, documentation of the performance of all such calibration and maintenance per manufacturer specifications. Although Company is to receive from Seller the aforesaid recommended schedules for calibration and maintenance, as well documentation of the performance of all such calibration and maintenance, Company shall have no responsibility to monitor Seller's compliance with such calibration and maintenance schedules. Accordingly, any failure by Company to bring Seller's attention any apparent failure by Seller to perform such recommended calibration and maintenance shall neither relieve Seller of its obligations under this

Agreement to perform such calibration and maintenance nor constitute a waiver of Company's rights under this Agreement with respect to such failure in performance by Seller.

(b) Corrective Measures; Repairs. In the event of a pattern of material inconsistencies in the data stream provided by the Monitoring and Communication Equipment, Seller shall perform, at Seller's expense, such corrective measures as Company may reasonably require, such as the recalibration of all field measurement device components of the Monitoring and Communication Equipment. In the event of any failure in the Monitoring and Communication Equipment, Seller shall repair or replace such equipment within fifteen (15) Days of such failure, or within such longer period as may be reasonably agreed to by the Parties.

9.6. Shutdown for Lack of Reliable Real Time Data.

Company shall have the right to direct Seller to shutdown the Facility due to the unavailability of reliable real time data as required under **Section 9.4** (Monitoring and Communications Equipment). In addition, in the event of the performance of corrective measures (including recalibration) and/or repairs to any Monitoring and Communications Equipment pursuant to **Section 9.5(b)** (Corrective Measures; Repairs), Company shall have the right to direct Seller to shutdown the Facility and the Facility shall remain shutdown until such corrective action and/or repairs are completed. In the event the cause for any shutdown in this **Section 9.6** (Shutdown For Lack of Reliable Real Time Data) falls within the definition of Seller-Attributable Unavailability, such period of time shall be allocated as such for purposes of calculating the Annual EAF under **Section 4.4(a)** (Annual Equivalent Availability Factor and Liquidated Damages) of this Agreement until such time as the successful completion of such corrective measures and/or repairs has been communicated by Seller to Company. If, after such communication, Company attempts to dispatch the Facility and determines that such corrective measures and/or repairs were not successfully completed, all time from the notice of successful completion to actual successful completion shall be revised as continuance of the deration or outage. Notwithstanding the foregoing, if Seller requests in writing for confirmation that the Facility's data is available to Company, then Company shall use reasonable efforts to respond to such request within three (3) Business Days in writing (with Email being acceptable) confirming that either (1) the Facility's data is available to Company (at which point no additional time after such request shall count as Seller-Attributable Unavailability), or (2) the Facility's data is not available so that Seller can take further appropriate corrective actions.

ARTICLE 10

GOVERNMENTAL APPROVALS AND LAND RIGHTS

[DRAFTING NOTE: To the extent a developer intends to site its Project on a Company-owned Site, appropriate revisions shall be made to this Agreement, including this Article 10, to reference the applicable terms of Attachment X.]

10.1. Governmental Approvals for Facility.

Seller shall obtain, at its expense, any and all Governmental Approvals required for the construction, ownership, operation and maintenance of the Facility and the interconnection of the Facility to the Company System. Under no circumstances shall Seller commence any construction, operation or maintenance of the Facility or interconnection of the Facility to the Company System, without Seller first obtaining the required, applicable Governmental Approvals.

10.2. Land Rights for Facility.

Seller shall obtain, at its expense, any and all Land Rights required for the construction, ownership, operation and maintenance of the Facility on the Site and the interconnection of the Facility to the Company System. Seller shall provide the following documentation to Company within the timeframes set forth below:

(a) No later than the Execution Date, Seller shall provide to Company copies of the documents, recorded, if required by Company (including but not limited to any agreements with landowners) evidencing Seller's Land Rights establishing the right of Seller to construct, own, operate and maintain the Facility on the Site, whether by fee simple ownership of the Site, leasehold interest of the Site for a term at least as long as the Term of this Agreement or, in the alternative for actual fee simple or leasehold interest in the Site, a binding, executed letter of intent establishing the right of Seller to enter into a lease for the Site subject only to reasonable conditions related to PUC approval of this Agreement and such conditions that shall not affect the ability of the Seller to execute such lease.

(b) Within six (6) months of the Execution Date, Seller shall provide to Company a current survey (dated no earlier than the Execution Date) for the Site and any other property identified by Seller as requiring Land Rights. Within four (4) months of the Execution Date, Seller shall provide to Company (i) a preliminary title report (dated no earlier than the Execution Date) for the Site and any other property identified by Seller as requiring Land Rights; (ii) copies of all Land Rights already obtained; and (iii) a current list identifying all Land Rights required for the construction, ownership, operation and maintenance of the Facility and the interconnection of the Facility to the Company System, including Seller's status as to whether such Land Rights have been obtained, have been negotiated or not yet pursued and if so, an estimated date when such Land Rights would be pursued.

(c) Within three (3) months of Seller's identification of such additional necessary Land Rights under **Section 10.2(b)** above, Seller shall provide to Company copies of such completed Land Rights, if any.

Under no circumstances shall Seller commence any construction, operation or maintenance of the Facility or interconnection of the Facility to the Company System, or require or permit Company to commence any such construction, without Seller first obtaining the required, applicable Land Rights. Seller shall bear complete responsibility for all delays in construction, operation and maintenance of the Facility or the interconnection of the Facility to the Company System resulting from Seller's failure to identify and/or timely obtain necessary Land Rights. In each case, such Land Rights documents may be redacted but only to the extent required to prevent disclosure of confidential or proprietary information of Seller or the counterparty to such agreement. Under no circumstances shall such redactions conceal information that is necessary for the Company to determine whether such documents establish the Land Rights of Seller to construct, own, operate and maintain the Facility on the Site and the interconnection of the Facility to the Company System in accordance with the terms of this Agreement.

10.3. Company-Owned Interconnection Facilities.

Seller shall provide the necessary Governmental Approvals and Land Rights for the construction, ownership operation and maintenance of the Company-Owned Interconnection Facilities in accordance with **Section 9** (Governmental Approvals for Company-Owned Interconnection Facilities) of **Attachment G** (Company-Owned Interconnection Facilities) and **Section 10** (Land Rights) of **Attachment G** (Company-Owned Interconnection Facilities). Regardless of whether Company or Seller constructs the Company-Owned Interconnection Facilities, Seller shall provide Company with an accounting of all necessary Governmental Approvals (in a list or spreadsheet) at the commencement of construction including relevant information regarding status and estimated completion. Seller shall update Company on the status of all necessary Governmental Approvals, including the addition of any new Governmental Approvals that may be discovered and required, in Seller's Monthly Progress Report submitted to Company in accordance with **Section 11.2** (Monthly Progress Report). Notwithstanding the above, under no circumstance shall Seller commence any construction, operation or maintenance of the Company-Owned Interconnection Facilities, or require or permit Company to commence any such construction, without first obtaining the required, applicable Governmental Approvals and Land Rights. Seller shall bear complete responsibility for all delays in construction, operation and maintenance of the Company-Owned Interconnection Facilities resulting from Seller's failure to identify and/or timely obtain necessary Governmental Approvals and Land Rights for such Company-Owned Interconnection Facilities.

ARTICLE 11

CONSTRUCTION PERIOD AND MILESTONES

11.1. Time is of the Essence.

Time is of the essence of this Agreement, and Seller's ability to timely achieve the Construction Milestones is critically important.

11.2. Monthly Progress Report.

Commencing upon the Execution Date of this Agreement, Seller shall submit to Company, on the tenth (10th) Business Day of each calendar month until the Commercial Operations Date, a progress report for the prior month in a form set forth on **Attachment R** (Form of Monthly Progress Report) ("**Monthly Progress Report**"). These progress reports shall notify Company of the current status of each Construction Milestone. Seller shall include in any Monthly Progress Report a list of all letters, notices, applications, approvals, authorizations and filings referring or relating to Governmental Approvals, and shall provide any such documents as may be reasonably requested by Company. In addition, Seller shall advise Company, as soon as reasonably practicable, of any problems or issues of which Seller is aware which could materially impact its ability to timely achieve any Construction Milestone. Seller shall provide Company with any requested documentation to support the achievement of an applicable Construction Milestone within ten (10) Business Days of receipt of such request from Company. Upon the occurrence of a Force Majeure event, Seller shall also comply with the requirements of **Section 17.4** (Satisfaction of Certain Conditions) to the extent such requirements provide for communications to Company beyond those required under this **Section 11.2** (Monthly Progress Report).

11.3. Remedial Action Plan.

In the event Seller does not timely achieve a Reporting Milestone, Seller shall submit to Company, within ten (10) Business Days of any such missed Reporting Milestone date, a remedial action plan which shall provide a detailed description of Seller's course of action and plan to achieve (a) the missed Reporting Milestone within ninety (90) Days of the missed Reporting Milestone date; and (b) all subsequent Construction Milestones; provided, that delivery of any remedial action plan shall not relieve Seller of its obligation to timely achieve such Construction Milestones.

11.4. Milestone Dates.

Seller shall achieve each Guaranteed Project Milestone Date or Reporting Milestone Date, subject (to the extent applicable) to the following extensions:

(a) if the PUC Approval Order Date occurs more than one hundred eighty (180) Days after the Execution Date, Seller and Company shall be entitled to an extension of the Guaranteed Project Milestone Dates, Reporting Milestone Dates, Seller's Conditions Precedent Dates and Company Milestone Dates equal to the number of Days that elapse between the end of the aforesaid 180-Day period and the

PUC Approval Order Date; provided, that in no event will the Guaranteed Commercial Operations Date be extended beyond **[OUTSIDE DATE TO BE INSERTED BASED ON TYPE OF PROPOSAL]**;

(b) if the failure to achieve a Construction Milestone by the applicable Guaranteed Project Milestone Date or Reporting Milestone Date is the result of Force Majeure (which, for purposes of this **Section 11.4(b)** excludes any delay in obtaining the PUC Approval Order because that contingency is addressed in **Section 11.4(a)** above), and if and so long as the conditions set forth in **Section 17.4** (Satisfaction of Certain Conditions) are satisfied, such Guaranteed Project Milestone Date or Reporting Milestone Date shall be extended by a period equal to the lesser of three hundred sixty-five (365) Days or the duration of the delay caused by the Force Majeure; or

(c) if the failure to achieve a Guaranteed Project Milestone by the applicable Guaranteed Project Milestone Date is the result of any failure by Company in the timely performance of its obligations under this Agreement, including achievement of its Company Milestones by the Company Milestone Dates as set forth on **Attachment K-1** (Seller's Conditions Precedent and Company Milestones), as such dates may be extended in accordance with **Section 11.4** (Milestone Dates) and **Section 11.5** (Company Milestones), Seller shall, provided Seller has satisfied Seller's Conditions Precedent set forth in **Attachment K-1** (Seller's Conditions Precedent and Company Milestones) by the respective Seller's Conditions Precedent Date set forth in said **Attachment K-1**, be entitled to an extension of such Guaranteed Project Milestone Date equal to the duration of the period of delay directly caused by such failure in Company's timely performance. Such extension on the terms described above shall be Seller's sole remedy for any such failure by Company. For purposes of this **Section 11.4(c)**, Company's performance will be deemed to be "timely" if it is accomplished within the time period specified in this Agreement with respect to such performance or, if no time period is specified, within a reasonable period of time. If the performance in question is Company's review of plans, the determination of what is a "reasonable period of time" will take into account Company's past practices in reviewing and commenting on plans for similar facilities.

11.5. Company Milestones.

Company's obligation to achieve the Company Milestones is contingent upon Seller completing the Seller's Conditions Precedent set forth in **Attachment K-1** (Company Milestones and Seller's Conditions Precedent). Company shall achieve each of the Company Milestones by the date set forth for such Company Milestones in **Attachment K-1** (Seller's Conditions Precedent and Company Milestones) of this Agreement (each such date, a "**Company Milestone Date**"), as such date may be extended in accordance with **Section 11.4** (Milestone Dates) and this **Section 11.5** (Company Milestones); provided, however in the event Seller does not complete a Seller's Condition Precedent on or before the applicable date set forth in **Attachment K-1** (Seller's Conditions Precedent and Company Milestones) (each such date, a "**Seller's Conditions Precedent Date**"), subject to the extensions set forth in **Section 11.4** (Milestone Dates), Company shall be entitled to an extension as follows: (i) for the commencement of Acceptance Testing, the new Company Milestone Date shall be as set forth in clause "(gg)" of **Section 2(f)(i)** of **Attachment G** (Company-Owned Interconnection Facilities); and (ii) for any other Company Milestone Date, the

extension shall be for the period of time reasonably necessary to meet any such Company Milestone Date adversely affected by Seller's failure, which extension shall be no shorter than a day-for-day extension.

11.6. Damages and Termination.

(a) Daily Delay Damages.

(i) If a Guaranteed Project Milestone (other than Commercial Operations) has not been achieved by the applicable Guaranteed Project Milestone Date, as extended as provided in **Section 11.4** (Milestone Dates), Company shall collect and Seller shall pay liquidated damages in the amount of \$_____ (“**Daily Delay Damages**”) for each Day following the applicable Guaranteed Project Milestone Date, as extended in accordance with **Section 11.4** (Milestone Dates); provided, however, that the number of Days for which Company shall collect and Seller shall pay Daily Delay Damages for a failure to achieve a Guaranteed Project Milestone by the Guaranteed Project Milestone Date shall not exceed sixty (60) Days for each such missed Guaranteed Project Milestone Date (the “**Construction Delay LD Period**”).

[Note: Daily Delay Damages = Contract Capacity x \$50/kW ÷ 180 Days]

(ii) If the Commercial Operations Date has not been achieved by the Guaranteed Commercial Operations Date, as extended as provided in **Section 11.4** (Milestone Dates), in addition to any Daily Delay Damages collected pursuant to **Section 11.6(a)(i)**, Company shall collect and Seller shall pay Daily Delay Damages for each Day following the Guaranteed Commercial Operations Date, as such date may be extended in accordance with **Section 11.4** (Milestone Dates); provided that the number of Days for which Company shall collect and Seller shall pay Daily Delay Damages for failing to timely achieve the Commercial Operations Date shall not exceed one hundred eighty (180) Days (the “**COD Delay LD Period**”).

(b) Termination and Termination Damages for Failure to Achieve Guaranteed Project Milestone Date. If, upon the expiration of the Construction Delay LD Period or the COD Delay LD Period, as applicable, Seller has not achieved the applicable Guaranteed Project Milestone, Company shall have the right, notwithstanding any other provision of this Agreement to the contrary, to terminate this Agreement with immediate effect by issuing a written termination notice to Seller designating the Day such termination is to be effective; provided, that Company shall issue such notice no later than thirty (30) Days following the expiration of the Construction Delay LD Period or the COD Delay LD Period, as applicable. The effective date of such termination shall be not later than the date that is thirty (30) Days after such notice is deemed to be received by Seller, and not earlier than the later to occur of the Day such notice is deemed to be received by Seller or the Day following the expiration of the Construction Delay LD Period or the COD Delay LD Period, as applicable. If the Agreement is terminated by Company pursuant to this **Section 11.5** (Damages and Termination), Company shall have the right to collect Termination Damages, which shall be calculated in accordance with **Section 6.5** (Calculation of Termination Damages) of this Agreement.

11.7. Payment of Daily Delay Damages.

Company shall draw upon the Development Period Security on a monthly basis for payment of the total Daily Delay Damages incurred by Seller during the preceding calendar month. If the Development Period Security is at any time insufficient to pay the amount of the draw to which Company is then entitled, Seller shall pay any such deficiency to Company promptly upon demand.

11.8. Liquidated Damages Appropriate.

The Parties acknowledge and agree that (a) the damages that Company would incur due to either (i) a delay in achieving Commercial Operations by the Guaranteed Commercial Operations Date (subject to the extensions provided in **Section 11.4** (Milestone Dates)); or (ii) the termination of this Agreement, would be difficult or impossible to calculate with certainty; (b) the Daily Delay Damages set forth in **Section 11.6** (Damages and Termination) and the Termination Damages calculated in accordance with **Section 6.5** (Calculation of Termination Damages), respectively, are an appropriate approximation of such damages; (c) the Daily Delay Damages are the sole and exclusive remedies for Seller's failure to achieve Commercial Operations by the Guaranteed Commercial Operations Date; and (d) the Termination Damages are the sole and exclusive remedy for Company's losses arising out of the termination of this Agreement; provided, that (i) payment of Termination Damages does not relieve Seller of liability for costs and balances incurred prior to the effective date of such termination; and (ii) the Termination Damages are not intended to limit Company's rights or remedies, or Seller's liabilities or duties, with respect to losses arising independent of the termination of this Agreement, including, without limitation, Company's right to recover under **Section 20.1** (Indemnification of Company).

ARTICLE 12 DISPATCHING AND CHARGING THE FACILITY; SCHEDULING

12.1. Dispatching and Charging the Facility.

(a) **Company's Exclusive Rights.** Company shall have the exclusive right, through supervisory equipment or otherwise, to direct and control the provision of all aspects of the Energy Storage Services, at any time, as it deems appropriate in its reasonable discretion, subject only to and consistent with Good Engineering and Operating Practices, the operational and performance standards requirements set forth in **Section 3** (Performance Standards) of **Attachment B** (Facility Owned by Seller), and Seller's maintenance schedule determined in accordance with **Section 12.2** (Seller's Maintenance Schedule) ("**Company Dispatch/Charge**"). Seller shall make the full capability of the Facility available for Company Dispatch/Charge. Company Dispatch/Charge will either be by Seller's manual control under the direction of the Company System Operator or by remote computerized control by the Energy Management System provided in **Section 1(g)** (Active Power Control Interface) of **Attachment B** (Seller's Facility), in each case at Company's reasonable discretion, and in accordance with the Performance Standards.

(b) **Failure to Comply; Seller-Attributable Unavailability.** Company may require deration or outage in response to the Facility's failure to comply with Company Dispatch/Charge or to any conditions of Seller-Attributable Unavailability. A deration or outage required by Company pursuant to the preceding sentence shall be considered an Unplanned Deration and shall "count against" Seller for the purpose of calculating the Annual EAF and Annual EFOF until the conditions that led to the deration or outage are resolved by Seller and Seller notifies Company of same. If, after such notification, Company attempts to dispatch the Facility and determines that such conditions that led to the deration or outage are not resolved, all time from the notice of resolution to actual resolution shall be revised as continuance of the deration or outage. If Seller requests confirmation from Company that Seller's actions to resolve such conditions that led to the deration or outage were successfully completed, then Company shall use reasonable efforts to respond to such request within three (3) Business Days in writing (with Email being acceptable) to allow Seller the opportunity to take further appropriate corrective actions if needed.

12.2. Seller's Maintenance Schedule.

(a) **Quarterly Schedule.** By each March 1, June 1, September 1 and December 1 (as applicable, subsequent to the Commercial Operations Date), Seller shall provide to Company, in the form requested by Company, a projection of maintenance outages and estimated reductions in capacity for the next calendar quarter. Seller shall provide Company with prompt written notice of any deviation from its quarterly maintenance schedule but in any case Seller shall provide such written notice not less than one (1) week prior to commencing any such rescheduled maintenance event. During any scheduled or rescheduled maintenance event, Seller shall provide updates to Company's operating personnel in the event there are any

delays or changes to the proposed schedule, and shall promptly respond to any requests from Company for updates regarding the status of such maintenance event.

(b) Annual Schedule. By each June 30 subsequent to the Commercial Operations Date, Seller shall submit to Company, in the form requested by Company, a schedule of maintenance outages which will reduce the capacity of the Facility by **[Drafting Note: the lower of five (5) MW or 25% of Allowed Capacity]** or more for the next two-year period, beginning with January of the following year. Such annual schedule shall state the proposed dates and durations of scheduled maintenance, the scope of work for the maintenance and the estimated reductions in capacity for each projected maintenance event. Company shall review the maintenance schedule for the two-year period and inform Seller in writing no later than December 1 of the same year of Company's concurrence or requested revisions, which Seller shall agree to unless, in Seller's judgment, such proposed revisions will void or violate any warranties of equipment that is part of, or used in connection with, the Facility or violate any long-term service agreement with respect to such equipment; provided, that, in each such case, Seller shall promptly notify Company thereof, and Seller and Company shall endeavor to reach a mutually satisfactory resolution of the matter in question.

12.3. Seller's Notification Obligations.

When Seller learns that any of its equipment will be removed from or returned to service, and any such removal or return may affect the ability of the Facility to make the Energy Storage Services available to Company, Seller shall notify Company as soon as practicable and any unit shut-down shall be coordinated with Company in advance to the extent practicable.

12.4. Outage Costs.

Seller shall return the Facility at the end of an outage to service with the same amount of Energy available for discharge as was stored immediately prior to the outage. Seller shall bear all costs for Energy required to charge and discharge the Facility for the purposes of the outage, including those costs needed to restore the Energy stored in the Facility to the same amount stored in the Facility prior to the start of the outage. For billing purposes, during full Facility outages, revenue meter readings shall be taken at the start of the outage and upon completion of the outage.

ARTICLE 13

FACILITY OPERATIONS, MAINTENANCE AND REPAIR

13.1. Operations Logs.

Seller shall maintain a daily operations log for the Facility which shall record all pertinent data that will indicate whether the Facility is being operated in accordance with Good Engineering and Operating Practices. These data logs shall include, but not be limited to, information on charging and discharging, electric energy consumption and efficiency, the electrical characteristics of each Storage Unit (including settings or adjustments of such Storage Unit(s) control equipment/power conversion system and protective devices), availability (including availability to charge and discharge and its ability to store energy), maintenance and inspections performed and/or deferred (including applicable correspondence between Seller and its insurer(s) for the Facility equipment pertaining to Seller's maintenance practices and Seller's procedures and scheduling (including deferral) of maintenance at the Facility), testing, Outages, changes in operating status, unusual conditions experienced or observed, and any other significant events related to the operation of the Facility. Company shall have the right, upon reasonable notice and during regular Business Day hours to review and copy such data logs maintained pursuant to this **Section 13.1** (Operations Logs); provided, that if such logs reveal any inconsistency with Company's records, Company may request and review Seller's supporting records, correspondence, memoranda and other documents or electronically recorded data associated with such logs related to the operation and maintenance of the Facility in order to resolve such inconsistency.

13.2. Maintenance and Repair.

(a) Seller's Summary of Maintenance and Inspection Performed. Prior to February 1 of each calendar year, Seller shall submit to Company for inspection at the Site, a summary in a format similar to the example provided in **Attachment W** (Summary of Maintenance and Inspection Performed in Prior Calendar Year) of (i) all maintenance and inspection work performed in the prior calendar year; (ii) all conditions experienced or observed during such calendar year that may have a material adverse effect on or may materially impair the short-term or long-term operation of the Facility at the operational levels contemplated by this Agreement; and (iii) Seller's proposals for correcting or preventing recurrences of identified equipment problems and for performing such other maintenance and inspection work as is required by Good Engineering and Operating Practices. The summary shall present the requested data in a meaningful and informative manner consistent with the cooperative exchange of information between the Parties. If available and practicable, such summary shall be provided in electronic format with sufficient software so that Company can group activities for specific process areas of the Facility and be able to view the maintenance history of a specific equipment item.

(b) Company's Written Recommendations. Within sixty (60) Days of receiving such summary, and after any reasonable inspection desired by Company of the Facility and consultation with Seller, in the event there are issues identified that may have a material adverse effect on or may materially impair the short-term or long-

term operation of the Facility at the operational levels contemplated by this Agreement, for purposes of addressing such issues, Company may provide written recommendations for specific operation or maintenance actions or for changes in the operation or maintenance program of the Facility. Company's making or failing to make such recommendations shall not be construed as endorsing the operation and maintenance thereof or as any warranty of the safety, durability or reliability of the Facility nor as a waiver of any Company right. If Seller agrees with Company, Seller shall, within a reasonable time after Company makes such recommendations, not to exceed ninety (90) Days (or such longer period as reasonably agreed to by the Parties), implement Company's recommendations. If Seller disagrees with Company, it shall, within ten (10) Days, inform Company of alternatives it will take to accomplish the same intent, or provide Company with a reasonable explanation as to why no action is required by Good Engineering and Operating Practices. If Company disagrees with Seller's position, and if, for each of the three preceding Contract Years, the Annual EAF was less than **94%**, the Capacity Ratio was less than the Tier 1 bandwidth under **Section 4.3(a)** (Capacity Test and Liquidated Damages) for such Contract Year, then the parties shall commission a study by a Qualified Consultant selected from among the entities listed in **Attachment D** (Consultants List) and the Qualified Consultant will make a recommendation to remedy the situation. Seller shall abide by the Qualified Consultant's recommendation contained in such study. Both Parties shall equally share in the cost for the Qualified Consultant. However, Seller shall pay all costs associated with implementing the recommendation contained in the Qualified Consultant's report. Notwithstanding the foregoing, Seller shall not be required to comply with any recommendations that, in Seller's reasonable judgment, will violate or void any warranties of equipment that is a part of, or used in connection with, the Facility or violate any long-term service agreement, or conflict with any written requirements, specifications or operating parameters of the manufacturer, with respect to such equipment; provided, that, in each such case, Seller shall promptly notify Company thereof, and Seller and Company shall endeavor to reach a mutually satisfactory resolution of the matter in question.

13.3. Manuals; Reports, Studies and Assessments.

Seller shall provide Company with (a) any and all manufacturer's equipment manuals together with a copy of the operating and maintenance manual no later than the Commercial Operations Date; and (b) any updates, supplements and/or amendments thereto within three (3) Business Days after Seller's receipt of the same. In addition, throughout the Term, Seller shall deliver to Company, promptly upon Seller's receipt of the same, any reports, studies or assessments of the Facility prepared by an independent engineer for the benefit of the Seller.

13.4. Time Period for Maintaining Records.

Any and all records, correspondence, memoranda and other documents or electronically recorded data related to the operation, maintenance and repair of the Facility shall be maintained by Seller for a period of not less than six (6) years.

ARTICLE 14 CREDIT ASSURANCE AND SECURITY

14.1. Development Period Security.

(a) **General.** To guarantee undertaking the performance of Seller's obligations under the Agreement for the period prior to the Commercial Operations Date (including but not limited to Seller's obligation to meet the Guaranteed Commercial Operations Date), Seller shall provide satisfactory development period security to Company in the amount equal to \$75 for each kilowatt of the Contract Capacity (the "**Development Period Security**"). Seller shall provide fifty percent (50%) of the Development Period Security to Company within ten (10) Days of the Execution Date of this Agreement, and the remaining fifty percent (50%) of the Development Period Security within ten (10) Business Days of the execution of the Interconnection Requirements Amendment.

(b) **Return of Development Period Security.** The Development Period Security shall be returned to Seller, subject to Company's right to draw from the Development Period Security as set forth in **Section 14.5** (Company's Right to Draw from Security Funds), in the following circumstances: (i) following Company's receipt of satisfactory Operating Period Security pursuant to **Section 14.2** (Operating Period Security) of this Agreement; or (ii) this Agreement is declared null and void pursuant to **Section 2.3** (Interconnection Requirements Study), **Section 3.4** (Prior to Effective Date), **Section 24.3** (Time Period for PUC Submittal Date), or **Section 24.4** (Time Period for PUC Approval).

14.2. Operating Period Security.

To guarantee the performance of Seller's obligations under the Agreement for the period starting from the Commercial Operations Date, Seller shall provide satisfactory operating period security to Company in the amount equal to \$125 for each kilowatt of the Contract Capacity (the "**Operating Period Security**"). Seller shall provide such Operating Period Security to Company within five (5) Business Days after the Commercial Operations Date, provided that, at all times, some form of Security Funds shall be in place and available to Company, whether Development Period Security or Operating Period Security.

14.3. Form of Security.

Seller shall supply the Development Period Security and Operating Period Security required in the form of an irrevocable standby letter of credit with no documentation requirement substantially in the form attached to this Agreement as **Attachment M** (Form of Letter of Credit) from a bank chartered in the United States with a credit rating of "A-" or better. If the rating (as measured by Standard & Poor's) of the bank issuing the standby letter of credit falls below A-, Company may require Seller to replace, within thirty (30) Days' notice by Company, the standby letter of credit with a standby letter of credit from another bank chartered in the United States with a credit rating of "A-" or better. Such letter of credit shall be issued for a minimum term of

one (1) year. Furthermore, at the end of each year, the security shall be renewed for an additional one (1) year term so that at the time of such renewal, the remaining term of any such security shall not be less than one (1) year. The letter of credit shall include a provision for at least thirty (30) Days advance notice to Company and Seller of any expiration or earlier termination of the letter of credit so as to allow Company sufficient time to exercise its rights under said security if Seller fails to extend or replace the security. In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the letter of credit shall be borne by Seller. In the event Company receives notice from the issuing bank that a letter of credit for the Development Period Security or Operating Period Security will be cancelled or is set to expire and will not be extended, Company shall endeavor, but shall not be obligated, to provide Seller with notice of such cancellation or termination. Company shall not be responsible for any lack of notice to Seller of such letter of credit's cancellation or termination and the events resulting therefrom, provided, however, that if Company draws upon the then full amount remaining under the letter of credit, the provisions of **Section 14.6** (Failure to Renew or Extend Letter of Credit) and **Section 14.7** (L/C Proceeds Escrow) shall apply. In the event the letter of credit for Development Period Security or Operating Period Security ever expires or is terminated without Company drawing on such full amount remaining under the letter of credit prior to its expiration, and Seller has not been afforded the opportunity to replace the letter of credit prior to its expiration or termination because of lack of notice, Seller shall be provided a grace period of five (5) Business Days from any notice of such expiration or termination of the letter of credit to obtain and provide to Company a substitute letter of credit meeting the requirements of this **Article 14** (Credit Assurance and Security).

14.4. Security Funds.

The Development Period Security and Operating Period Security, including L/C Proceeds therefrom (collectively, the "**Security Funds**") established, funded, and maintained by Seller pursuant to the provisions of this **Article 14** (Credit Assurance and Security) shall provide security for the performance of Seller's obligations under this Agreement and shall be available to be drawn on by Company as provided in **Section 14.5** (Company's Right to Draw from Security Funds). Seller shall maintain the Security Funds at the contractually-required level throughout the Term of this Agreement. Seller shall replenish the Security Funds to such required level within fifteen (15) Business Days after any draw on the Security Funds by Company or any reduction in the value of Security Funds below the required level for any other reason. Notwithstanding the foregoing, Seller's obligation to replenish the Development Period Security shall not exceed in total three (3) times the original amount of the Development Period Security required under **Section 14.1** (Development Period Security) of this Agreement.

14.5. Company's Right to Draw from Security Funds.

In addition to any other remedy available to it, Company may, before or after termination of this Agreement, draw from the Security Funds such amounts as are necessary to recover amounts Company is owed pursuant to this Agreement or the IRS Letter Agreements, including, without limitation, any damages due Company, any

interconnection costs owed pursuant to **Attachment G** (Company-Owned Interconnection Facilities) and any amounts for which Company is entitled to indemnification under this Agreement. Company may, in its sole discretion, draw all or any part of such amounts due Company from any of the Security Funds to the extent available pursuant to this **Article 14** (Credit Assurance and Security), and from all such forms, and in any sequence Company may select. Any failure to draw upon the Security Funds or other security for any damages or other amounts due Company shall not prejudice Company's rights to recover such damages or amounts in any other manner.

14.6. Failure to Renew or Extend Letter of Credit.

If the letter of credit is not renewed or extended at least thirty (30) Days prior to its expiration or earlier termination, Company shall have the right to draw immediately upon the full amount of the letter of credit and to place the proceeds of such draw (the "**L/C Proceeds**"), at Seller's cost, in an escrow account in accordance with **Section 14.7** (L/C Proceeds Escrow), until and unless Seller provides a substitute letter of credit meeting the requirements of this **Article 14** (Credit Assurance and Security).

14.7. L/C Proceeds Escrow.

If Company draws on the letter of credit pursuant to **Section 14.6** (Failure to Renew or Extend Letter of Credit), and so long as a substitute letter of credit meeting the requirements of this **Article 14** (Credit Assurance and Security) is not obtained and provided to Company, Company shall, in order to avoid comingling the L/C Proceeds, have the right, but not the obligation, to place the L/C Proceeds in an escrow account as provided in this **Section 14.7** (L/C Proceeds Escrow) with a reputable escrow agent acceptable to Company ("**Escrow Agent**"). Without limiting the generality of the foregoing, a federally-insured bank shall be deemed to be a "reputable escrow agent." Company shall have the right to apply the L/C Proceeds as necessary to recover amounts Company is owed pursuant to this Agreement or the IRS Letter Agreements, including, without limitation, any damages due Company, any interconnection costs owed pursuant to **Attachment G** (Company-Owned Interconnection Facilities) and any amounts for which Company is entitled to indemnification under this Agreement. To that end, the documentation governing such escrow account shall be in form and content satisfactory to Company and shall give Company the sole authority to draw from the account. Seller shall not be a party to such documentation and shall have no rights to the L/C Proceeds. Upon full satisfaction of Seller's obligations under this Agreement, including recovery by Company of amounts owed to it under this Agreement, Company shall instruct the Escrow Agent to remit to the bank that issued the letter of credit that was the source of the L/C Proceeds the remaining balance (if any) of the L/C Proceeds. If there is more than one escrow account with L/C Proceeds, Company may, in its sole discretion, draw on such accounts in any sequence Company may select. Any failure to draw upon the L/C Proceeds for any damages or other amounts due Company shall not prejudice Company's rights to recover such damages or amounts in any other manner. If a substitute letter of credit satisfying the requirements of this **Article 14** (Credit Assurance and Security) is obtained and provided to Company, the net L/C Proceeds remaining as of the date that such substitute letter of credit is provided, shall be returned to Seller, or as Seller

directs in writing.

14.8. Release of Security Funds.

Promptly following the end of the Term, and the complete performance of all of Seller's obligations under this Agreement, including, but not limited to, the obligation to pay any and all amounts owed by Seller to Company under this Agreement, Company shall release the Security Funds to Seller.

ARTICLE 15 SALE AND ASSIGNMENT

15.1. Sale of the Facility.

Seller shall comply with the requirements of **Attachment P** (Sale of Facility by Seller) before Seller's right, title or interest in the Facility, in whole or in part, including a Change in Control, may be disposed of (other than the disposition of equipment in the ordinary course of operating and maintaining the Facility). Any attempt by Seller to make any such disposition or Change in Control without fulfilling the requirements of **Attachment P** (Sale of Facility by Seller) shall be deemed null and void and shall constitute an Event of Default pursuant to **Article 6** (Events of Default; Remedies; Termination).

15.2. Assignment by Seller.

This Agreement may not be assigned by Seller without the prior written consent of Company (such consent not to be unreasonably withheld, conditioned or delayed), provided that Seller shall have the right, without the consent of Company, to assign its interest in this Agreement (a) to a wholly-owned subsidiary or to an affiliated company under common control with **[INSERT APPROPRIATE PARENT ENTITY]**, provided that such assignment does not impair the ability of Seller to perform its obligations under this Agreement; and (b) as collateral security for purposes of arranging or rearranging debt and/or equity financing for the Facility, or for sale-leaseback financing, to assign all or any part of its rights or benefits, but not its obligations, to any lender providing debt financing for the Facility. Seller shall promptly provide written notice to Company of any assignment of all or part of this Agreement and Seller shall provide to Company information about the assignee and the assignee's operational experience reasonably requested by Company. Company shall not be required to incur any duty or obligation as a result of, or in connection with, such assignment made without its consent beyond those duties and obligations set forth in this Agreement, unless otherwise agreed to by Company in writing.

15.3. Company's Acknowledgment.

In connection with any assignment relating to the Facility Debt pursuant to **Section 15.2** (Assignment by Seller), Company shall, if requested by Seller and if its costs (including reasonable attorneys' fees of outside counsel) in responding to such request are paid by Seller: (a) execute and/or provide such Hawai'i-law-governed documents as may be reasonably requested by the Facility Lender, and reasonably acceptable to Company, including (i) to acknowledge (A) such assignment and/or pledge/mortgage, (B) the right of the Facility Lender to receive copies of notices of Events of Default where the Seller is the Defaulting Party and (C) the Facility Lender's reasonable opportunity to cure such Events of Default and to exercise remedies to assume Seller's obligations under this Agreement; and (ii) estoppel certificates as to Seller's and Company's compliance with the terms and conditions of this Agreement; and (b) provide a legal opinion as to the due authorization of such Company acknowledgment.

15.4. Financing Document Requirements.

Seller shall include in the terms of the Financing Documents as provisions for Company's benefit that provide that as a condition to the Facility Lender, or any purchaser, successor, assignee and/or designee of the Facility Lender ("**Subsequent Owner**"), succeeding to ownership or possession of the Facility as a result of the exercise of remedies under the Financing Documents, and thereafter operating the Facility to generate electric energy, such Facility Lender or Subsequent Owner shall, prior to operating the Facility for such purpose, have provided to Company, evidence reasonably acceptable to Company that such Subsequent Owner has (a) the qualifications, or has contracted with an entity having the qualifications, to operate the Facility in a manner consistent with the terms and conditions of this Agreement; and (b) assumed all of Seller's rights and obligations under this Agreement.

15.5. Reimbursement of Company Costs.

Seller shall reimburse Company for costs and expenses incurred by Company (including reasonable attorneys' fees of outside counsel) in responding to Facility Lender's requests or as a result of any event of default by Seller under the Financing Documents, including, but not limited to any assumption of Seller's obligations under **Section 15.4** (Financing Document Requirements).

15.6. Assignment by Company.

This Agreement shall not be assigned by Company without the prior written consent of Seller (which consent shall not be unreasonably withheld, conditioned or delayed); provided, however, that Company shall have the right, without the consent of Seller, to assign its interest in this Agreement to any affiliated company owned in whole or in part by HEI so long as such assignee (a) shall have assumed all obligations of Company under this Agreement; and (b) is a utility regulated by the PUC.

15.7. Consequences for Failure to Comply.

Any attempt to make any pledge, mortgage, grant of a security interest or collateral assignment for which consent is required under **Section 15.2** (Assignment by Seller) or **Section 15.6** (Assignment by Company) (as applicable), without fulfilling the requirements of this **Article 15** (Sale and Assignment) shall be null and void and shall constitute an Event of Default pursuant to **Article 6** (Events of Default; Remedies; Termination).

ARTICLE 16

PERSONNEL AND SYSTEM SAFETY

Notwithstanding any other provisions of this Agreement, if at any time Company reasonably determines that the Facility may endanger Company's personnel, and/or the continued operation of the Facility may endanger the integrity of the Company System or have an adverse effect on Company's other customers' electric service, Company shall have the right to disconnect the Facility from the Company System, as determined in the sole discretion of the Company System Operator. The Facility shall immediately comply with the dispatch instruction, which may be initiated through remote control, and shall remain disconnected (and in Seller-Attributable Unavailability status if so determined), until such time as Company is satisfied that the condition(s) referred to above have been corrected. If Company disconnects the Facility from the Company System for personnel or system safety reasons, it shall as soon as practicable notify Seller by telephone, and thereafter make reasonable efforts to confirm, in writing (with email being acceptable), within three (3) Days of the disconnection, the reasons for the disconnection. If the reason for the disconnection constitutes Seller-Attributable Unavailability, Company will notify Seller (a) whether the conditions resulting in such disconnection have been resolved (in which case no additional time after such confirmation shall count as Seller-Attributable Unavailability); or (b) that conditions resulting in such disconnection have not been resolved so that Seller can take such appropriate corrective actions. Seller shall notify Company in writing when such corrective action has been completed; provided, however, that Seller shall remain in Seller-Attributable Unavailability until Company is satisfied that the condition resulting in the disconnection has been corrected. Company shall use reasonable efforts to inspect such corrective measures (if necessary) and confirm the resolution of such condition within three (3) Business Days after Seller's notification.

ARTICLE 17 FORCE MAJEURE

17.1. Definition of Force Majeure.

The term “**Force Majeure**” as used in this Agreement means any occurrence that:

- (a) In whole or in part delays or prevents a Party’s performance under this Agreement;
- (b) Is not the direct or indirect result of the fault or negligence of that Party;
- (c) Is not within the control of that Party notwithstanding such Party having taken all reasonable precautions and measures in order to prevent or avoid such event; and
- (d) The Party has been unable to overcome by the exercise of due diligence.

17.2. Events That Could Qualify as Force Majeure.

Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to, the following:

- (a) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;
- (b) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation; or
- (c) except as set forth in **Section 17.3(i)**, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable).

17.3. Exclusions From Force Majeure.

Force Majeure, however, does not include any of the following:

- (a) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of Seller, unless such acts or omissions are themselves caused by an event of Force Majeure;
- (b) any full or partial reduction in the availability of the Facility to provide the Energy Storage Services in response to Company Dispatch/Charge that is caused by or arises from either (i) a mechanical or equipment breakdown, or other mishaps, events or conditions attributable to normal wear and tear, unless such mishap is caused by Force Majeure; or (ii) any action or inaction of a third party, including but

not limited to any vendor or supplier of the Seller or Company, except to the extent such action or inaction is due to Force Majeure;

(c) changes in market conditions that affect the cost of the Seller's supplies, or that otherwise render this Agreement uneconomic or unprofitable for the Seller;

(d) Seller's inability to obtain Governmental Approvals or Land Rights for the construction, ownership, operation or maintenance of the Facility, or Seller's loss of any such Governmental Approvals or Land Rights once obtained;

(e) Seller's inability to obtain sufficient fuel, power or materials to operate the Facility, except if Seller's inability to obtain sufficient power or materials is caused solely by an event of Force Majeure;

(f) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Company pursuant to this Agreement;

(g) a forced outage except where such forced outage is caused by an event of Force Majeure;

(h) litigation or administrative or judicial action pertaining to Seller's interest in this Agreement, the Site, the Facility, the Land Rights, any Governmental Approvals, or the construction, ownership, operation or maintenance of the Facility, the Company-Owned Interconnection Facilities or the Company System;

(i) A strike, work stoppage, or labor dispute limited only to any one or more of the Indemnified Seller Parties or any other third party employed by Seller to work on the Facility.

17.4. Satisfaction of Certain Conditions.

Subject to **Article 11** (Construction Period and Milestones), **Section 17.5** (Termination for Force Majeure) and **Section 17.6** (Effect of Force Majeure), if, because of Force Majeure, either Party is unable to perform its obligations under this Agreement, such Party shall be excused from whatever performance is affected by the Force Majeure only to the extent so affected; provided:

(a) the non-performing Party gives the other Party, no more than five (5) Days after the non-performing Party becomes aware or should have become aware of the Force Majeure condition or event, but in any event no later than thirty (30) Days after the Force Majeure condition or event begins, written notice (the "**Force Majeure Notice**") stating that the non-performing Party considers such condition or event to constitute Force Majeure and describing the particulars of such Force Majeure condition or event, including the date the Force Majeure commenced;

(b) the non-performing Party gives the other Party, within fourteen (14) Days Force Majeure Notice was or should have been provided, a written explanation of the Force Majeure condition or event and its effect on the non-performing Party's performance, which explanation shall include evidence reasonably sufficient to

establish that the occurrence constitutes Force Majeure;

(c) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

(d) the non-performing Party exercises commercially reasonable efforts to remedy its inability to perform and provides written weekly progress reports to the other Party describing actions taken to end the Force Majeure; and

(e) when the condition or event of Force Majeure ends and the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

17.5. Termination for Force Majeure.

If Force Majeure delays or prevents a Party's performance for more than three hundred sixty-five (365) Days from the occurrence or inception of the Force Majeure, as stated in the Force Majeure Notice, and such delay or failure of performance would have otherwise constituted an Event of Default under **Article 6** (Events of Default; Remedies; Termination), the other Party shall have the right to terminate this Agreement by written notice. Such notice shall designate the date such termination is to be effective, which date shall be no later than thirty (30) Days after such notice is deemed to be received by the Party whose performance has been delayed or prevented. In the event of termination pursuant to this **Section 17.5** (Termination for Force Majeure), neither Party shall be liable for any damages or have any obligations to the other, except as provided in **Section 27.22** (Survival of Obligations) (but excluding **Section 27.22(b)**).

17.6. Effect of Force Majeure.

Except as provided in **Article 11** (Construction Period and Milestones) and **Section 17.5** (Termination for Force Majeure), neither Party will be considered to be in default in the performance of any of its obligations set forth in this Agreement (except for obligations to pay money) when and to the extent failure of performance is caused by Force Majeure; provided, that a failure to make payments when due that accrued prior to the Force Majeure event shall not be excused.

17.7. No Relief of Other Obligations.

Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.

17.8. No Extension of Term.

In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term.

ARTICLE 18

REPRESENTATIONS AND WARRANTIES

18.1. Representations and Warranties of Both Parties.

As of the Execution Date and for the extent of the Term, each Party represents and warrants to the other Party that:

- (a) Each respective Party has all necessary right, power and authority to execute, deliver and perform this Agreement; and
- (b) The execution, delivery and performance of this Agreement by each respective Party will not result in a violation of any Laws, or conflict with, or result in a breach of, or cause a default under, any agreement or instrument to which such Party is also a party or by which it is bound. No consent of any person or entity not a Party to this Agreement, including any Governmental Authority (other than agencies whose approval is necessary for the development, construction, operation and maintenance of the Facility and the Company-Owned Interconnection Facilities or the PUC), is required for such execution, delivery and performance by either Party.

18.2. Representations and Warranties of Seller.

Seller represents and warrants to Company that:

- (a) As of the Execution Date and for the extent of the Term, it is an entity in good standing with the Hawai'i Department of Commerce and Consumer Affairs and shall provide Company with a certified copy of a certificate of good standing by the Execution Date;
- (b) As of the Execution Date, Seller is a subsidiary of [_____], a company with extensive experience developing, constructing, owning and operating utility-scale renewable energy generation facilities.
- (c) Seller has obtained or will obtain Land Rights within the time periods set forth in **Section 10.2** (Land Rights for Facility) and **Section 10.3** (Company-Owned Interconnection Facilities);
- (d) Seller shall have obtained, at the time legally required (i) all Governmental Approvals for the construction, ownership, operation and maintenance of the Company-Owned Interconnection Facilities and (ii) all Governmental Approvals necessary for the construction, ownership, operation and maintenance of the Facility; and
- (e) As of the Commercial Operations Date and for the extent of the Term, Discharge Energy shall be delivered to Company free and clear of all liens, security interests, claims and encumbrances or any other interest therein or thereto by any person.

ARTICLE 19 LIMITATIONS

19.1. Consequential Damages.

NEITHER PARTY SHALL BE LIABLE FOR DAMAGES INCURRED BY THE OTHER PARTY FOR ANY LOSS OF PROFIT OR REVENUES, LOSS OF PRODUCT, LOSS OF USE OF PRODUCTS OR SERVICES OR ASSOCIATED EQUIPMENT, INTERRUPTION OF BUSINESS, COST OF CAPITAL, DOWNTIME COSTS, INCREASED OPERATING COSTS, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR PUNITIVE DAMAGES; PROVIDED, HOWEVER, THAT NOTHING IN THIS **SECTION 19.1** (CONSEQUENTIAL DAMAGES) SHALL LIMIT ANY OF (A) THE INDEMNIFICATION OBLIGATIONS OF EITHER PARTY UNDER **ARTICLE 20** (INDEMNIFICATION) OF THIS AGREEMENT; (B) THE LIABILITY OF EITHER PARTY FOR LIQUIDATED DAMAGES AS SET FORTH IN THIS AGREEMENT; (C) THE LIABILITY OF EITHER PARTY FOR DIRECT DAMAGES FOR BREACH OF THIS AGREEMENT AS AND TO THE EXTENT SUCH DAMAGES HAVE NOT BEEN LIQUIDATED AS SET FORTH IN THIS AGREEMENT; (D) THE LIABILITY OF EITHER PARTY FOR GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT; OR (E) THE RIGHT OR ABILITY OF COMPANY TO PROCEED AGAINST OR OTHERWISE EXERCISE ITS RIGHTS WITH RESPECT TO ANY DEVELOPMENT PERIOD SECURITY OR OPERATING PERIOD SECURITY.

19.2. No Representation by Company.

Any review by Company of the Facility, including the design, construction or refurbishment, operation or maintenance of the Facility, or otherwise, is solely for Company's information. By making such review, Company makes no representation as to the economic and technical feasibility, operational capability, or reliability of the Facility, and Seller shall in no way represent to any third party that any such review by Company of the Facility, including, but not limited to, any review of the design, construction or renovation, operation, or maintenance of the Facility by Company, constitutes any such representation by Company. Seller is solely responsible for the economic and technical feasibility, operational capability, and reliability of the Facility.

ARTICLE 20 INDEMNIFICATION

20.1. Indemnification of Company.

(a) **Third-Party Claims.** In addition to any other indemnification obligations Seller may have elsewhere in this Agreement, which are hereby incorporated in this **Section 20.1(a)** (Third-Party Claims), Seller shall indemnify, defend, and hold harmless Company, its successors, permitted assigns, affiliates, controlling persons, directors, officers, employees, servants and agents, including but not limited to contractors, subcontractors and the employees of any of them (each, a “**Indemnified Company Party**”), from and against any Losses suffered, incurred or sustained by any Indemnified Company Party or to which any Indemnified Company Party becomes subject, resulting from, arising out of, or relating to, any Claim due to any Claim (whether or not well founded, meritorious or unmeritorious) by a third party not controlled by, or under common ownership and/or control with, Company (whether or not well founded, meritorious or unmeritorious) relating to (i) the Energy Storage Services or Seller’s development, permitting, deployment, ownership, operation and/or maintenance of the Facility or Company-Owned Interconnection Facilities (excluding the ownership, operation and/or maintenance of the Company-Owned Interconnection Facilities following the Transfer Date); (ii) any breach of Seller of its representations and warranties in **Article 18** (Representations and Warranties); or (iii) any actual or alleged personal injury or death or damage to property, in any way arising out of, incident to, or resulting directly or indirectly from the acts or omissions of any Indemnified Seller Party or its agents or subcontractors, except as and to the extent that any of the foregoing such Loss is attributable to the negligence or willful misconduct of an Indemnified Company Party.

(b) **Compliance with Laws.** Any Losses incurred by an Indemnified Seller Party for noncompliance by Seller or an Indemnified Seller Party with applicable Laws shall not be reimbursed by Company but shall be the sole responsibility of Seller. Seller shall indemnify, defend and hold harmless each Indemnified Company Party from and against any and all Losses in any way arising out of, incident to, or resulting directly or indirectly from the failure of Seller to comply with any Laws.

(c) **Notice of Claim.** If Seller shall obtain knowledge of any Claim subject to **Section 20.1(a)** (Indemnification Against Third Party Claims), **Section 20.1(b)** (Compliance with Laws) or otherwise under this Agreement, Seller shall give prompt notice thereof to Company, and if Company shall obtain any such knowledge, Company shall give prompt notice thereof to Seller.

(d) **Indemnification Procedures.**

(i) In case any Claim subject to **Section 20.1(a)** (Indemnification Against Third Party Claims) or **Section 20.1(b)** (Compliance with Laws) or otherwise under this Agreement, shall be brought against an Indemnified Company Party, Company shall notify Seller of the commencement thereof and, provided that Seller has acknowledged in writing to Company its obligation to an Indemnified Company Party under this **Section 20.1** (Indemnification of Company), Seller shall be entitled,

at its own expense, acting through counsel acceptable to Company, to participate in and, to the extent that Seller desires, to assume and control the defense thereof; provided, however, that Seller shall not compromise or settle a Claim against an Indemnified Company Party without the prior written consent of Company which consent shall not be unreasonably withheld or delayed.

(ii) Seller shall not be entitled to assume and control the defense of any such Claim subject to **Section 20.1(a)** (Indemnification Against Third Party Claims), **Section 20.1(b)** (Compliance with Laws) or otherwise under this Agreement, if and to the extent that, in the sole opinion of Company, such Claim involves the potential imposition of criminal liability on an Indemnified Company Party or a conflict of interest between an Indemnified Company Party and Seller, in which case Company shall be entitled, at its own expense, acting through counsel acceptable to Seller to participate in any Claim, the defense of which has been assumed by Seller. Company shall supply, or shall cause an Indemnified Company Party to supply, Seller with such information and documents requested by Seller as are necessary or advisable for Seller to possess in connection with its participation in any Claim to the extent permitted by this **Section 20.1(d)(2)**. Company shall not enter, and shall restrict any Indemnified Company Party from entering, into any settlement or other compromise with respect to any Claim without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed.

(iii) Upon payment of any Losses by Seller, pursuant to this **Section 20.1** (Indemnification of Company) or other similar indemnity provisions contained herein, to or on behalf of Company, Seller, without any further action, shall be subrogated to any and all claims that an Indemnified Company Party may have relating thereto.

(iv) Company shall fully cooperate and cause all Company Indemnified Parties to fully cooperate, in the defense of or response to, any Claim subject to **Section 20.1** (Indemnification of Company).

20.2. Indemnification of Seller.

(a) **Third-Party Claims.** Company shall indemnify, defend, and hold harmless Seller, its successors, permitted assigns, affiliates, controlling persons, directors, officers, employees, servants and agents, including but not limited to contractors, subcontractors and their employees of any of them (each, a “**Indemnified Seller Party**”), from and against any Losses suffered, incurred or sustained by any Indemnified Seller Party or to which any Indemnified Seller Party becomes subject, resulting from, arising out of, or relating to, due to any Claim (whether or not well founded, meritorious or unmeritorious) by a third party not controlled by or under common ownership and/or control with Seller relating to (i) the ownership, operation and/or maintenance of the Company-Owned Interconnection Facilities following the Transfer Date; (ii) any breach of Company of its representations and warranties in **Article 18** (Representations and Warranties); or (iii) to any actual or alleged personal injury or death or damage to property, in any way arising out of, incident to, or resulting directly or indirectly from the acts or omissions of Company, except to the extent that any such Loss is attributable to the gross negligence or willful misconduct of an Indemnified Seller Party.

(b) Compliance with Laws. Any Losses incurred by an Indemnified Company Party for noncompliance by Company or an Indemnified Company Party with applicable Laws shall not be reimbursed by Seller but shall be the sole responsibility of Company. Company shall indemnify, defend and hold harmless each Indemnified Seller Party from and against any and all Losses in any way arising out of, incident to, or resulting directly or indirectly from the failure of Company to comply with any Laws.

(c) Notice of Claim. If Company shall obtain knowledge of any Claim subject to **Section 20.2(a)** (Indemnification Against Third Party Claims), **Section 20.2(b)** (Compliance with Laws) or otherwise under this Agreement, Company shall give prompt notice thereof to Seller, and if Seller shall obtain any such knowledge, Seller shall give prompt notice thereof to Company.

(d) Indemnification Procedures.

(i) In case any Claim subject to **Section 20.2(a)** (Indemnification Against Third Party Claims), **Section 20.2(b)** (Compliance with Laws), or otherwise under this Agreement, shall be brought against an Indemnified Seller Party, Seller shall notify Company of the commencement thereof and, provided that Company has acknowledged in writing to Seller its obligation to an Indemnified Seller Party under this **Section 20.2** (Indemnification of Seller), Company shall be entitled, at its own expense, acting through counsel acceptable to Seller, to participate in and, to the extent that Company desires, to assume and control the defense thereof; provided, however, that Company shall not compromise or settle a Claim against an Indemnified Seller Party without the prior written consent of Seller which consent shall not be unreasonably withheld or delayed.

(ii) Company shall not be entitled to assume and control the defense of any such Claim subject to **Section 20.2(a)** (Indemnification Against Third Party Claims), **Section 20.2(b)** (Compliance with Laws), or otherwise under this Agreement, if and to the extent that, in the opinion of Seller, such Claim involves the potential imposition of criminal liability on an Indemnified Seller Party or a conflict of interest between an Indemnified Seller Party and Company, in which case Seller shall be entitled, at its own expense, acting through counsel acceptable to Company, to participate in any Claim the defense of which has been assumed by Company. Seller shall supply, or shall cause an Indemnified Seller Party to supply, Company with such information and documents requested by Company as are necessary or advisable for Company to possess in connection with its participation in any Claim, to the extent permitted by this **Section 20.2(d)(2)**. Seller shall not enter, and shall restrict any Indemnified Seller Party from entering, into any settlement or other compromise with respect to any Claim without the prior written consent of Company, which consent shall not be unreasonably withheld or delayed.

(iii) Upon payment of any Losses by Company pursuant to this **Section 20.2** (Indemnification of Seller) or other similar indemnity provisions contained herein to or on behalf of Seller, Company, without any further action, shall be subrogated to any and all claims that an Indemnified Seller Party may have relating thereto.

(iv) Seller shall fully cooperate and cause all Seller Indemnified Parties to fully cooperate, in the defense of, or response to, any Claim subject to **Section 20.2** (Indemnification of Seller).

ARTICLE 21 INSURANCE

21.1. Required Coverage.

Seller, and anyone acting under its direction or control or on its behalf, shall, at its own expense, acquire and maintain, or cause to be maintained in full effect, commencing with the start of construction of the Facility, as applicable, and continuing throughout the Term, as applicable, the minimum insurance coverage set forth in **Attachment Q** (Required Insurance), or such higher amounts as the Seller and/or the Facility Lender reasonably determines to be necessary during construction and operation of the Facility. Seller's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

21.2. Waiver of Subrogation.

Seller, and anyone acting under its direction or control or on its behalf, shall cause its insurers to waive all rights of subrogation which Seller or its insurers may have against Company, Company's agents, or Company's employees.

21.3. Additional Insureds.

The insurance policies specified in **Section 2** (General Liability Insurance), **Section 3** (Automobile Liability Insurance) and **Section 9** (Pollution Liability Insurance) of **Attachment Q** (Required Insurance) shall name Company as an additional insured, as its interests may appear, with respect to any and all third-party bodily injury and/or property damage claims, including completed operations, arising from Seller's performance of this Agreement, and Seller shall submit to Company a copy of such additional insured endorsement with evidence of insurance as required herein. The insurance policies specified in **Section 4** (Builders All Risk Insurance) and **Section 5** (All Risk Property/Mechanical and Electrical Breakdown Insurance (Upon Completion of Construction)) of **Attachment Q** (Required Insurance) shall include Company as loss payee, as its interest may appear with respect to any Property or Mechanical and Electrical losses. Seller shall promptly, and in no event later than five (5) Days after such cancellation, modification or non-renewal, provide written notice to Company should any of the insurance policies required under this Agreement be cancelled, materially modified, or not renewed upon expiration. Company acknowledges that the Facility Lender shall be entitled to receive and distribute any and all loss proceeds as stipulated by any Financing Documents related to any policy described in this **Article 21** (Insurance) and **Attachment Q** (Required Insurance).

21.4. Evidence of Policies Provided to Company.

Evidence of insurance for the coverage specified in this **Article 21** (Insurance) shall be provided to Company within thirty (30) Days after the Effective Date or prior to the start of construction, whichever shall first occur. Within thirty (30) Days of any change of any policy and upon renewal of any policy, Seller shall provide certificates of insurance to Company. Upon Company's reasonable request during the Term, Seller

shall make available to Company for its inspection at Seller's designated location certified copies of the insurance policies described in this **Article 21** (Insurance) and **Attachment Q** (Required Insurance). Receipt of any evidence of insurance showing less coverage than requested is not a waiver of Seller's obligations to fulfill the requirements.

21.5. Deductibles.

Company acknowledges that any policy required herein may contain reasonable deductibles or self-insured retentions, the amounts of which will be reviewed for acceptance by Company. Acceptance will not be unreasonably withheld. Any deductible shall be the responsibility of Seller.

21.6. Application of Proceeds from All Risk Property/Mechanical and Electrical Breakdown Insurance.

Seller shall use commercially reasonable efforts to obtain provisions in the Financing Documents, on reasonable terms, providing for the insurance proceeds from All Risk Property/Mechanical and Electrical Breakdown Insurance to be applied to repair of the Facility.

21.7. Annual Review by Company.

The coverage limits shall be reviewed annually by Company and if, in Company's discretion, Company determines that the coverage limits should be increased, Company shall so notify Seller. The amount of any increase of the coverage limits, when considered as a percentage of the then existing coverage limits, shall not exceed the cumulative amount of increase in the Consumer Price Index occurring after the coverage limits herein were last set. Seller shall, within thirty (30) Days of notice from Company, increase the coverage as directed in such notice and the costs of such increased coverage limits shall be borne by Seller.

21.8. No Representation of Coverage Adequacy.

By requiring insurance herein, Company does not represent that coverage and limits will necessarily be adequate to protect Seller, and such coverage and limits shall not be deemed as a limitation on Seller's liability under the indemnities granted to Company in this Agreement.

21.9. Subcontractors.

Seller shall ensure that each of its subcontractors is either (a) named as an additional insured under the insurance policies procured by Seller; or (b) separately covered by insurance policies equivalent in type and monetary limits as those required of Seller. All such insurance shall be provided at the sole cost of Seller or its subcontractor.

21.10. General Insurance Requirements.

Each policy shall be specifically endorsed by blanket or otherwise to provide that

Seller's insurance is primary. Any other insurance carried by Company will be excess only and not contribute with this insurance. Each policy is to be written by an insurer with a rating by A.M. Best Company, Inc. of "A-VII" or better. If coverage is written on a claims-made basis, Seller warrants that any retroactive date applicable to coverage under the policy is equal to or prior to the Execution Date; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the end of the Term. If the limits of available liability coverage required herein become substantially reduced as a result of claim payments, Seller shall promptly, and in no event later than thirty (30) Days after such substantial reduction, at its own expense, purchase additional liability insurance (if such coverage is available at commercially reasonable rates) to increase the amount of available coverage to the limits of liability coverage required herein.

ARTICLE 22

REVISIONS TO PERFORMANCE STANDARDS

22.1. Revisions to Performance Standards.

The Parties acknowledge that, during the Term, certain Performance Standards and Telemetry and Control interfaces may be revised or added to facilitate necessary improvements in integrating energy storage resources into the Company System and operations. Such revisions or additions may be attributable to, without limitation, the following: changes in the Company System, changes in communications and control platforms, changes in system protection requirements, changes to the state of commercially available technology, changes in customer electrical usage (such as changes in average hourly load profiles) and changes in Laws (e.g., new environmental constraints, which may limit Company's ability to start/stop its generators in response to integration of intermittent generation, or constraints impacting the power quality standards for the Company System, such as constraints imposed by HERA or by the PUC under the HERA Law). Changes in Facility characteristics achieved through control system configuration, settings, or other tunable parameters shall not be considered a revision to performance standards. These types of changes should be implemented by Seller in response to Company request unless it can be shown that the changes negatively impact Seller's ability to meet its obligations under this Agreement.

22.2. Performance Standards Information Request.

If Company reasonably concludes that a Performance Standards Revision is necessary or important for the operation of the Company System and is capable of being complied with by Seller, Company shall have the right to issue to Seller a Performance Standards Information Request with respect to such Performance Standards Revision. Seller shall, within a reasonable period of time following Seller's receipt of such Performance Standards Information Request, but in no event more than ninety (90) Days after Seller's receipt of such request (or such other period of time as Company and Seller may agree in writing), submit to Company a Performance Standards Proposal responsive to the Performance Standards Revision proposed in such Performance Standards Information Request.

22.3. Performance Standards Proposal.

Upon receipt of a Performance Standards Proposal submitted in response to a Performance Standards Information Request, Company will evaluate such Performance Standards Proposal and Seller shall assist Company in performing such evaluation as and to the extent reasonably requested by Company (including, but not limited to, providing such additional information as Company may reasonably request and participating in meetings with Company as Company may reasonably request). Company shall have no obligation to evaluate a Performance Standards Proposal submitted at Seller's own initiative.

22.4. Performance Standards Revision Document.

If, following Company's evaluation of a Performance Standards Proposal, Company desires to consider implementing the Performance Standards Revision addressed in such Proposal, Company shall provide Seller with written notice to that effect, such notice to be issued to Seller within one hundred eighty (180) Days of receipt of the Performance Standards Proposal, and Company and Seller shall proceed to negotiate in good faith a Performance Standards Revision Document setting forth the specific changes to the Agreement that are necessary to implement such Performance Standards Revision. A decision by Company to initiate negotiations with Seller as aforesaid shall not constitute an acceptance by Company of any of the details set forth in Seller's Performance Standards Proposal for the Performance Standards Revision in question, including, but not limited to, the Performance Standards Modifications and the Performance Standards Pricing Impact. Any adjustment to the payments due from Company under this Agreement pursuant to such Performance Standards Revision Document shall be limited to the Performance Standards Pricing Impact (other than with respect to the financial consequences of non-performance as to a Performance Standards Revision). The time periods set forth in such Performance Standards Revision Document as to the effective date for the Performance Standards Revision shall be measured from the date the PUC Performance Standards Revision Order becomes non-appealable, as provided in **Section 22.6** (PUC Performance Standards Revision Order).

22.5. Failure to Reach Agreement.

If Company and Seller are unable to agree upon and execute a Performance Standards Revision Document within one hundred eighty (180) Days of Company's written notice to Seller pursuant to **Section 22.4** (Performance Standards Revision Document), Company shall have the option of declaring the failure to reach agreement on and execute such Performance Standards Revision Document to be a dispute and submit such dispute to an Independent Evaluator for the conduct of a determination pursuant to **Section 22.10** (Dispute) of this Agreement. Any decision of the Independent Evaluator, rendered as a result of such dispute shall include a form of a Performance Standards Revision Document as described in **Section 22.4** (Performance Standards Revision Document).

22.6. PUC Performance Standards Revision Order.

No Performance Standards Revision Document shall constitute an amendment to the Agreement unless and until a PUC Performance Standards Revision Order issued with respect to such document has become non-appealable. Once the condition of the preceding sentence has been satisfied, such Performance Standards Revision Document shall constitute an amendment to this Agreement. To be "non-appealable" under this **Section 22.6** (PUC Performance Standards Revision Order), such PUC Performance Standards Revision Order shall be either (a) not subject to appeal to any Circuit Court of the State of Hawai'i or the Supreme Court of the State of Hawai'i, because the thirty (30) Day period (accounting for weekends and holidays as appropriate) permitted for such an appeal has passed without the filing of notice of such an appeal; or (b) affirmed on appeal to any Circuit Court of the State of Hawai'i or the Supreme Court, or the Intermediate Appellate Court upon assignment by the Supreme Court, of the State of Hawai'i, or affirmed upon further appeal or appellate

process, and is not subject to further appeal, because the jurisdictional time permitted for such an appeal (and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari) has passed without the filing of notice of such an appeal (or the filing for further appellate process).

22.7. Company's Rights.

The rights granted to Company under **Section 22.4** (Performance Standards Revision Document) and **Section 22.5** (Failure to Reach Agreement) above are exclusive to Company. Seller shall not have a right to initiate negotiations of a Performance Standards Revision Document or to initiate dispute resolution under **Section 22.10** (Dispute), as a result of a failure to agree upon and execute any Performance Standards Revision Document.

22.8. Seller's Obligation.

Notwithstanding any provision of this **Article 22** (Revisions to Performance Standards) to the contrary, Seller shall have no obligation to respond to more than one (1) Performance Standards Information Request during any twelve (12) month period.

22.9. Limited Purpose.

This **Article 22** (Revisions to Performance Standards) is intended to specifically address necessary revisions to the Performance Standards and Telemetry and Control interfaces to enhance integration of energy storage resources onto the Company System, or to comply with future Laws which may be driven in part by higher integration of energy storage resources, and is not intended for either Party to provide a means for renegotiating any other terms of this Agreement. Revisions to the Performance Standards in accordance with the provisions of this **Article 22** (Revisions to Performance Standards) are not intended to materially increase Seller's risk of non-performance or default.

22.10. Dispute.

If Company decides to declare a dispute as a result of the failure to reach agreement and execute a Performance Standards Revision Document pursuant to **Section 22.5** (Failure to Reach Agreement), it shall provide written notice to that effect to Seller. Within twenty (20) Days of delivery of such notice Seller and Company shall agree upon an Independent Evaluator to resolve the dispute regarding a Performance Standards Revision Document. The Independent Evaluator shall be reasonably qualified and expert in battery energy storage systems, matters relating to the Performance Standards, financing, and energy storage power purchase agreements. If the Parties are unable to agree upon an Independent Evaluator within such 20-Day period, Company shall apply to the PUC for the appointment of an Independent Evaluator. If an Independent Observer retained under the Competitive Bidding Framework is qualified and willing and available to serve as Independent Evaluator, the PUC shall appoint one of the persons or entities qualified to serve as an Independent Observer to be the Independent Evaluator; if not, the PUC shall appoint another qualified person or entity to serve as Independent Evaluator. In its

application, Company shall ask the PUC to appoint an Independent Evaluator within thirty (30) Days of the application.

(a) Promptly upon appointment, the Independent Evaluator shall request the Parties to address the following matters within the next fifteen (15) Days:

- (i)** The Performance Standard Revision(s);
- (ii)** The technical and operational feasibility of complying with the Performance Standard Revision(s) and likelihood of compliance;
- (iii)** How Seller would comply with the Performance Standard Revision(s);
- (iv)** Reasonably expected net costs and/or lost revenues associated with the Performance Standards Revision(s);
- (v)** The appropriate level, if any, of Performance Standards Pricing Impact in light of the foregoing; and
- (vi)** Contractual consequences for non-performance that are commercially reasonable under the circumstances.

(b) Within ninety (90) Days of appointment, the Independent Evaluator shall render a decision unless the Independent Evaluator determines it needs to have additional time, not to exceed forty-five (45) Days, to render a decision.

(c) The Parties shall assist the Independent Evaluator throughout the process of preparing its review, including making key personnel and records available to the Independent Evaluator, but neither Party shall be entitled to participate in any meetings with personnel of the other Party or review of the other Party's records. However, the Independent Evaluator will have the right to conduct meetings, hearings or oral arguments in which both Parties are represented. The Parties may meet with each other during the review process to explore means of resolving the matter on mutually acceptable terms.

(d) The following standards shall be applied by the Independent Evaluator in rendering his or her decision: (i) if it is not technically or operationally feasible for Seller to comply with a Performance Standard Revision, the Independent Evaluator shall determine that the Agreement shall not be amended to incorporate such Performance Standard Revision (unless the Parties agree otherwise); (ii) if it is technically or operationally feasible for Seller to comply with a Performance Standard Revision, the Independent Evaluator shall incorporate such Performance Standard Revision into a Performance Standards Revision Document including (A) Seller's Performance Standards Modifications; (B) pricing terms that incorporate the Performance Standards Pricing Impact; and (C) contract terms and conditions that are commercially reasonable under the circumstances, especially with respect to the consequences of non-performance by Seller as to the Performance Standards Revision(s). In addition to the Performance Standards Revision Document, the Independent Evaluator shall render a decision which sets forth the positions of the

Parties and Independent Evaluator's rationale for his or her decisions on disputed issues.

(e) The fees and costs of the Independent Evaluator shall be paid by Company up to the first \$30,000 of such fees and costs; above those amounts, the Party that is not the prevailing Party shall be responsible for any such fees and costs; provided, that, if neither Party is the prevailing Party, the fees and costs of the Independent Evaluator above \$30,000 shall be borne equally by the Parties. The Independent Evaluator in rendering his or her decision shall also state which Party prevailed over the other Party, or that neither Party prevailed over the other.

22.11. HERA Law.

The provisions of this **Article 22** (Revisions to Performance Standards) are without limitation to the obligations of the Parties under the HERA Law and the reliability standards and interconnection requirements developed and adopted by the PUC pursuant to the HERA Law.

ARTICLE 23

FINANCIAL COMPLIANCE

23.1. Financial Compliance.

Seller shall provide or cause to be provided to Company on a timely basis, as reasonably determined by Company, all information, including but not limited to information that may be obtained in any audit referred to below (the “**Financial Compliance Information**”), reasonably requested by Company for purposes of permitting Company and its parent company, HEI, to comply with the requirements (initial and on-going) of (a) the accounting principles of Financial Accounting Standards Board (“**FASB**”) Accounting Standards Codification 810, Consolidation (“**FASB ASC 810**”); (b) Section 404 of the Sarbanes-Oxley Act of 2002 (“**SOX 404**”); and (c) all clarifications, interpretations and revisions of and regulations implementing FASB ASC 810 and SOX 404, issued by the FASB, Securities and Exchange Commission, the Public Company Accounting Oversight Board, Emerging Issues Task Force or other Governmental Authorities. In addition, if required by Company in order to meet its compliance obligations, Seller shall allow Company 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, however, that Company shall be responsible for all costs associated with the foregoing, including but not limited to Seller’s reasonable internal costs. Company shall limit access to such Financial Compliance Information to persons involved with such compliance matters and restrict persons involved in Company’s monitoring, dispatch or scheduling of Seller and/or Facility, or the administration of this Agreement, from having access to such Financial Compliance Information (unless approved in writing in advance by Seller).

23.2. Confidentiality.

Company shall, and shall cause HEI to, maintain the confidentiality of the Financial Compliance Information as provided in this **Article 23** (Financial Compliance). Company may share the Financial Compliance Information on a confidential basis with HEI and the independent auditors and attorneys for HEI. (Company, HEI, and their respective independent auditors and attorneys are collectively referred to in this **Article 23** (Financial Compliance) as “**Recipient**.”) If either Company or HEI, in the exercise of their respective reasonable judgments, concludes that consolidation or financial reporting with respect to Seller and/or this Agreement is necessary, Company and HEI each shall have the right to disclose such of the Financial Compliance Information as Company 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 Company or HEI disclose Financial Compliance Information pursuant to the preceding sentence, Company and HEI shall, without limitation to the generality of the preceding sentence, have the right to disclose Financial Compliance Information to the PUC and the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs of the State of Hawai‘i in connection with the PUC’s rate making activities for Company and other HEI-affiliated entities; provided, that, if the scope or content of the Financial Compliance Information to be disclosed to the

PUC exceeds or is more detailed than that disclosed pursuant to the preceding sentence, such Financial Compliance Information will not be disclosed until the PUC first issues a protective order to protect the confidentiality of such Financial Compliance Information. Neither Company nor HEI shall use the Financial Compliance Information for any purpose other than as permitted under this **Article 23** (Financial Compliance).

23.3. Required Disclosure.

In circumstances other than those addressed in **Section 23.2** (Confidentiality), if any Recipient becomes legally compelled under applicable Laws 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 Financial Compliance 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 **Article 23** (Financial Compliance). If such protective order or other remedy is not obtained, or if Seller waives compliance with the provisions at this **Article 23** (Financial Compliance), Recipient shall furnish only that portion of the Financial Compliance Information which it is legally required to so furnish and to use reasonable efforts to obtain assurance that confidential treatment will be accorded to any disclosed material.

23.4. Exclusions from Confidentiality.

The obligation of nondisclosure and restricted use imposed on each Recipient under this **Article 23** (Financial Compliance) shall not extend to any portion(s) of the Financial Compliance Information which (a) was known to such Recipient prior to receipt; (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.

23.5. Consolidation.

Company does not want to be subject to consolidation as set forth in FASB ASC 810, as issued and amended from time to time by FASB.

(a) **Consolidation.** Company represents that, as of the Execution Date, it is not required to consolidate Seller into its financial statements in accordance with relevant accounting guidance under U.S. generally accepted accounting principles (“GAAP”). If, due to a change in applicable law or accounting guidance under U.S. GAAP, or as a result of a material amendment to the Agreement, in each case, after the Execution Date, Company determines, in its sole but good faith discretion, that it is required to consolidate Seller into its financial statements in accordance with relevant accounting guidance in accordance with U.S. GAAP, then Seller, upon Company’s written request, shall, as soon as reasonably practicable (but in no event longer than fifteen (15) Days) provide audited financial statements (including footnotes) in accordance with U.S. GAAP (and as of the reporting periods Company is required to report thereafter) in order for Company to consolidate and file its financial

statements within the reporting deadlines of the Securities and Exchange Commission; provided, however, that if Seller does not normally prepare audited financial statements for the periods requested, Company shall reimburse Seller fifty percent (50%) of the reasonable costs of having necessary audits performed and preparation of the audited financial statement; provided, further that the foregoing reimbursement shall only apply if Seller normally prepares financial statements on an annual basis. Notwithstanding the foregoing requirement that Seller provide audited financial statements to Company, the Parties will take all commercially reasonable steps, which may include modification of this Agreement to eliminate the consolidation treatment, while preserving the economic “benefit of the bargain” to both Parties. If the Parties are unable to eliminate the consolidation treatment by other means, the Parties shall effectuate a sale of the Facility to Company for an amount equal to the greater of: (i) the Make Whole Amount determined pursuant to **Section 6** (Make Whole Amount) of **Attachment P** (Sale of Facility of Seller) or (ii) the fair market value determined pursuant to **Section 3** (Procedure to Determine Fair Market Value of the Facility) of **Attachment P** (Sale of Facility by Seller), in either case under a Purchase and Sale Agreement to be negotiated based on the terms and conditions set forth in **Section 4** (Purchase and Sale Agreement) of **Attachment P** (Sale of Facility by Seller).

(b) **Reserved.**

(c) **Reserved.**

ARTICLE 24 REGULATORY APPROVAL

24.1. General.

This Agreement is subject to approval by the PUC in the form of a satisfactory PUC Approval Order and the Parties' respective obligations hereunder are conditioned upon receipt of such approval, except as specifically provided otherwise herein. Upon the Execution Date of this Agreement, the Parties shall use good faith efforts to obtain, as soon as practicable, a PUC Approval Order that satisfies the requirements of **Section 24.5(a)** (PUC Approval Order). Company shall submit to the PUC an application for a satisfactory PUC Approval Order but does not extend any assurances that a PUC Approval Order will ultimately be obtained. As requested by Company, Seller will provide reasonable cooperation to support Company in obtaining a PUC Approval Order, including timely providing information requested by Company to support its application, including information for Company and its consultant to conduct a greenhouse gas emissions analysis for the PUC application, as well as information requested by the PUC and parties to the PUC proceeding in which approval is being sought. Seller understands that lack of cooperation may result in Company's inability to file an application with the PUC and/or a failure to receive a PUC Approval Order. For the avoidance of doubt, Company has no obligation to seek reconsideration, appeal, or other administrative or judicial review of any Unfavorable PUC Order. The Parties agree that neither Party has control over whether a PUC Approval Order will be issued and each Party hereby assumes any and all risks arising from, or relating in any way to, the inability to obtain a satisfactory PUC Approval Order and hereby releases the other Party from any and all claims relating thereto.

24.2. Seller Participation.

Seller shall seek participation without intervention in the PUC docket for approval of this Agreement pursuant to applicable rules and orders of the PUC. The scope of Seller's participation shall be determined by the PUC. However, Seller expressly agrees to seek participation for the limited purpose and only to the extent necessary to assist the PUC in making an informed decision regarding the approval of this Agreement. If Seller chooses not to seek participation in the docket, Seller expressly agrees and knowingly waives the right to claim, before the PUC, in any court, arbitration or other proceeding, that the information submitted and the arguments offered by Company in support of the application requesting the PUC Approval Order are insufficient to meet Company's burden of justifying that the terms of this Agreement are just and reasonable and in the public interest, or otherwise deficient in any manner for purposes of supporting the PUC's approval of this Agreement. Seller shall not seek in the docket and Company shall not disclose any confidential information to Seller that would provide Seller with an unfair business advantage or would otherwise harm the position of others with respect to their ability to compete on equal and fair terms.

24.3. Time Period for PUC Submittal Date.

If the PUC Submittal Date has not occurred within one hundred twenty (120) Days of the Execution Date, or such longer period as Company and Seller may agree to by a subsequent written agreement, Company may, by written notice delivered within thirty (30) Days of the expiration of such period, declare the Agreement null and void if the reason the application has not been filed is (a) any one or more of the conditions set forth in **Section 3.4** (Prior to Effective Date); or (b) Seller's failure to provide in a timely manner information reasonably requested by Company to support such application.

24.4. Time Period for PUC Approval.

If the Commission issues an Unfavorable PUC Order or if a PUC Approval Order is not issued within twelve (12) months of the PUC Submittal Date, or within such longer period as Company and Seller may agree to by a written agreement ("**PUC Approval Time Period**"), then Company or Seller may, by written notice delivered within one hundred and eighty (180) Days of (a) in the case that an Unfavorable PUC Order has been issued, the date the Unfavorable PUC Order becomes non-appealable, or (b) in the case that a PUC Approval Order is not issued within twelve (12) months of the PUC Submittal Date, or the expiration of the PUC Approval Time Period, as applicable, declare this Agreement null and void. If a PUC Approval Order or an Unfavorable PUC Order is issued within the PUC Approval Time Period but that order is appealed, and a Non-Appealable PUC Approval Order is not obtained within twenty-four (24) months of the PUC Submittal Date, or within such longer period as Company and Seller may agree to by a subsequent written agreement (the "**PUC Order Appeal Period**"), then Company or Seller may, by written notice delivered within ninety (90) Days after the expiration of the PUC Order Appeal Period, declare this Agreement null and void.

24.5. Regulatory Approval Terms.

(a) **PUC Approval Order.** The term "**PUC Approval Order**" means an order from the PUC that does not contain terms and conditions deemed to be unacceptable by Company, and is in a form deemed to be reasonable by Company, in its sole, but nonarbitrary, discretion, ordering that:

(i) this Agreement is approved;

(ii) Company is authorized to include the purchased energy storage costs (and related revenue taxes) that Company incurs under this Agreement in Company's Energy Cost Recovery Clause or equivalent, to the extent such costs are not included in base rates for the Term;

(iii) Company is authorized to include the Lump Sum Payment that Company incurs under this Agreement in Company's Purchase Power Adjustment Clause, to the extent such costs are not included in Base Rates for the Term;

(iv) The purchased energy storage costs to be incurred by Company as a result of this Agreement are reasonable; and

(v) Company's energy storage arrangements under this Agreement, pursuant to which Company will purchase the availability of the Facility's Energy Storage Services from Seller, are prudent and in the public interest.

(b) Non-Appealable PUC Approval Order. The term “**Non-Appealable PUC Approval Order**” means a PUC Approval Order (i) that is not subject to appeal to any Circuit Court of the State of Hawai‘i, Intermediate Court of Appeals of the State of Hawai‘i, or the Supreme Court of the State of Hawai‘i, because the period permitted for such an appeal (the “**Appeal Period**”) has passed without the filing of notice of such an appeal; or (ii) that was affirmed on appeal to any Circuit Court of the State of Hawai‘i, Intermediate Court of Appeals of the State of Hawai‘i, or the Supreme Court of the State of Hawai‘i, or was affirmed upon further appeal or appellate process, and that is not subject to further appeal, because the jurisdictional time permitted for such an appeal and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari has passed without the filing of notice of such an appeal or the filing for further appellate process.

(c) Company’s Written Statement. Not later than thirty-five (35) Days after the issuance of a PUC order approving this Agreement, Company shall provide Seller with a copy of such order together with a written statement as to whether the conditions set forth in **Section 24.5(a)** (PUC Approval Order) have been met and the order constitutes a PUC Approval Order. If Company’s written statement declares that the conditions set forth in **Section 24.5(a)** (PUC Approval Order) have been satisfied, the date of the issuance of the PUC Approval Order shall be the “**PUC Approval Order Date.**”

(d) Non-Appealable PUC Approval Order Date. If Company provides the written statement referred to in **Section 24.5(c)** (Company’s Written Statement) to the effect that the conditions referred to in **Section 24.5(a)** (PUC Approval Order) have been satisfied, the term “**Non-Appealable PUC Approval Order Date**” shall be defined as follows:

(i) If a PUC Approval Order is issued and is not made subject to a motion for reconsideration or clarification filed with the PUC or an appeal, the Non-Appealable PUC Approval Order Date shall be the date one (1) Day after the expiration of the Appeal Period following the issuance of the PUC Approval Order, or the date of Company’s written statement as required under **Section 24.5(c)** (Company’s Written Statement), whichever is later;

(ii) If the PUC Approval Order became subject to a motion for reconsideration or clarification, and the motion for reconsideration or clarification is denied or the PUC Approval Order is affirmed after reconsideration or clarification, and such order is not made subject to an appeal, the Non-Appealable PUC Approval Order Date shall be deemed to be the date one (1) Day after the expiration of the Appeal Period following the order denying reconsideration of or affirming the PUC Approval Order; or

(iii) If the PUC Approval Order, or an order denying reconsideration or clarification of the PUC Approval Order or affirming approval of the PUC Approval Order after reconsideration, becomes subject to an appeal, then the Non-Appealable PUC Approval Order Date shall be the date upon which the PUC Approval Order becomes a non-appealable order within the meaning of the definition of a Non-Appealable PUC Approval Order in **Section 24.5(b)** (Non-Appealable PUC Approval Order).

(e) Unfavorable PUC Order. The term “**Unfavorable PUC Order**” means an order from the PUC concerning this Agreement that: (i) dismisses Company’s application; (ii) denies Company’s application; or (iii) approves Company’s application but contains terms and conditions deemed unacceptable by Company in its sole discretion and therefore does not meet the definition of a PUC Approval Order as set forth in **Section 24.5(a)** (PUC Approval Order).

ARTICLE 25

EQUAL EMPLOYMENT OPPORTUNITY

25.1. Equal Employment Opportunity.

(Applicable to all contracts of \$10,000 or more in the whole or aggregate. 41 CFR 60-1.4 and 41 CFR 60-741.5.) Seller is aware of and is fully informed of Seller's responsibilities under Executive Order 11246 (reference to which include amendments and orders superseding in whole or in part) and shall be bound by and agrees to the applicable provisions as contained in Section 202 of said Executive Order and the Equal Opportunity Clause as set forth in 41 CFR 60-1.4 and 41 CFR 60-741.5(a), which clauses are hereby incorporated by reference.

25.2. Equal Opportunity for Disabled Veterans, Recently Separated Veterans, Other Protected Veterans and Armed Forces Service Medal Veterans.

(Applicable to (i) contracts of \$25,000 or more entered into before December 31, 2003 (41 CFR 60-250.4) or (ii) each federal government contract of \$100,000 or more, entered into or modified on or after December 31, 2003 (41 CFR 60-300.4) for the purchase, sale or use of personal property or nonpersonal services (including construction).) If applicable to Seller under this Agreement, Seller agrees that it is, and shall remain, in compliance with the rules and regulations promulgated under The Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended by the Jobs for Veterans Act of 2002, including the requirements of 41 CFC 60-250.5(a) (for orders/contracts entered into before December 31, 2003) and 41 CFR 60-300.5(a) (for orders/contracts entered into or modified on or after December 31, 2003) which are incorporated into this Agreement by reference.

ARTICLE 26

DISPUTE RESOLUTION

26.1. Good Faith Negotiations.

Except as otherwise expressly set forth in this Agreement, before submitting any Dispute under this Agreement to the dispute resolution procedures set forth in **Section 26.2** (Dispute Resolution Procedures), the presidents, vice presidents, or authorized delegates from both Supplier and Company having full authority to settle the Dispute(s), shall personally meet in Hawai'i and attempt in good faith to resolve the Dispute(s) ("**Management Meeting**"), within thirty (30) Days after a request by either Party.

26.2. Dispute Resolution Procedures.

Except as otherwise expressly set forth in this Agreement and subject to **Section 26.1** (Good Faith Negotiations), any and all Dispute(s) arising out of or relating to this Agreement (a) which remain unresolved for a period of twenty (20) Days after the Management Meeting takes place; or (b) for which the Parties fail to hold a Management Meeting within sixty (60) Days of the date that a Management Meeting was requested by a Party, may upon the agreement of the Parties, first be submitted to confidential mediation in Honolulu, Hawai'i, pursuant to the administration by, and in accordance with the Mediation Rules, Procedures and Protocols of, Dispute Prevention & Resolution, Inc. (or its successor) or, in their absence, the American Arbitration Association ("**DPR**") then in effect. If the Parties agree to submit the dispute to confidential mediation, the Parties shall each pay fifty percent (50%) of the cost of the mediation (i.e., the fees and expenses charged by the mediator and DPR) and shall otherwise each bear their own costs and attorney's fees. If the Parties do not submit the Dispute(s) to mediation, or if they do submit the Dispute(s) to mediation but settlement of the Dispute(s) is not reached within sixty (60) Days after commencement of the mediation, either Party may initiate legal proceedings in a court of competent jurisdiction in the State of Hawai'i. Notwithstanding the foregoing, the provisions of this **Article 26** (Dispute Resolution) shall not apply to any Dispute within the authority of an Independent Evaluator under **Article 22** (Revisions to Performance Standards) or **Attachment S** (Quarterly Reporting and Dispute Resolution by Independent Evaluator).

26.3. Document Retention.

If either party initiates dispute resolution under this **Article 26** (Dispute Resolution), then each Party must retain and preserve all records, including documents, which may be relevant to such Dispute, in accordance with applicable Laws until such Dispute is resolved.

ARTICLE 27 MISCELLANEOUS

27.1. Amendments.

Any amendment or modification of this Agreement or any part hereof shall not be valid unless in writing and signed via manual signature by the Parties. Any waiver hereunder shall not be valid unless in writing and signed via manual signature by the Party against whom waiver is asserted. Notwithstanding the foregoing, administrative changes mutually agreed by Company and Seller in writing, such as changes to settings shown in the **Attachment E** (Single-Line Drawing and Interface Block Diagram) and **Attachment F** (Relay List and Trip Scheme) and changes to numerical values of Performance Standards in **Section 3** (Performance Standards) of **Attachment B** (Facility Owned by Seller) shall not be considered amendments to this Agreement requiring PUC approval.

27.2. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, legal representatives, and permitted assigns.

27.3. Notices.

(a) All notices, consents and waivers under this Agreement shall be in writing and will be deemed to have been duly given when (i) delivered by hand, (ii) sent by E-Mail, (iii) sent by certified mail, return receipt requested, or (iv) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and E-mail addresses set forth below (or to such other addresses and facsimile numbers as a Party may designate by notice to the other Party):

Company:

By Mail:

Hawaiian Electric Company, Inc.
P.O. Box 2750
Honolulu, Hawai'i 96840
Attn: Manager, Energy Contract Management

Delivered by Hand or Overnight Delivery:

Hawaiian Electric Company, Inc.
Central Pacific Plaza
220 South King Street, Suite 2100
Honolulu, Hawai'i 96813
Attn: Manager, Energy Contract Management

By E-Mail:

Hawaiian Electric Company, Inc.
Manager, Energy Contract Management
Email: ppanotices@hawaiianelectric.com

With a copy to:

By Mail:

Hawaiian Electric Company, Inc.
Legal Division
P.O. Box 2750
Honolulu, Hawai'i 96840

By E-Mail:

Hawaiian Electric Company, Inc.
Legal Division
Email: legalnotices@hawaiianelectric.com

Seller: The contact information listed in **Attachment A** (Description of Storage Facility).

(b) Notice sent by mail shall be deemed to have been given on the date of actual delivery or at the expiration of the fifth (5th) Day after the date of mailing, whichever is earlier. Any Party hereto may change its address for written notice by giving written notice of such change to the other Party hereto.

(c) Any notice delivered by E-Mail shall request a receipt thereof confirmed by E-Mail or in writing by the recipient and followed by personal or mail delivery of such correspondence and attachments as may be requested by the recipient, and the effective date of such notice shall be the date of receipt, provided such receipt has been confirmed by the recipient.

(d) The Parties may agree in writing upon additional means of providing notices, consents and waivers under this Agreement in order to adapt to changing technology and commercial practices.

27.4. Entire Agreement.

This Agreement and the IRS Letter Agreements (together with any confidentiality or non-disclosure agreements entered into by the Parties during the process of negotiating this Agreement and/or discussing the specifications of the Facility) constitutes the entire agreement between the Parties relating to the subject matter hereof, superseding all prior agreements, understandings or undertakings, oral or written. Each of the Parties confirms that in entering into this Agreement, it has not relied on any statement, warranty or other representations (other than those set out in this Agreement) made or information supplied by or on behalf of the other Party.

27.5. Effect of Section and Attachment Headings.

The table of contents and paragraph headings of the various sections and attachments have been inserted in this Agreement as a matter of convenience for reference only and shall not modify, define or limit any of the terms or provisions hereof and shall not be used in the interpretation of any term or provision of this Agreement.

27.6. Non-Waiver.

Except as otherwise provided in this Agreement, no delay or forbearance of Company or Seller in the exercise of any remedy or right will constitute a waiver thereof, and the exercise or partial exercise of a remedy or right shall not preclude further exercise of the same or any other remedy or right.

27.7. Relationship of the Parties.

Nothing in this Agreement shall be deemed to constitute either Party hereto as partner, agent or representative of the other Party or to create any fiduciary relationship between the Parties. Seller does not hereby dedicate any part of Facility to serve Company, Company's customers or the public.

27.8. Governing Law, Jurisdiction and Venue.

Interpretation and performance of this Agreement shall be in accordance with, and shall be controlled by, the laws of the State of Hawai'i, other than the laws thereof that would require reference to the laws of any other jurisdiction. By entering into this Agreement, Seller submits itself to the personal jurisdiction of the courts of the State of Hawai'i and agrees that the proper venue for any civil action arising out of or relating to this Agreement shall be Honolulu, Hawai'i.

27.9. Limitations.

Nothing in this Agreement shall limit Company's ability to exercise its rights as specified in Company tariffs as filed with the PUC, or as specified in General Order No. 7 of the PUC's Standards for Electric Utility Service in the State of Hawai'i, as either may be amended from time to time.

27.10. Further Assurances.

If either Party determines in its reasonable discretion that any further instruments, assurances or other things are necessary or desirable to carry out the terms of this Agreement, the other Party will execute and deliver all such instruments and assurances and do all things reasonably necessary or desirable to carry out the terms of this Agreement.

27.11. Electronic Signatures and Counterparts.

This Agreement and any subsequent writings, including amendments, may be executed and delivered by exchange of executed copies via E-mail or other acceptable

electronic means, and in electronic formats such as Adobe PDF or other formats mutually agreeable between the parties which preserve the final terms of this Agreement or such writing. A party's signature transmitted by facsimile, E-mail, or other acceptable electronic means shall be considered an "original" signature which is binding and effective for all purposes of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument binding all Parties notwithstanding that all of the Parties are not signatories to the same counterparts. For all purposes, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

27.12. Severability.

If any term or provision of this Agreement, or the application thereof to any person, entity or circumstances is to any extent invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, and the Parties will take all commercially reasonable steps, including modification of the Agreement, to preserve the economic "benefit of the bargain" to both Parties notwithstanding any such aforesaid invalidity or unenforceability.

27.13. Settlement of Disputes.

Except as otherwise expressly provided, any dispute or difference arising out of this Agreement or concerning the performance or the non-performance by either Party of its obligations under this Agreement shall be determined in accordance with the dispute resolution procedures set forth in **Article 26** (Dispute Resolution) of this Agreement.

27.14. Proprietary Rights.

Seller agrees that in fulfilling its responsibilities under this Agreement, it will not use any process, program, design, device or material that infringes on any United States patent, trademark, copyright or trade secret ("**Proprietary Rights**"). Seller agrees to indemnify, defend and hold harmless the Indemnified Company Party from and against all losses, damages, claims, fees and costs, including but not limited to reasonable attorneys' fees and costs, arising from or incidental to any suit or proceeding brought against the Indemnified Company Party for infringement of third-party Proprietary Rights arising out of Seller's performance under this Agreement, including but not limited to patent infringement due to the use of technical features of the Facility to meet the Performance Standards specified in the Agreement.

27.15. Negotiated Terms.

The Parties agree that the terms and conditions of this Agreement are the result of negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its

professional advisors participated in the preparation of this Agreement.

27.16. Computation of Time.

In computing any period of time prescribed or allowed under this Agreement, the Day of the act, event or default from which the designated period of time begins to run shall not be included. If the last Day of the period so computed is not a Business Day, then the period shall run until the end of the next Day which is a Business Day.

27.17. Community Outreach Plan.

(a) The Parties acknowledge that, prior to the Execution Date, Seller provided to Company a comprehensive community outreach and communications plan to work with and inform neighboring communities and stakeholders to gain their support for the Project (“**Community Outreach and Engagement Plan**”). Seller agrees to work with neighboring communities and stakeholders and to provide them timely information during all phases of the Project, including, but not limited to the following information: Project description, Project stakeholders, community concerns and Seller’s efforts to address such concerns, Project benefits, government approvals, Project schedule, and a Community Outreach and Engagement Plan. Seller’s Community Outreach and Engagement Plan is a public document and shall remain available to members of the community on Seller’s website for the Term of this Agreement and upon request. Seller shall also provide Company with links to their Project website and Community Outreach and Engagement Plan.

(b) The Parties also acknowledge that, prior to the Execution Date, Seller provided reasonable advance notice and hosted a public meeting for community and neighborhood groups in and around the vicinity of the Project site that provided the neighboring community, stakeholders, and the general public with: (i) a reasonable opportunity to learn about the proposed Project; (ii) an opportunity to engage in a dialogue about concerns, mitigation measures, and potential community benefits of the proposed Project; and (iii) information concerning the process and/or intent for the public’s input and engagement, including advising attendees that they will have thirty (30) Days from the date of said public meeting to submit written comments to Company and/or Seller for inclusion in Company’s submission to the PUC of its application for a satisfactory PUC Approval Order. Seller shall collect all public comments, and then provide Company copies of all comments received in their original, unedited form, along with copies of all comments with personal information redacted and ready for filing. Seller agrees that Company may submit any and all public comments (presented in its original, unedited form) as part of its PUC application for this Project.

(c) Seller acknowledges and agrees that subsequent to the PUC Submittal Date and prior to the date when the Parties’ statements of position are to be filed in the docketed PUC proceeding for this Project, Seller will solicit public comments concerning the Project a second time. Seller will submit to the PUC as part of the docketed PUC proceeding for this Project any and all public comments (presented in its original, unedited form) received by Company and/or Seller regarding the Project that are not received in time to include as part of Company’s application for a satisfactory PUC Approval Order.

(d) The Parties acknowledge and agree that Seller is responsible for community outreach and engagement for the Project, and that the public meeting and comment solicitation process described in this **Section 27.17** (Community Outreach Plan) do not represent the only community outreach and engagement activities that can or should be performed by Seller. Without limitation to the generality of the preceding sentence, Seller agrees to take into account the Project's potential impacts on historical and cultural resources and, at a minimum, Seller shall describe: (i) any valued cultural, historical, or natural resources in the area in question, including the extent to which traditional and customary native Hawaiian rights are exercised in the area; (ii) the extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the Project; and (iii) the feasible action, if any, to be taken to reasonably protect native Hawaiian rights if they are found to exist. Seller shall determine and implement such additional means as may be reasonably necessary to share information with and involve the community and neighborhood groups in and around the vicinity of the Facility during the Project planning and development process through the Term of this Agreement, and shall timely inform Company of its plans and activities in this regard.

(e) Upon the Execution Date and at all times during the Term of this Agreement, Seller shall designate an individual as the "Seller's Community Representative." The Seller's Community Representative shall be the primary contact between the community and the Seller and shall be available during the Term of this Agreement to receive and answer questions from the community. As of the Execution Date the Seller's Community Representative shall be:

Name: [name of Seller's Community Representative]

Contact Information: [email address]

Seller shall notify Company in writing upon designation of any new Seller's Community Representative.

27.18. Change in Standard System or Organization.

(a) **Consistent with Original Intent.** If, during the Term, any standard, system or organization referenced in this Agreement should be modified or replaced in the normal course of events, such modification or replacement shall from that point in time be used in this Agreement in place of the original standard, system or organization, but only to the extent such modification or replacement is generally consistent with the original spirit and intent of this Agreement.

(b) **Eliminated or Inconsistent with Original Intent.** If, during the Term, any standard system or organization referenced in this Agreement should be eliminated or cease to exist, or is modified or replaced and such modification or replacement is inconsistent with the original spirit and intent of this Agreement, then in such event the Parties will negotiate in good faith to amend this Agreement to a standard, system or organization that would be consistent with the original spirit and intent of this Agreement.

27.19. No Third-Party Beneficiaries.

Nothing expressed or referred to in this Agreement will be construed to give any person or entity other than the Parties any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties and their successors and permitted assigns.

27.20. Hawai'i General Excise Tax.

Seller shall, when making payments to Company under this Agreement, pay such additional amount as may be necessary to reimburse Company for the Hawai'i general excise tax on gross income and all other similar taxes imposed on Company by any Governmental Authority with respect to payments in the nature of gross receipts tax, sales tax, privilege tax or the like (including receipt of any payment made under this **Section 27.20** (Hawai'i General Excise Tax)), but excluding federal or state net income taxes. By way of example and not limitation, as of the Execution Date, all payments subject to the Hawai'i general excise tax plus surcharge on O'ahu (totaling 4.5% as of the Execution Date) would include an additional 4.712% so that the underlying payment will be net of such tax liability. Company will not reimburse Seller for any taxes or fees imposed on Seller including, but not limited to, State of Hawai'i general excise tax.

27.21. Specifications; No Endorsement.

Wherever in this Agreement Company has the right to give specifications, determinations or approvals, such specifications, determinations or approvals shall be given in accordance with Company's standard practices, policies and procedures and shall not be unreasonably withheld. Any such specifications, determinations, or approvals shall not be deemed to be an endorsement, warranty, or waiver of any right of Company.

27.22. Survival of Obligations.

The rights and obligations that are intended to survive a termination of this Agreement are all of those rights and obligations that this Agreement expressly provides shall survive any such termination and those that arise from Seller's or Company's covenants, agreements, representations, and warranties applicable to, or to be performed, at or during any time prior to or as a result of the termination of this Agreement, including, without limitation:

- (a) The obligation to pay Daily Delay Damages under **Section 11.6** (Damages and Termination);
- (b) The obligation to pay Termination Damages under **Article 6** (Events of Default; Remedies; Termination);
- (c) The indemnity obligations under **Article 20** (Indemnification) and **Section 27.14** (Proprietary Rights);
- (d) The dispute resolution provisions of **Article 26** (Dispute Resolution);

(e) **Article 19** (Limitations), **Section 27.3** (Notices), **Section 27.6** (Non-Waiver), **Section 27.8** (Governing Law, Jurisdiction and Venue), **Section 27.9** (Limitations), **Section 27.12** (Severability), **Section 27.13** (Settlement of Disputes), **Section 27.14** (Proprietary Rights), **Section 27.16** (Computation of Time), **Section 27.19** (No Third-Party Beneficiaries), **Section 27.20** (Hawai'i General Excise Tax), this **Section 27.22** (Survival of Obligations), **Section 7** (Land Restoration) of **Attachment G** (Company-Owned Interconnection Facilities) and **Section 1(d)** (Seller's Right to Transfer) and **Section 2(d)** (Right of First Refusal) of **Attachment P** (Sale of Facility by Seller); and Seller's obligations to pay interconnection, operation and maintenance costs incurred up to the date of termination of the Agreement under **Section 3** (Seller Payment To Company for Company-Owned Interconnection Facilities and Review Of Facility) and **Section 4** (Ongoing Operation and Maintenance Charges) of **Attachment G** (Company-Owned Interconnection Facilities).

27.23. Certain Rules of Construction.

For purposes of this Agreement:

(a) "Including" and any other words or phrases of inclusion will not be construed as terms of limitation, so that references to "included" matters will be regarded as non-exclusive, non-characterizing illustrations;

(b) "Copy" or "copies" means that the copy or copies of the material to which it relates are true, correct and complete;

(c) When "Article," "Section," "Schedule," or "Attachment" is capitalized in this Agreement, it refers to an article, section, schedule or attachment to this Agreement;

(d) "Will" has the same meaning as "shall" and, thus, connotes an obligation and an imperative and not a futurity;

(e) Titles and captions of or in this Agreement, the cover sheet and table of contents of this Agreement, and language in parenthesis following Section references are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions;

(f) Whenever the context requires, the singular includes the plural and plural includes the singular, and the gender of any pronoun includes the other genders; and

(g) Any reference to any statutory provision includes each successor provision and all applicable Laws as to that provision.

27.24. Agreement is Not a Design or Construction Contract.

The Parties acknowledge and agree that Seller will finance and develop the Facility for Seller to own and operate. Seller is not a design professional or a contractor. Seller is not hereby undertaking to perform and is not holding itself out or offering to perform any work for which a professional or contractor's license may be required under the

laws of the State of Hawai'i. Notwithstanding anything to the contrary, all work related to the design, engineering, and construction of the Facility shall be performed by design professionals and contractors who hold the appropriate licenses issued by the State of Hawai'i and intend to develop the Facility in full compliance with all applicable state laws. For the avoidance of doubt, in all instances where this Agreement refers to Seller performing the acts of constructing, building or installing, said language shall be interpreted to mean that such work will be performed by duly licensed contractors properly retained by Seller in accordance with laws of the State of Hawai'i.

**[Signatures for Energy Storage Power Purchase Agreement
appear on the following page]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

HAWAIIAN ELECTRIC COMPANY, INC., a
Hawai'i corporation

By: _____

Name:

Title:

By: _____

Name:

Title:

(“Company”)

[SELLER NAME], a **[Seller's business registration]**

By: _____

Name:

Title:

By: _____

Name:

Title:

(“Seller”)

SCHEDULE OF DEFINED TERMS

“**Acceptance Notice**” has the meaning set forth in **Section 1(a)(ii)** of **Attachment P** (Sale of Facility by Seller) to this Agreement.

“**Acceptance Test**” means a test conducted by Seller and witnessed by Company, within thirty (30) Days of completion of all Interconnection Facilities and in accordance with criteria and test procedures determined by Company and Seller as set forth in **Section 2(f)** (Acceptance Test Procedures) of **Attachment G** (Company-Owned Interconnection Facilities), to determine conformance with **Attachment B** (Facility Owned by Seller), **Attachment G** (Company-Owned Interconnection Facilities) and Good Engineering and Operating Practices. **Attachment N** (Acceptance Test General Criteria) provides general criteria to be included in the written protocol for the Acceptance Test. Successful completion of the Acceptance Test shall be a condition precedent for the performance of the Control System Acceptance Test and the Commercial Operations Date.

“**Active Power Control Interface**” has the meaning set forth in **Section 1(g)** (Active Power Control Interface) of **Attachment B** (Facility Owned by Seller) of this Agreement.

“**Agreement**” has the meaning set forth in the preamble.

“**Allowed Capacity**” has the meaning set forth in **Section 8(a)** of **Attachment A** (Description of Storage Facility) to this Agreement.

“**Annual EAF**” has the meaning set forth in **Section 4.4(a)** (Annual Equivalent Availability Factor and Liquidated Damages).

“**Annual EFOF**” has the meaning set forth in **Section 4.5(a)** (Annual Equivalent Forced Outage Factor and Liquidated Damages).

“**Appeal Period**” has the meaning set forth in **Section 24.5(b)** (Non-Appealable PUC Approval Order).

“**Appraised Fair Market Value of the Facility**” has the meaning set forth in **Section 3(d)** of **Attachment P** (Sale of Facility by Seller) to this Agreement.

“**Bill of Material**” means a list of equipment to be installed at the Facility including, but not necessarily limited to, items such as relays, breakers, and switches.

“**Business Day**” means any Day except a Saturday, a Sunday, or a federal or Hawai'i state holiday.

“**Capacity Performance Metric**” has the meaning set forth in **Attachment T** (Facility Tests) to this Agreement.

“**Capacity Cure Period**” has the meaning set forth in **Section 4.3(b)** (Capacity Test Termination Rights).

“**Capacity Ratio**” has the meaning set forth in **Attachment T** (Facility Tests) to this

Agreement.

“**Capacity Test**” has the meaning set forth in **Attachment T** (Facility Tests) to this Agreement.

“**Charging Energy**” means the amount of Energy withdrawn from the Company System to be stored by the Facility and discharged at a later time, as measured in MWh by the Revenue Metering Package. Charging Energy does not include Station Use or Energy required to charge the Facility for the purposes of an Outage or testing.

“**Change in Control**” has the meaning set forth in **Section 1(b)** (Change in Ownership Interests and Control of Seller) of **Attachment P** (Sale of Facility by Seller) to this Agreement.

“**Claim**” means any claim, suit, action, demand or proceeding.

“**COD Delay LD Period**” has the meaning set forth in **Section 11.6(a)(ii)**.

“**Commercial Operations**,” with respect to the Facility, shall be considered achieved upon satisfaction of the following conditions:

- (a) the Acceptance Test has been passed;
- (b) all Storage Unit(s) have passed Control System Acceptance Tests;
- (c) the Transfer Date has occurred;
- (d) Seller has (i) provided to Company the Required Models (as defined in **Section 6(a)** (Seller's Obligation to Provide Models) of **Attachment B** (Facility Owned by Seller)) in the form of Source Code; (ii) placed the current version of the Source Code for the Required Models with the Source Code Escrow Agent as required in **Section 6(b)(i)(A)** (Establishment of Source Code Escrow) of **Attachment B** (Facility Owned by Seller); or (iii) if Seller is unable to arrange for the placement of the appropriate Source Code into the Source Code Escrow account, placed the required funds with the Proceeds Escrow Agent as required in **Section 6(b)(ii)(A)** (Establishment of Monetary Escrow) of **Attachment B** (Facility Owned by Seller); and
- (e) Seller has provided Company with written notice that Seller is ready to declare the Commercial Operations Date, which shall be the Day following the Day Company receives such written notice from Seller.

“**Commercial Operations Date**” or “**COD**” means the date on which the Facility first achieves Commercial Operations.

“**Company**” has the meaning set forth in the preamble of this Agreement.

“**Company-Owned Interconnection Facilities**” has the meaning set forth in **Section 1** (General) of **Attachment G** (Company-Owned Interconnection Facilities).

“**Company Dispatch/Charge**” has the meaning set forth in **Section 12.1(a)** (Company's Exclusive Rights).

“Company Milestones” means each of the milestones identified as such in **Attachment K-1** (Seller's Conditions Precedent and Company Milestones).

“Company Milestone Date” has the meaning set forth in **Section 11.5** (Company Milestones).

“Company System” means the electric system owned and operated by Company (to include any non-utility owned facilities) consisting of power plants, transmission and distribution lines, and related equipment for the production and delivery of electric power to the public.

“Company System Operator” means the authorized representative(s) of Company who is/are responsible for carrying out Company Dispatch/Charge with respect to the Facility.

“Company’s Recommendations” has the meaning set forth in **Section 4(c)** of **Attachment B** (Facility Owned by Seller).

“Competitive Bidding Framework” means The Framework for Competitive Bidding contained in Decision and Order No. 23121 issued by the Public Utilities Commission on December 8, 2006, and any subsequent orders providing for modifications from those set forth in Order No. 23121 issued December 8, 2006.

“Construction Delay LD Period” has the meaning set forth in **Section 11.6(a)(i)**.

“Construction Milestones” means the Guaranteed Project Milestones and the Reporting Milestones set forth in **Attachment K** (Guaranteed Project Milestones) **Attachment L** (Reporting Milestones) of this Agreement, respectively.

“Consultants List” has the meaning set forth in **Section 4(e)** of **Attachment B** (Facility Owned by Seller).

“Contract Capacity” has the meaning set forth in **Section 8(c)** of **Attachment A** (Description of Storage Facility)

“Contract Year” means the twelve (12) calendar month period commencing on either (a) the Commercial Operations Date (if the Commercial Operations Date occurs on the first (1st) Day of a calendar month); or (b) the first Day of the calendar month following the month during which the Commercial Operations Date occurs, and thereafter on each anniversary of the first Day of such month; provided, however, that, in the latter case, the initial Contract Year shall also include the Days from the Commercial Operations Date to the first (1st) Day of succeeding calendar month.

“Contractors” has the meaning set forth in **Section 2(a)(i)** of **Attachment G** (Company-Owned Interconnection Facilities) to this Agreement.

“Control System Acceptance Test” or **“CSAT”** means a test or tests performed on the centralized and collective control systems and Active Power Control Interface of the Facility, which includes successful completion of the Control System Telemetry and Control List, in accordance with procedures set forth in **Section 1(h)** (Control System Acceptance Test Procedures) of **Attachment B** (Facility Owned by Seller). **Attachment**

O (Control System Acceptance Test Criteria) provides general criteria to be included in the written protocol for the Control System Acceptance Test.

“Control System Telemetry and Control List” includes, but is not limited to, all of the Facility’s equipment and generation performance/quality parameters that will be monitored, alarmed and/or controlled by the EMS throughout the Term of this Agreement. Examples of the Control System Telemetry and Control List include:

- (a) Seller's substation/equipment status – breaker open/closed status, equipment normal/alarm operating status, etc.
- (b) Active Power control interface – dispatch MW setpoint, etc.
- (c) Voltage control interface – voltage kV setpoint, etc.
- (d) Power factor control interface – power factor setpoint, etc.

“Daily Delay Damages” has the meaning set forth in **Section 11.6(a)(i)**.

“Day” means a calendar day.

“Defaulting Party” means the Party whose failure, action or breach of its obligations under this Agreement results in an Event of Default under **Article 6** (Events of Default; Remedies; Termination).

“Development Period Security” has the meaning set forth in **Section 14.1(a)** (General).

“Discharge Energy” means all Energy discharged from the Facility as measured in MWh by the Revenue Metering Package.

“Disconnection Event” has the meaning set forth in **Section 4(a)** of **Attachment B** (Facility Owned by Seller).

“Dispute” means any and all disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Agreement, or to either Party’s performance or failure of performance under this Agreement.

“DPR” has the meaning set forth in **Section 26.2** (Dispute Resolution Procedure).

“EAF Performance Metric” has the meaning set forth in **Section 4.4(a)** (Annual Equivalent Availability Factor and Liquidated Damages).

“EFOF Performance Metric” has the meaning set forth in **Section 4.5(a)** (Annual Equivalent Forced Outage Factor and Liquidated Damages).

“E-Mail” means electronic mail.

“Effective Date” means the last to occur of (a) the Non-Appealable PUC Approval Order Date; and (b) the date that the Interconnection Requirements Amendment (if required pursuant to **Section 2.3(a)** of this Agreement) is executed and delivered as such date is

set forth in the Interconnection Requirements Amendment.

“Energy” means alternating current electrical energy measured in kilowatthours (kWh).

“Energy Cost Recovery Clause” means the provision in Company’s rate schedules that allows Company to pass through to its customers Company’s costs of fuel and purchased power.

“Energy Management System” or **“EMS”** means the real-time, computer-based control system, or any successor thereto, used by Company to manage the supply and delivery of electric energy to its consumers. It provides the Company System Operator with an integrated set of manual and automatic functions necessary for the operation of the Company System under both normal and emergency conditions. The EMS provides the interfaces for the Company System Operator to perform real-time monitoring and control of the Company System, including but not limited to monitoring and control of the Facility for system balancing, supplemental frequency control and economic dispatch as prescribed in this Agreement.

“Energy Storage Services” means, collectively or individually, the acceptance of Charging Energy at the Point of Interconnection from the Company System, the storing of Energy in the Facility, the delivery of Discharge Energy to the Point of Interconnection from the Facility, in accordance with Company Dispatch/Charge and the technical and operational requirements of **Attachment B** (Facility Owned by Seller) and the terms of this Agreement.

“Engineering and Design Work” has the meaning set forth in **Section 3(a)(i)** of **Attachment G** (Company-Owned Interconnection Facilities).

“Environment” has the meaning set forth in **Section 1(b)(iii)(G)(2)** (Malware) of **Attachment B** (Facility Owned by Seller).

“EPC Contract” means Seller’s engineering, procurement and construction contract with the EPC Contractor.

“EPC Contractor” means Seller’s engineering, procurement and construction contractor for the Facility.

“ESPPA Amendment Deadline” means the sixtieth (60th) Day following the date the completed IRS is provided to Seller, or such later date as Company and Seller may agree to by written agreement.

“Escrow Agent” has the meaning set forth in **Section 14.7** (L/C Proceeds Escrow).

“Event of Default” has the meaning set forth in **Article 6** (Events of Default; Remedies; Termination).

“Exclusive Negotiation Period” has the meaning set forth in **Section 2(b)** (Negotiations) of **Attachment P** (Sale of Facility by Seller) to this Agreement.

“Execution Date” has the meaning set forth in the preamble of this Agreement.

“**Exempt Sales**” has the meaning set forth in **Section 1(c)** (Exempt Sales) of **Attachment P** (Sale of Facility by Seller) to this Agreement.

“**Extended Term**” has the meaning set forth in **Section 3.1** (Term).

“**Facility**” means the battery energy storage system that is the subject of this Agreement, together with all Storage Units, Seller-Owned Interconnection Facilities, and all other equipment, devices, associated appurtenances owned, controlled, operated and managed by Seller in connection with, and to facilitate the storing of electric energy at the Facility and the charging of electric energy from, and the discharging of electric energy to, the Company System, as described in **Attachment A** (Description of Storage Facility) and **Attachment B** (Facility Owned by Seller).

“**Facility Debt**” means the obligations of Seller to any lender pursuant to the Financing Documents, including without limitation, principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing.

“**Facility Lender**” means any lender(s) or tax equity financing party providing any Facility Debt and any successor(s) or assigns thereto, collectively.

“**FASB**” has the meaning set forth in **Section 23.1** (Financial Compliance).

“**FASB ASC 810**” has the meaning set forth in **Section 23.1** (Financial Compliance).

“**Fast Frequency Response Performance Metric**” has the meaning set forth in **Section 4.7** (Fast Frequency Response Performance Metric) of this Agreement.

“**FFR Allocated Portion of the Lump Sum Payment**” means an amount equal to __ percent (__%) of the monthly Lump Sum Payment amount without taking into account any set-offs against such monthly Lump Sum Payment. **[DRAFTING NOTE: PERCENTAGE SHALL BE THE PROPORTIONATE RELATIONSHIP BETWEEN THE ANNUAL LUMP SUM PAYMENT SPECIFIED IN SELLER’S RESPONSE TO RFP AND THE ANNUAL COST OF THE CONTINGENCY STORAGE COMPONENT SPECIFIED IN SELLER’S RESPONSE TO RFP FOR THE CONTINGENCY STORAGE VARIATION INCLUDED IN THE PPA.]**

“**Final Non-Appealable Order from the PUC**” has the meaning set forth in **Section 5(d)** of **Attachment P** (Sale of Facility by Seller) to this Agreement.

“**Financial Compliance Information**” has the meaning set forth in **Section 23.1** (Financial Compliance).

“**Financial Termination Costs**” has the meaning set forth in **Section 6** (Make Whole Amount) of **Attachment P** (Sale of Facility by Seller).

“**Financing Documents**” means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction and/or permanent debt financing for the Facility,

including any credit enhancement, credit support, working capital financing, tax equity financing or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

“Force Majeure” means an event that satisfies the requirements of **Section 17.1** (Definition of Force Majeure), **Section 17.2** (Events That Could Qualify as Force Majeure) and **Section 17.3** (Exclusions From Force Majeure).

“Force Majeure Notice” has the meaning set forth in **Section 17.4** (Satisfaction of Certain Conditions).

“GAAP” has the meaning set forth in **Section 23.5(a)** (Consolidation).

“Good Engineering and Operating Practices” means the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry for similarly situated U.S. facilities, considering Company's isolated island setting, that at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should be known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with Law, regulation, reliability for an island system, safety, environmental protection, economy and expedition. With respect to the Facility, Good Engineering and Operating Practices include, but are not limited to, taking reasonable steps to ensure that:

(a) Adequate materials, resources and supplies, including fuel and spare parts inventories, are available to meet the Facility's needs under normal conditions and reasonably foreseeable abnormal conditions.

(b) Sufficient operating personnel are available and are adequately experienced and trained to operate the Facility properly, efficiently and within manufacturer's guidelines and specifications and are capable of responding to emergency conditions.

(c) Preventive, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment, tools, and procedures.

(d) Appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and reasonably foreseeable abnormal conditions.

(e) Equipment is operated in a manner safe to workers, the general public and the environment and in accordance with equipment manufacturer's specifications, including, without limitation, defined limitations such as steam pressure, temperature, moisture content, chemical content, quality of make-up water, operating voltage, current, frequency, rotational speed, polarity, synchronization, control system limits, etc.

(f) Equipment and components are designed and manufactured to meet or exceed the standard of durability that is generally used for similarly situated battery energy storage systems/facilities, considering Company's isolated island setting, and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

"Governmental Approvals" means all permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities, as well as any agreements with Governmental Authorities, required for the construction, ownership, operation and maintenance of the Facility and the Company-Owned Interconnection Facilities, and all amendments, modifications, supplements, general conditions and addenda thereto.

"Governmental Authority" means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

"Guaranteed Commercial Operations Date" is the date specified as such in **Attachment K** (Guaranteed Project Milestones) of this Agreement, by which Seller guarantees it will achieve the Commercial Operations Date.

"Guaranteed Procurement Payment Date" means the date specified in **Attachment K** (Guaranteed Project Milestones) that Seller shall make payment to Company of the amount required under **Section 3(b)(iii)** (Balance of Company-Owned Interconnection Facilities Prepayment) of **Attachment G** (Company-Owned Interconnection Facilities).

"Guaranteed Project Milestone" means each of the milestone events identified in **Attachment K** (Guaranteed Project Milestones) of this Agreement.

"Guaranteed Project Milestone Date" means each of the milestone dates identified in **Attachment K** (Guaranteed Project Milestones) of this Agreement.

"HEI" means Hawaiian Electric Industries, Inc.

"HERA" means the Hawai'i Electricity Reliability Administrator.

"HERA Law" means Act 166 (Haw. Leg. 2012), which was passed by the 27th Hawai'i Legislature in the form of S.B. No. 2787, S.D. 2, H.D.2, C.D.1 on May 2, 2012 and signed by the Governor on June 27, 2012. The effective date for the law is July 1, 2012. The HERA Law authorizes (a) the PUC to develop, adopt, and enforce reliability standards and interconnection requirements; (b) the PUC to contract for the performance of related duties with a party that will serve as the HERA; and (c) the collection of a Hawai'i electricity reliability surcharge to be collected by Hawai'i's electric utilities and used by the HERA. Reliability standards and interconnection requirements adopted by the PUC pursuant to the HERA Law will apply to any electric utility and any user, owner, or operator of the Hawai'i electric system. The PUC also is provided with the authority to monitor and compel the production of data, files, maps,

reports, or any other information concerning any electric utility, any user, owner or operator of the Hawai'i electric system, or other person, business, or entity, considered by the commission to be necessary for exercising jurisdiction over interconnection to the Hawai'i electric system, or for administering the process for interconnection to the Hawai'i electric system.

"Indemnified Company Party" has the meaning set forth in **Section 20.1(a)** (Third-Party Claims).

"Indemnified Seller Party" has the meaning set forth in **Section 20.2(a)** (Third-Party Claims).

"Independent Evaluator" means a person empowered, pursuant to **Section 22.5** (Failure to Reach Agreement), **Section 22.10** (Dispute) and **Section 2(c)** (Appointment of Independent Evaluator) of **Attachment S** (Quarterly Reporting and Dispute Resolution by Independent Evaluator) to this Agreement, to resolve (a) disputes due to failure of the Parties to agree on a Performance Standards Revision Document; and (b) disagreements due to failure of the Parties to resolve a Quarterly Report Disagreement.

"Initial Term" has the meaning set forth in **Section 3.1** (Term).

"Integral Station Use" is that subset of Station Use that is metered through the Revenue Metering Package for Station Use components that are so integrated with the Facility design that it is not feasible to meter such Energy separately and that is described in **Attachment B** (Facility Owned by Seller).

"Interconnection Facilities" means all the equipment and devices required to permit the Facility to operate in parallel with the Company System; make available to Company the Energy Storage Services; and provide reliable and safe operation of, and power quality on, the Company System (in accordance with applicable provisions of the PUC's General Order No. 7, Company tariffs, operational practices, interconnection requirements studies, and planning criteria), such as, but not limited to, transmission and distribution lines, transformers, switches, and circuit breakers.

"Interconnection Requirements Amendment" has the meaning set forth in **Section 2.3** of this Agreement.

"Interconnection Requirements Study" or **"IRS"** means a study, performed in accordance with the terms of the IRS Letter Agreements to determine, among other things, (a) the system requirements and equipment requirements to interconnect the Facility with the Company System; (b) the Performance Standards for the Facility; and (c) an estimate of costs and schedule for interconnection of the Facility.

"Interface Block Diagram" means the visual representation of the signals between Seller and Company, including but not limited to Telemetry and Control points, digital fault recorder settings, telecommunications and protection signals.

"IRS Letter Agreements" means the system impact study and Facility study letter agreements and any written, signed amendments thereto, between Company and Seller that collectively describe the scope, schedule and payment arrangements for the

IRS.

“**L/C Proceeds**” has the meaning set forth in **Section 14.6** (Failure to Renew or Extend Letter of Credit).

“**Land**” means, for purposes of **Section 7** (Land Restoration) of **Attachment G** (Company-Owned Interconnection Facilities), any portion of the Site and any other real property where any Company-Owned Interconnection Facilities are located.

“**Land Rights**” means all easements, rights of way, licenses, leases, surface use agreements and other interests or rights in real estate.

“**Laws**” means all federal, state and local laws, rules, regulations, orders, ordinances, permit conditions and other governmental actions.

“**LD Assessment Date**” means, for the last month of each LD Period, the Day following the expiration of the 10-Business Day period provided for Company to submit a Notice of Disagreement pursuant to **Section 2(a)** (Notice of Disagreement With Quarterly Report) of **Attachment S** (Quarterly Reporting and Dispute Resolution by Independent Evaluator) to this Agreement.

“**LD Period**” means a rolling period of twelve (12) calendar months each. At the end of each calendar month, the LD Period rolls forward to include the next calendar month. The initial “LD Period” shall consist of the twelve (12) full calendar months of the initial Contract Year.

“**LDT**” has the meaning set forth in **Section 4.6(a)** (RTE Test and Liquidated Damages).

“**Losses**” means any and all direct, indirect or consequential damages, fines, penalties, deficiencies, losses, liabilities (including settlements and judgments), costs, expenses (including reasonable attorneys’ fees and court costs) and disbursements.

“**Lowest Capacity Bandwidth**” has the meaning set forth in **Section 4.3(a)** (Capacity Test and Liquidated Damages).

“**Lump Sum Payment**” means the payment to be made by Company to Seller in exchange for Seller making the Energy Storage Services of the Facility available for Company Dispatch/Charge, based on the pricing Seller submitted in its RFP Proposal.

“**Make Whole Amount**” has the meaning set forth in **Section 6** (Make Whole Amount) of **Attachment P** (Sale of Facility by Seller).

“**Malware**” means computer software, code or instructions that: (a) intentionally, and with malice intent by a third party, adversely affect the operation, security or integrity of a computing, telecommunications or other digital operating or processing system or environment, including without limitation, other programs, data, databases, computer libraries and computer and communications equipment, by altering, destroying, disrupting or inhibiting such operation, security or integrity; (b) without functional purpose, self-replicate without manual intervention; (c) purport to perform a useful function but which actually performs either a destructive or harmful function, or

perform no useful function other than utilize substantial computer, telecommunications or memory resources with the intent of causing harm; or (d) without authorization collect and/or transmit to third parties any information or data; including such software, code or instructions commonly known as viruses, Trojans, logic bombs, worms, adware and spyware.

“Management Meeting” has the meaning set forth in **Section 26.1** (Good Faith Negotiations).

“Maximum Rated Output” means the net maximum output of the Facility in MW, which shall not exceed the Allowed Capacity.

“Measurement Period” means, in any Contract Year, the following periods of three (3) calendar months each: (a) the period beginning on the first day of the first (1st) calendar month of such Contract Year and extending through the last day of the third (3rd) calendar month of such Contract Year; (b) the period beginning on the first (1st) day of the fourth (4th) calendar month of such Contract Year and extending through the last day of the sixth (6th) calendar month of such Contract Year; (c) the period beginning on the first (1st) day of the seventh (7th) calendar month of such Contract Year and extending through the last day of the ninth (9th) calendar month of such Contract Year; and (d) the period beginning on the first (1st) day of the tenth (10th) calendar month of such Contract Year and extending through the last day of the twelfth (12th) calendar month of such Contract Year.

“Monitoring and Communications Equipment” has the meaning set forth in **Section 9.4** (Monitoring and Communications Equipment).

“Monthly Progress Report” has the meaning set forth in **Section 11.2** (Monthly Progress Report).

“Quarterly Report” means the report of the data (for the LD Period and the Measurement Period in question) necessary for the calculation of the Performance Metrics to be provided by Seller to Company as set forth in **Section 1** (Quarterly Report) of **Attachment S** (Quarterly Reporting and Dispute Resolution by Independent Evaluator) to this Agreement.

“Quarterly Report Disagreement” means any disagreement arising out of the same Quarterly Report.

“NERC GADS” means the North American Electric Reliability Corporation Generating Availability Data System.

“Non-Appealable PUC Approval Order” has the meaning set forth in **Section 24.5(b)** (Non-Appealable PUC Approval Order).

“Non-Appealable PUC Approval Order Date” has the meaning set forth in **Section 24.5(d)** (Non-Appealable PUC Approval Order Date).

“Non-Defaulting Party” has the meaning set forth in **Section 6.4** (Rights of the Non-Defaulting Party; Forward Contract).

“**Notice of Disagreement**” has the meaning set forth in **Section 2(a)** (Notice of Disagreement With Quarterly Report) of **Attachment S** (Quarterly Reporting and Dispute Resolution by Independent Evaluator).

“**Offer Date**” has the meaning set forth in **Section 1(a)(i)** of **Attachment P** (Sale of Facility by Seller) to this Agreement.

“**Offer Materials**” has the meaning set forth in **Section 1(a)(i)** of **Attachment P** (Sale of Facility by Seller) to this Agreement.

“**Offer Notice**” has the meaning set forth in **Section 1(a)(i)** of **Attachment P** (Sale of Facility by Seller) to this Agreement.

“**Offer Price**” has the meaning set forth in **Section 1(a)(i)** of **Attachment P** (Sale of Facility by Seller) to this Agreement.

“**Operating Period Security**” has the meaning set forth in **Section 14.2** (Operating Period Security).

“**Performance Metrics**” means each of the Capacity Performance Metric, the EAF Performance Metric, the EFOF Performance Metric, the RTE Performance Metric, and the Fast Frequency Response Performance Metric [**DRAFTING NOTE: This metric only applies if Facility provides fast frequency response**].

“**Performance Metrics LDs**” has the meaning set forth in **Section 4.8** (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages).

“**Performance Standards**” means the various performance standards specified in **Section 3** (Performance Standards) of **Attachment B** (Facility Owned by Seller) for the operation of the Facility, including the availability of Energy Storage Services to Company, as such standards may be revised from time to time pursuant to **Article 22** (Revisions to Performance Standards) of this Agreement.

“**Performance Standards Information Request**” means a written notice from Company to Seller proposing revisions to one or more of the Performance Standards then in effect and requesting information from Seller concerning such proposed revision(s).

“**Performance Standards Modifications**” means, for each Performance Standards Revision, any capital improvements, additions, enhancements, replacements, repairs or other operational modifications to the Facility and/or to changes in Seller’s operations or maintenance practices necessary to enable the Facility to achieve the performance requirements of such Performance Standards Revision.

“**Performance Standards Pricing Impact**” means any adjustment in the payment obligations of Company under this Agreement necessary to specifically reflect the recovery of the net costs and/or net lost revenues specifically attributable to any Performance Standards Modification necessary to comply with a Performance Standard Revision, which shall consist of the following: (a) recovery of, and return on,

any capital investment (i) made over a cost recovery period starting after the Performance Standards Revision is made effective following a PUC Performance Standards Revision Order through the end of the Term; and (ii) based on a proposed capital structure that is commercially reasonable for such an investment and the return on investment is at market rates for such an investment or similar investment); (b) recovery of reasonably expected net additional operating and maintenance costs; and (c) an adjustment in pricing necessary to compensate Seller for reasonably expected reductions, if any, in the provision of Energy Storage Services to Company under this Agreement.

“Performance Standards Proposal” means a written communication from Seller to Company detailing the following with respect to a proposed Performance Standards Revision: (a) a statement as to whether Seller believes that it is technically feasible to comply with the Performance Standards Revision and the basis therefor; (b) the Performance Standards Modifications proposed by Seller to comply with the Performance Standards Revision; (c) the capital and incremental operating costs of any necessary technical improvements, and any other incremental net operating or maintenance costs associated with any necessary operational changes, and any expected lost revenues associated with expected reductions in the Energy Storage Services provided to Company; (d) the Performance Standards Pricing Impact of such costs and/or lost revenues; (e) information regarding the effectiveness of such technical improvements or operational modifications; (f) proposed contractual consequences for failure to comply with the Performance Standard Revision that would be commercially reasonable under the circumstances; and (g) such other information as may be reasonably required by Company to evaluate Seller's proposals. A Performance Standards Proposal may be issued either in response to a Performance Standards Information Request or on Seller’s own initiative; provided, however, that, in accordance with **Section 22.3** (Performance Standards Proposal), Company shall have no obligation to evaluate a Performance Standards Proposal submitted at Seller’s own initiative.

“Performance Standards Revision” means a revision, as specified in a Performance Standards Information Request or a Seller-initiated Performance Standards Proposal, to the Performance Standards in effect as of the date of such request or proposal.

“Performance Standards Revision Document” means a document specifying one or more Performance Standards Revisions and setting forth the changes to the Agreement necessary to implement such Performance Standards Revision(s). A Performance Standards Revision Document may be either a written agreement executed by Company and Seller or as directed by the Independent Evaluator pursuant to **Section 22.10** (Dispute) of this Agreement, in the absence of such written agreement.

“Permitted Lien” has the meaning set forth in **Section 4** (Purchase and Sale Agreement) of **Attachment P** (Sale of Facility by Seller) to this Agreement.

“Plans” has the meaning set forth in **Section 2(b)** (Coordination of Construction) of **Attachment G** (Company-Owned Interconnection Facilities).

“Point of Interconnection” of **“POI”** means the point of delivery of Energy supplied by Seller to Company, where the Facility owned by the Seller interconnects with the

Company System. The Seller shall own and maintain the facilities from the Facility to the Point of Interconnection, excluding any Company-Owned Interconnection Facilities located on the Site. The Company shall own and maintain the facilities from the Point of Interconnection to the Company System. The Point of Interconnection will be identified in the IRS and set forth on the Single-Line Drawing and Interface Block Diagram in **Attachment E** (Single-Line Drawing and Interface Block Diagram). The Point of Interconnection will be at the voltage level of the Company System. If it is necessary to step up the voltage at which Energy supplied by Seller is delivered to Company System, the Point of Interconnection will be on the high voltage side of the step-up transformer.

“Prime Rate” means the “prime rate” of interest, as published from time to time by The Wall Street Journal in the “Money Rates” section of its Western Edition Newspaper (or the average prime rate if a high and a low prime rate are therein reported). The Prime Rate shall change without notice with each change in the prime rate reported by The Wall Street Journal, as of the date such change is reported. Any such rate is a general reference rate of interest, may not be related to any other rate, may not be the lowest or best rate actually charged by any lender to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by lenders or market rates in general.

“Proceeds” has the meaning set forth in **Section 6(b)(ii)(C)** (Extend Letter of Credit) of **Attachment B** (Facility Owned by Seller) to this Agreement.

“Proceeds Escrow Agent” has the meaning set forth in **Section 6(b)(ii)(D)** (Proceeds Escrow) of **Attachment B** (Facility Owned by Seller) to this Agreement.

“Proceeds Escrow Agreement” has the meaning set forth in **Section 6(b)(ii)(D)** (Proceeds Escrow) of **Attachment B** (Facility Owned by Seller) to this Agreement.

“Project Documents” means this Agreement any ground lease or other agreement or instrument in respect of the Site and/or the Land Rights, all construction contracts to which Seller is or becomes a party thereto, operation and maintenance agreements, and all other agreements, documents and instruments to which Seller is or becomes a party thereto in respect of the Facility, other than the Financing Documents, as the same may be modified or amended from time to time in accordance with the terms thereof.

“Proposed Actions” has the meaning set forth in **Section 4(c)** of **Attachment B** (Facility Owned by Seller) to this Agreement.

“Proprietary Rights” has the meaning set forth in **Section 27.14** (Proprietary Rights).

“PSA” has the meaning set forth in **Section 4** (Purchase and Sale Agreement) of **Attachment P** (Sale of Facility by Seller) to this Agreement.

“PUC” has the meaning set forth in the recitals of this Agreement.

“PUC Approval Order” has the meaning set forth in **Section 24.5(a)** (PUC Approval Order).

“**PUC Approval Order Date**” has the meaning set forth in **Section 24.5(c)** (Company’s Written Statement).

“**PUC Approval Time Period**” has the meaning set forth in **Section 24.4** (Time Period for PUC Approval).

“**PUC Order Appeal Period**” has the meaning set forth in **Section 24.4** (Time Period for PUC Approval).

“**PUC Performance Standards Revision Order**” means the decision and order of the PUC approving the application or motion by the Parties seeking (a) approval of the Performance Standards Revision in question and the associated Performance Standards Revision Document; (b) finding that the impact of the changes to Company’s payment obligations under this Agreement on Company’s revenue requirements is reasonable; and (c) approval to include the costs arising out of pricing changes in Company’s Energy Cost Recovery Clause (or equivalent).

“**PUC Submittal Date**” means the date of the submittal of Company’s complete application or motion for a satisfactory PUC Approval Order pursuant to **Section 24.1** (General).

“**PUC’s Standards**” means the Standards for Small Power Production and Cogeneration in the State of Hawai‘i, issued by the Public Utilities Commission of the State of Hawai‘i, Chapter 74 of Title 6, Hawai‘i Administrative Rules, currently in effect and as may be amended from time to time.

“**Qualified Consultant**” has the meaning set forth in **Section 4(e)** of **Attachment B** (Facility Owned by Seller) to this Agreement.

“**Recipient**” has the meaning set forth in **Section 23.2** (Confidentiality).

“**Reporting Milestone**” means each of the milestones identified as such in **Attachment L** (Reporting Milestones).

“**Required Model(s)**” has the meaning set forth in **Section 6(a)** (Seller’s Obligation to Provide Models) of **Attachment B** (Facility Owned by Seller).

“**Revenue Metering Package**” means the revenue meter(s), revenue metering PTs and CTs and secondary wiring for the Facility.

“**RFP**” means the Company’s Request for Proposals for Variable Renewable Dispatchable Generation and Energy Storage, Island of O‘ahu, issued on [_____], 2019.

“**RFP Proposal**” means the documents and submissions comprising Seller’s proposal selected in the Final Award Group in response to the RFP.

“**Right of First Negotiation Period**” has the meaning set forth in **Section 1(a)(ii)** of **Attachment P** (Sale of Facility by Seller) to this Agreement.

“**RTE Cure Period**” has the meaning set forth in **Section 4.6(b)** (RTE Test Termination

Rights).

“**RTE Performance Metric**” has the meaning set forth in **Attachment T** (Facility Tests) to this Agreement.

“**Second NUB Contract**” has the meaning set forth in **Section 1(e)** (Revisions to Costs) of **Attachment G** (Company-Owned Interconnection Facilities).

“**Security Funds**” has the meaning set forth in **Section 14.4** (Security Funds).

“**Seller**” has the meaning set forth in the preamble in this Agreement.

“**Seller-Attributable Unavailability**” means the time periods during which the inverter in question (or the Facility as a whole) is not dispatched or is derated or shutdown (or the Facility is disconnected) because of any of the following:

(a) The Facility’s failure to comply with any of the Performance Standards, Good Engineering and Operating Practices, Governmental Approvals, applicable Laws or Seller's other obligations under this Agreement;

(b) Seller-Attributable System Conditions;

(c) Conditions at or on either side of the Point of Interconnection arising from the acts or omissions of Seller or any of its affiliates, employees, agents, contractors, vendors, materialmen, independent contractors or suppliers of Seller, acting in such capacity for the benefit of Seller (“**Seller Representatives**”), unless such acts or omissions are themselves excused by reasons of Force Majeure pursuant to **Article 17** (Force Majeure) of this Agreement;

(d) A disconnection initiated by the Company pursuant to **Article 16** (Personnel and System Safety) of this Agreement) that is caused by Seller or any Seller Representatives;

(e) The Company has reasonably decided that it is inadvisable for such inverter (or the Facility as a whole) to continue normal operations without a further Control System Acceptance Test as provided in **Section 7(a)** (Testing Requirements) of **Attachment B** (Facility Owned by Seller);

(f) The Facility is deemed to be in Seller-Attributable Unavailability status under any of the following sections of **Attachment B** (Facility Owned by Seller): **Section 1(j)** (Demonstration of Facility) or **Section 4(e)**; and

(g) The Facility is shutdown at the direction of Company as provided in **Section 9.6** (Shutdown for Lack of Reliable Real Time Data), and such shutdown is caused by Seller or any Seller Representatives.

Each time period of Seller-Attributable Unavailability shall constitute an Outage or Deration, as applicable.

“**Seller-Attributable System Conditions**” means conditions on the Company System:

(a) that result from either (i) the Facility's storage and/or delivery of electric power to the Company System; or (ii) any condition arising from the acts or omissions of Seller or any Seller Representative, unless such acts or omissions are themselves excused by reasons of Force Majeure pursuant to **Article 17** (Force Majeure) of this Agreement; and

(b) caused by or attributable to the Facility or Seller or any Seller Representatives that Company reasonably determines to either (i) be inconsistent with Good Engineering and Operating Practices on the Company System; or (ii) jeopardize the safety, reliability or stability of the Company System.

"Seller-Owned Interconnection Facilities" means the Interconnection Facilities constructed and owned by Seller.

"Seller's Conditions Precedent Date" has the meaning set forth in **Section 11.5** (Company Milestones).

"Site" means the parcel of real property on which the Facility will be constructed and located, together with any Land Rights reasonably necessary for the construction, ownership, operation and maintenance of the Facility. The Site is identified in **Attachment A** (Description of Storage Facility) to this Agreement.

"Source Code" means the human readable source code of the Required Models which: (a) will be narrated documentation related to the compilation, linking, packaging and platform requirements and any other materials or software sufficient to enable a reasonably skilled programmer to build, modify and use the code within a commercially reasonable period of time for the purposes of a Source Code Authorized Use; and (b) can reasonably be compiled by a computer for execution.

"Source Code Authorized Use" has the meaning set forth in **Section 6(b)(i)(E)** (Authorized Use) of **Attachment B** (Facility Owned by Seller).

"Source Code Escrow" means the escrow established with the Source Code Escrow Agent under the terms of the Source Code Escrow Agreement under which Source Code shall be confidentially deposited by a Source Code Owner for safekeeping and, upon the satisfaction of certain conditions, release to the Company.

"Source Code Escrow Agent" means [_____] or such other similar escrow agent approved by Company.

"Source Code Escrow Agreement" means a multi-party escrow agreement between Company, Source Code Escrow Agent and any and all Source Code Owners depositing Source Code into the Source Code Escrow which, among other matters, names Company as beneficiary thereunder, and is otherwise acceptable in form and substance to Company.

"Source Code Owner" means the developer and/or owner of the Required Models utilizing Source Code authorized to deposit the Source Code with the Source Code Escrow Agent upon the terms of the Source Code Escrow Agreement.

“**SOX 404**” has the meaning set forth in **Section 23.1** (Financial Compliance).

“**Standards**” has the meaning set forth in **Section 2(c)** (Plans) of **Attachment G** (Company-Owned Interconnection Facilities).

“**State of Charge**” or “**SOC**” means the amount of Storage Energy in the Facility stated as a percentage of the Contract Capacity (e.g., 80% SOC).

“**Station Use**” means the electrical load of the Facility’s auxiliary equipment that are necessary for operation of the Facility as set forth in **Attachment B** (Facility Owned by Seller). The auxiliary equipment includes, but is not limited to, forced and induced draft fans, air conditioner systems, cooling towers, plant lighting and control systems, any heating or cooling equipment necessary to keep energy storage componentry within their normal operating temperatures, any motors or pumps required for moving material within the battery energy storage system, and any other electrical loads required for the Energy Storage Services.

“**Station Use Metering Equipment**” means, for the Facility, a Company-approved revenue quality meter (or meters), Company-approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all electric energy consumed by the Facility for Station Use.

“**Storage Energy**” means the Energy the Facility can deliver from 100% SOC to 0% SOC.

“**Storage Unit(s)**” means the battery energy storage system unit or units specified in **Attachment A** (Description of Storage Facility) through which Seller has agreed to make available the Energy Storage Services to Company pursuant to this Agreement.

“**Study**” has the meaning set forth in **Section 4(e)** of **Attachment B** (Facility Owned by Seller).

“**Supervisory Control and Data Acquisition**” or “**SCADA**” means the Company system that provides remote control and monitoring of Company’s transmission and sub-transmission systems and enables Company to perform real-time control of equipment in the field and to monitor the conditions and status of the Company System.

“**Submission Notice**” has the meaning set forth in **Section 2(c)** (Appointment of Independent Evaluator) of **Attachment S** (Quarterly Reporting and Dispute Resolution by Independent Evaluator) to this Agreement.

“**Subsequent Owner**” has the meaning set forth in **Section 15.4** (Financing Document Requirements).

“**Telemetry and Control**” means the interface between Company’s EMS and the physical equipment at the Facility.

“**Term**” means, collectively, the Initial Term and the Extended Term (if any).

“Termination Damages” means liquidated damages calculated in accordance with **Section 6.5** (Calculation of Termination Damages).

“Termination Date” has the meaning set forth in **Section 6.4** (Rights of the Non-Defaulting Party; Forward Contract).

“Termination Deadline” means the fourteenth (14th) Day following the date the completed IRS is provided to Seller, or such later date as Company and Seller may agree to in writing.

“Total Actual Interconnection Cost” means the actual costs for the Interconnection Facilities, to be designed, engineered and constructed by Company, as provided in **Attachment G** (Company-Owned Interconnection Facilities) to this Agreement.

“Total Actual Relocation Cost” has the meaning set forth in **Section 5(b)** of **Attachment G** (Company-Owned Interconnection Facilities) to this Agreement.

“Total Estimated Interconnection Cost” means the estimated costs for the Interconnection Facilities, to be designed, engineered and constructed by Company, as provided in **Attachment G** (Company-Owned Interconnection Facilities) to this Agreement.

“Total Estimated Relocation Cost” has the meaning set forth in **Section 5(a)** of **Attachment G** (Company-Owned Interconnection Facilities) to this Agreement.

“Total Interconnection Cost” has the meaning set forth in **Section 3(a)(i)** of **Attachment G** (Company-Owned Interconnection Facilities) to this Agreement.

“Transfer Date” means the date, prior to the Commercial Operations Date, upon which Seller transfers to Company all right, title and interest in and to Company-Owned Interconnection Facilities to the extent, if any, that such facilities were constructed by Seller and/or its contractors.

“Unfavorable PUC Order” has the meaning set forth in **Section 24.5(e)** (Unfavorable PUC Order).

ATTACHMENT A
DESCRIPTION OF STORAGE FACILITY

1. Name of Facility: _____

(a) Location: _____ (TMK No. _____)

(b) Telephone number (for system emergencies): (____) _____

(c) E-mail Address: _____

(d) Contact Information for Notices pursuant to **Section 27.3** (Notices) of the Agreement:

Mailing Address:

Address for Hand/Overnight Delivery:

E-Mail Address: _____

Phone: _____

2. Owner (if different from Seller): _____

If Seller is not the owner, Seller shall provide Company with a certified copy of a certificate warranting that the owner is a corporation, partnership or limited liability company in good standing with the Hawai'i Department of Commerce and Consumer Affairs which shall be attached hereto as **Exhibit A-1** (Good Standing Certificates).

3. Operator: _____

If Seller is not the operator, Seller shall provide a copy of the agreement between Seller and the operator which requires the operator to operate the Facility and which establishes the scope of operations by the operator and the respective rights of Seller and the operator with respect to the availability of Energy Storage Services to Company by the Commercial Operations Date. In addition, Seller shall provide a certified copy of a certificate warranting that the operator is a corporation, partnership or limited liability company in good standing with the Hawai'i Department of Commerce and Consumer Affairs no later than the Commercial Operations Date.

4. Name of person to whom payments are to be made: _____

(a) Mailing address:

(b) Hawai'i Gross Excise Tax License number: _____

5. Insurance Carrier(s): [SELLER TO PROVIDE INFORMATION]

6. Seller shall provide a certified copy of a certificate warranting that Seller is a corporation, partnership or limited liability company in good standing with the Hawai'i Department of Commerce and Consumer Affairs which shall be attached hereto as **Exhibit A-1** (Good Standing Certificates).

7. Ownership Structures:

(a) Seller, owner and operator shall provide Company a certificate and/or description of their ownership structures which shall be attached hereto as **Exhibit A-2** (Ownership Structures).

(b) In the event of a change in ownership or identity of Seller, owner or operator, such entity shall provide within thirty (30) Days thereof, a certified copy of a new certificate and a revised ownership structure.

8. Equipment:

(a) The "**Allowed Capacity**" of this Agreement shall be the lower of (i) Contract Capacity or (ii) the net nameplate capacity (net for export) of the Facility installed by the Commercial Operations Date.

(b) Seller may propose revisions to this **Section 8** (Equipment) of **Attachment A** (Description of Storage Facility) ("**Section 8**") for Company's approval prior to commencement of construction, provided, however, that (i) no such revision to this Section 8 shall change the type of Facility or equipment deployed at the Facility from a standalone battery energy storage system; (ii) Seller shall be in compliance with all other terms and conditions of this Agreement; and (iii) such revision(s) shall not change the characteristics of the Facility equipment or the specifications used in the IRS. Any revision to this Section 8 complying with items (i) through (iii) above shall be subject to Company's prior approval, which approval shall not be unreasonably withheld. If Seller's proposed revision(s) to this Section 8 otherwise satisfies items (i) and (ii) above but not item (iii) such that Company, in its reasonable discretion, determines that a re-study or revision to all or any part of the IRS is required to accommodate Seller's proposed revision(s), Company may, in its sole and absolute discretion, conditionally approve such revision(s) subject to a satisfactory re-study or revision to the IRS and Seller's payment and continued obligation to be liable and responsible for all costs and expenses of re-studying or revising such portions of the IRS and for modifying and paying for all costs and expenses of modification to the Facility, the Company-Owned Interconnection Facilities based on the results of the re-studies or revisions to the IRS. Any changes made

to this **Attachment A** (Description of Storage Facility) or the Agreement as a result of this **Section 8(b)** of **Attachment A** (Description of Storage Facility) shall be reflected in a written amendment to the Agreement.

Seller understands and acknowledges that Company’s review and approval of Seller’s proposed revisions to this Section 8 and any necessary re-studies or revisions to the IRS shall be subject to Company’s then-existing time and personnel constraints. Company agrees to use commercially reasonable efforts, under such time and personnel constraints, to complete any necessary reviews, approvals and/or re-studies or revisions to the IRS.

Any delay in completing, or failure by Seller to meet, any subsequent Seller milestones under **Article 11** (Construction Period and Milestones) as a result of any revision pursuant to this Section 8 by Seller (whether requiring a re-study or revision to the IRS or not) shall be borne entirely by Seller and Company shall not be responsible or liable for any delay or failure to meet any such milestones by Seller.

(c) Design and capacity

Energy Storage Capacity (“**Contract Capacity**”): _____ MW / _____ MWh

Total Number of Energy Storage Units:

[number and size of each Energy Storage Unit. e.g. one (1) Brand X, 200 kW; one (1) Brand Y, 300 kW]

Description of Equipment:

[For example: Describe the type of battery energy storage system equipment, capacity, and any special features.]

	kW	kVAR Consumed	kVAR Produced
<u>Full load</u>			
<u>Startup</u>	_____	_____	_____

Energy Storage Unit:

Type	
Rated Power	_____ kW
Voltage	_____ V, ___ phase
Frequency	_____ HZ
Class of Protection	
Number of Poles	N/A

Rated Speed N/A
Rated Current _____ A
Rated Power Factor See Exhibit B-2

Portion of Facility To Provide Fast Frequency Response:
[DRAFTING NOTE: This section only applies if Facility provides fast frequency response.]

Capacity: _____ MW
Storage: _____ MWH
Other Description(s):

- (d) Single or 3 phase:
- (e) Name of manufacturer:
- (f) Description of Facility SCADA and control system(s):

EXHIBIT A-1
GOOD STANDING CERTIFICATES

EXHIBIT A-2
OWNERSHIP STRUCTURES

[This Attachment will be revised to reflect the results of the IRS]

ATTACHMENT B
FACILITY OWNED BY SELLER

1. The Facility.

(a) Drawings, Diagrams, Lists, Settings and As-Built.

(i) Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip Scheme. A preliminary single-line drawing (including notes), Interface Block Diagram, relay list, relay settings, and trip scheme of the Facility shall, after Seller has obtained prior written consent from Company, be attached to this Agreement on the Execution Date as **Attachment E** (Single-Line Drawing and Interface Block Diagram) and **Attachment F** (Relay List and Trip Scheme). A final single-line drawing (including notes), Interface Block Diagram, relay list and trip scheme of the Facility shall, after having obtained prior written consent from Company, be labeled the “Final” Single-Line Drawing, the “Final” Interface Block Diagram and the “Final” Relay List and Trip Scheme and shall supersede **Attachment E** (Single-Line Drawing and Interface Block Diagram) and **Attachment F** (Relay List and Trip Scheme) to this Agreement and shall be made a part hereof on the Commercial Operations Date. After the Commercial Operations Date, no changes shall be made to the “Final” Single-Line Drawing, the “Final” Interface Block Diagram and the “Final” Relay List and Trip Scheme without the prior written consent of Seller and Company. The single-line drawing shall expressly identify the Point of Interconnection of Facility to Company System.

(ii) As-Built. Seller shall provide final as-built drawings of the Seller-Owned Interconnection Facilities within 30 Days of the successful completion of the Acceptance Test.

(iii) No Material Changes. Seller agrees that no material changes or additions to the Facility as reflected in the “Final” Single-Line Drawing (including notes), the “Final” Interface Block Diagram, and the “Final” Relay List and Trip Scheme shall be made without Seller first having obtained prior written consent from Company. The foregoing are subject to changes and additions as part of any Performance Standards Modifications. If Company directs any changes in or additions to the Facility, records and operating procedures that are not part of any Performance Standards Modifications, Company shall specify such changes or additions to Seller in writing, and, except in the case of an emergency, Seller shall have the opportunity to review and comment upon any such changes or additions in advance.

(b) Certain Specifications for the Facility.

(i) Seller shall furnish, install, operate and maintain the Facility, including breakers, relays, switches, synchronizing equipment, monitoring equipment and control and protective devices approved by Company as suitable for parallel operation of the Facility with Company System. The Facility shall be accessible at all times to authorized Company personnel.

(ii) The Facility shall include:

[LIST OF THE FACILITY

Examples may include, but are not limited to:

- **Seller-Owned Interconnection Facilities**
- **Substation**
- **Control and monitoring facilities**
- **Transformers**
- **Energy storage system equipment (as described in Attachment A)**
- **“Lockable” cabinets or housings suitable for the installation of the Company-Owned Interconnection Facilities located on the Site**
- **Relays and other protective devices**
- **Leased telephone line and/or equipment to facilitate microwave communication]**

(iii) The Facility shall comply with the following **[includes excerpts of language that may be requested by Company]**:

(A) Seller shall install a ___ kV gang operated, load breaking, lockable disconnect switch and all other items for its switching station (relaying, control power transformers, high voltage circuit breaker). Bus connection shall be made to a manually and automatically (via protective relays) operated high-voltage circuit breaker. The high-voltage circuit breaker shall be fitted with bushing style current transformers for metering and relaying. Downstream of the high-voltage circuit breaker, a structure shall be provided for metering transformers. From the high-voltage circuit breaker, another bus connection shall be made to another pole mounted disconnect switch, with surge protection.

(B) Seller shall provide within the Seller-Owned Interconnection Facilities a separate, fenced area with separate access for Company. Seller shall provide all conduits, structures and accessories necessary for Company to install the Revenue Metering Package. Seller shall also provide, within such area, space for Company to install its communications, SCADA equipment (remote terminal unit or equivalent) and certain relaying if necessary for the interconnection. Seller shall also provide AC and DC source lines as specified by Company. Seller shall provide a telephone line for Company-owned meters. Seller shall work with Company to determine an acceptable location and size of the fenced-in area. Seller shall provide an acceptable demarcation cabinet on its side of the fence where Seller and Company wiring will connect/interface.

(C) Seller shall ensure that the Seller-Owned Interconnection Facilities have a lockable cabinet for switching station relaying equipment. Seller shall select and install relaying equipment acceptable to Company. At a minimum, the relaying equipment will provide over and under frequency (81), negative phase sequence (46), under voltage (27), over voltage (59), ground over voltage (59G), over current functions (50/51) and direct transfer trip. Seller shall install protective relays

that operate a lockout relay, which in turn will trip the main circuit breaker.

(D) Seller shall configure the relay protection system to provide overpower protection to enable the Facility to comply with the Allowed Capacity limitation.

(E) Seller's equipment also shall provide at a minimum:

(1) Interface with Company's Telemetry and Control, or designated communications and control interface, to provide telemetry of electrical quantities such as total Facility net MW, MVar, power factor, voltages, currents, and other quantities as identified by the Company;

(2) Interface with Company's Telemetry and Control, or designated communications and control interface, to provide status for circuit breakers, reactive devices, switches, and other equipment as identified by the Company;

(3) Interface with Company's Telemetry and Control, or designated communications and control interface, to provide control to incrementally raise and lower the voltage target at the point of regulation operating in automatic voltage regulation control. If Company's Telemetry and Control, or designated communications and control interface, is unavailable, due to loss of communication link, Telemetry and Control failure, or other event resulting in loss of the remote control by Company, provision must be made for Seller to be able to institute via local controls, within thirty (30) minutes (or such other period as Company accepts in writing) of the verbal directive by the Company System Operator, such change in voltage regulation target as directed by the Company System Operator;

(4) Interface with Company's Telemetry and Control, or designated communications and control interface, to provide active power control to set level of net real power import or export from the Facility, to change the level of net real power import or export from the Facility, and to enable, disable, dispatch and/or schedule other aspects of the energy storage system real power and energy operations; and

(5) Interface with Company's Telemetry and Control, or designated communications and control interface, to provide telemetry of inverter availability and energy storage system state and status. Unless agreed otherwise by Company and Seller in writing, Seller shall provide such telemetry to Company via SCADA communication and protocol acceptable to Company at a continuous scan updated not less frequently than every 2 seconds.

(F) If Seller adds, deletes and/or changes any of its equipment, or changes its design in a manner that would change the characteristics of the equipment and specifications used in the IRS, Seller shall be required to obtain Company's prior written approval. If an analysis to revise parts of the IRS is required, Seller shall be responsible for the cost of revising those parts of the IRS, and modifying and paying for the cost of the modifications to the Facility and/or the Company-Owned Interconnection Facilities based on the revisions to the IRS.

(G) Critical Infrastructure Protection.

(1) Documentation. Seller shall submit documentation describing the approach, methodology and design to provide physical and cyber security with its submittal of the design drawings pursuant to **Section 1(c)** (Design Drawings, Bill of Materials, Relay Settings and Fuse Selection) of **Attachment B** (Facility Owned by Seller) which shall be at least sixty (60) Days prior to the Acceptance Test.

- The design shall meet industry standards and best practices, as indicated by NERC CIP guidelines and requirements for critical generation facilities. The system shall be designed with the criteria to meet applicable industry standards and guidelines (at the time of this writing, NERC CIP, or any future standard adopted by the industry in its place), compliance requirements and identify areas that are not consistent with NERC CIP guidelines and requirements.

- The cyber-security documentation shall include a block diagram of the control system with all external connections clearly described.

- Seller shall provide such additional information as Company may reasonably request as part of a security posture assessment.

- Company shall be notified in advance when there is any condition that would compromise physical or cyber security, or if any breaches in security, or security incidents are detected.

(2) Malware. Seller shall (consistent with the following sentence) ensure that no malware or similar items are coded or introduced into any aspect of the Facility, Interconnection Facilities, the Company Systems interfacing with the Facility and Interconnection Facilities, and any of Seller's critical control systems or processes used by Seller to provide energy, including the information, data and other materials delivered by or on behalf of Seller to Company, (collectively, the "**Environment**"). Seller will continue to review, analyze and implement improvements to and upgrades of its Malware prevention and correction programs and processes that are commercially reasonable and consistent with the then current technology industry's standards and, in any case, not less robust than the programs and processes implemented by Seller with respect to its own information systems. If Malware is found to have been introduced into the Environment, Seller will promptly notify Company and Seller shall take immediate action to eliminate and remediate the effects of the Malware, at Seller's expense. Seller shall not modify or otherwise take corrective action with respect to the Company Systems except at Company's request. Seller will promptly report to Company the nature and status of all Malware elimination and remediation efforts.

(3) Security Breach. In the event that Seller discovers or is notified of a breach, potential breach of security, or security incident at Seller's Facility or of Seller's systems, Seller shall immediately (a) notify Company of such potential, suspected or actual security breach, whether or not such breach has

compromised any of Company's confidential information, (b) investigate and promptly remediate the effects of the breach, whether or not the breach was caused by Seller, (c) cooperate with Company with respect to any such breach or unauthorized access or use; (d) comply with all applicable privacy and data protection laws governing Company's or any other individual's or entity's data; and (e) to the extent such breach was caused by Seller, provide Company with reasonable assurances satisfactory to Company that such breach, potential breach, or security incident shall not recur. Seller shall provide documentation to Company evidencing the length and impact of the breach. Any remediation of any such breach will be at Seller's sole expense.

(4) Monitoring and Audit. Seller shall provide information on available audit logs and reports relating to cyber and physical and security. Company may audit Seller's records to ensure Seller's compliance with the terms of this **Section 1(b)(iii)(G)** (Critical Infrastructure Protection) of this **Attachment B** (Facility Owned by Seller), provided that Company has provided reasonable notice to Seller and any such records of Seller's will be treated by Company as confidential.

(H) The Facility shall, a minimum, satisfy the wind load and seismic load requirements of the International Building Code and any more stringent requirements imposed under applicable Laws.

(c) Design Drawings, Bill of Material, Relay Settings and Fuse Selection. Seller shall provide to Company for its review the design drawings, Bill of Material, relay settings and fuse selection for the Facility, and Company shall have the right, but not the obligation, to specify the type of electrical equipment, the interconnection wiring, the type of protective relaying equipment, including, but not limited to, the control circuits connected to it and the disconnecting devices, and the settings that affect the reliability and safety of operation of Company's and Seller's interconnected system. Seller shall provide the relay settings and protection coordination study, including fuse selection and AC/DC Schematic Trip Scheme (part of design drawings), for the Facility to Company during the 60% design. Company, at its option, may, with reasonable frequency, witness Seller's operation of control, synchronizing, and protection schemes and shall have the right to periodically re-specify the settings. Seller shall utilize relay settings prescribed by Company, which may be changed over time as Company System requirements change.

(d) Disconnect Device. Seller shall provide a manually operated disconnect device which provides a visible break to separate Facility from Company System. Such disconnect device shall be lockable in the OPEN position and be readily accessible to Company personnel at all times.

(e) Other Equipment. Seller shall install, own and maintain the infrastructure associated with the Revenue Metering Package, including but not limited to all enclosures (meter cabinets, meter pedestals, meter sockets, pull boxes, and junction boxes, along with their grounding/bonding connections), CT/PT mounting structures, conduits and ductlines, enclosure support structures, ground buses, pads, test switches, terminal blocks, isolation relays, telephone surge suppressors, and analog phone lines (one per meter), subject to Company's review and approval. **[COMPANY TO REVISE THIS SECTION 1(e) PRIOR TO EXECUTION FOR**

SPECIFICS OF THE PROJECT.]

(f) Maintenance Plan. Seller shall maintain Seller-Owned Interconnection Facilities in accordance with Good Engineering and Operating Practices and the following maintenance plan:

Transmission line: _____

_____ kV Facility switching station: _____

Relay protection equipment: _____

Other equipment as identified: _____

Seller shall furnish to Company a copy of records documenting such maintenance, within thirty (30) Days of completion of such maintenance work.

(g) Active Power Control Interface.

(i) Seller shall provide and maintain in good working order all equipment, computers and software associated with the control system (the “**Active Power Control Interface**”) necessary to interface the Facility active power controls with the Company System Operations Control Center for real power and energy control of the Facility by the Company System Operator. The Active Power Control Interface will be used to control the net real power and energy import and export from the Facility as required under this **Attachment B** (Facility Owned by Seller). The implementation of the Active Power Control Interface will allow Company System Operator to control the net real power and energy import and export from the entire Facility, up to Power Possible, remotely from the Company System Operations Control Center through control signals from the Company System Operations Control Center.

(ii) Company shall review and provide prior written approval of the design for the Active Power Control Interface to ensure compatibility with Company’s SCADA and EMS systems. In order to ensure such continued compatibility, Seller shall not materially change the approved design without Company’s prior review and prior written approval.

(iii) The Active Power Control Interface shall include, but not be limited to, a demarcation cabinet, ancillary equipment and software necessary for Seller to connect to Company’s Telemetry and Control, located in Company’s portion of the Facility switching station which shall provide the control signals to the Facility and send feedback status to the Company System Operations Control Center. The control type shall be analog output (set point) controls.

(iv) The Active Power Control Interface shall also include provision for feedback points from the Facility indicating when the Company System Operator active power controls are in effect and the analog value of the controls received from the Company. The Facility shall provide the feedback to the Company SCADA system within 2 seconds of receiving the respective control signal from the Company.

(v) Seller shall provide an analog input to the Company's Telemetry and Control for the MW input or output of the individual generating units, and an analog signal for the total MW input or output at the Point of Interconnection.

(vi) The Active Power Control Interface shall provide for remote control of the net real power and energy input and output of the Facility by the Company at all times. If the Active Power Control Interface is unavailable or disabled, the Facility shall not import or export net real power from or to Company and the Facility shall be deemed to be in Seller-Attributable Unavailability status, unless the Company, in its sole discretion, agrees to supply or accept electric energy and Seller and Company agree on an alternate means of dispatch. Notwithstanding the foregoing, if Seller fails to provide such remote control features (whether temporarily or throughout the Term) and fails to discontinue importing or exporting electric energy to Company as required by this **Section 1(g)(vi)**, then, notwithstanding any other provision of this **Attachment B** (Facility Owned by Seller), Company shall have the right to derate or disconnect the entire Facility during those periods that such control features are not provided and the Facility shall be deemed to be in Seller-Attributable Unavailability status for such periods.

- If all local and remote active power controls become unavailable or fail, the Facility shall immediately disconnect from the Company System.
- If the direct transfer trip is unavailable due to loss of communication link, Telemetry and Control failure, or other event resulting in the loss of the remote control by Company, provision must be made for Seller to shutdown the Facility and open and lockout the main circuit breaker.

(vii) The Facility will respond to the active power control requests.
[THESE REQUIREMENTS MAY BE CHANGED BY COMPANY FOLLOWING COMPLETION OF THE IRS]

(viii) The Active Power Control Interface shall accept the following active power control(s) from the Company SCADA and EMS systems:

- Maximum Power Import and Export Limits: The Facility is not allowed to exceed these settings under any circumstances. The frequency response control specified in **Section 3(m)** (Frequency Response) of **Attachment B** (Facility Owned by Seller) is not allowed to increase the Facility's net real power import or export above the Import and Export limits, respectively.

- Power Reference Set Point: The Facility is to import or export active power at this level to the extent allowed by the energy storage and is not allowed to exceed this setting when system frequency is within the deadband determined in **Section 3(m)(iii)** of **Attachment B** (Facility Owned by Seller). When system frequency exceeds the deadband determined in **Section 3(m)(iii)** of **Attachment B** (Facility Owned by Seller), the Facility's net real power import or export is allowed to exceed this setting or be further reduced below this setting when commanded by the frequency response control specified in **Section 3(m)** (Frequency Response) of **Attachment B** (Facility Owned by Seller).

- Any additional remote controls necessary to enable, disable, dispatch and/or schedule the energy storage system real power and energy operations mutually agreed upon in writing by the Parties.

- Inverter Enable/Disable Control: The Facility shall include an inverter Enable/Disable control. When Disable is selected, the Facility shall ramp down, shutdown, and leave offline its inverters. When Enable is selected, the Facility inverters start up, ramp up, and remain in normal operations.

(ix) Seller shall not override Company's active power controls without first obtaining specific approval to do so from the Company System Operator.

(x) The requirements of the Active Power Control Interface may be modified as mutually agreed upon in writing by the Parties.

(h) Control System Acceptance Test Procedures.

(i) Conditions Precedent. The following conditions precedent must be satisfied prior to conducting the Control System Acceptance Test:

- Successful completion of the Acceptance Test;
- Facility has been successfully energized;
- All of the Facility's generators have been fully synchronized;
- The control system computer has been programmed for normal operations; and
- All equipment that is relied upon for normal operations (including ancillary devices such as capacitors/inductors, fire protection, HVAC systems, statcom, etc.) shall have been commissioned and be operating within normal parameters.

(ii) Facility Energy Storage System Units and Inverters. Unless all of the Facility's energy storage system units and inverters are available for the duration of the Control System Acceptance Test, the Control System Acceptance Test will have to be re-run from the beginning unless Seller demonstrates to the satisfaction of the Company that the test results attained with less than all of the Facility's energy storage system units and inverters are consistent with the results that would have been attained if all of the Facility's energy storage system units and inverters had been available for the duration of the test.

(iii) Procedures. The Control System Acceptance Test will be conducted on Business Days during normal working hours on a mutually agreed upon schedule. No Control System Acceptance Test will be scheduled during the final twenty-one (21) Days of a calendar year. No later than thirty (30) Days prior to conducting the Control System Acceptance Test, Company and Seller shall agree on a written protocol setting out the detailed procedure and criteria for passing the Control System Acceptance Test. **Attachment O** (Control System Acceptance Test Criteria)

provides general criteria to be included in the written protocol for the Control System Acceptance Test. Within fifteen (15) Business Days of completion of the Control System Acceptance Test, Company shall notify Seller in writing whether the Control System Acceptance Test(s) has been passed and, if so, the date upon which such Control System Acceptance Test(s) was passed. If any changes have been made to the technical specifications of the Facility or the design of the Facility in accordance with **Section 8(b) of Attachment A** (Description of Storage Facility), such changes shall be reflected in an amendment to this Agreement, and the written protocol for the Control Systems Acceptance Test shall be based on the Facility as modified. Such amendment shall be executed prior to conducting the Control System Acceptance Test and Company shall have no obligation for any delay in performing the Control Systems Acceptance Test due to the need to complete and execute such amendment.

(i) Facility Security and Maintenance. Seller is responsible for securing the Facility. Seller shall have personnel available to respond to all calls related to security incidents and shall take commercially reasonable efforts to prevent any security incidents. Seller is also responsible for maintaining the Facility, including vegetation management, to prevent security breaches. Seller shall comply with all commercially reasonable requests of Company to update security and/or maintenance if required to prevent security breaches.

(j) Demonstration of Facility. Company shall have the right at any time, other than during maintenance or other special conditions, including Force Majeure, communicated by Seller, to notify Seller in writing of Seller's failure, as observed by Company and set forth in such written notice, to meet the operational and performance requirements specified in **Section 4.7** (Fast Frequency Response Performance Metric) of this Agreement, and **Section 1(g)** (Active Power Control Interface) and **Section 3** (Performance Standards) of this **Attachment B** (Facility Owned by Seller), and to require documentation or testing to verify compliance with such requirements. Upon receipt of such notice, Seller shall promptly investigate the matter, implement corrective action and provide to Company, within thirty (30) Days of such notice, a written report of both the results of such investigation and the corrective action taken by Seller; provided, that, if thirty (30) Days is not a reasonable time period to investigate the matter, implement corrective action and provide such written report, Seller shall complete the foregoing within such longer commercially reasonable period of time agreed to by the Parties in writing. If Seller's report does not resolve the issue to Company's reasonable satisfaction, the Parties shall promptly commission a study to be performed by one of the engineering firms then included on the Consultants List to evaluate the cause of the non-compliance and to make recommendations to remedy such non-compliance. Seller shall pay for the cost of the study. The study shall be completed within ninety (90) Days, unless the selected consultant determines such study cannot reasonably be completed within ninety (90) Days, in which case, such longer period of time as the selected consultant determines is necessary to complete such study shall apply. The consultant shall send the study to Company and Seller. Seller and/or its third-party consultants and contractors), at Seller's expense, shall take such action as the study shall recommend with the objective of resolving the non-compliance. Such recommendations shall be implemented by Seller to Company's reasonable satisfaction no later than forty-five (45) Days from the Day the completed study is issued by the consultant, unless provided that such recommendations cannot reasonably be implemented within forty-

five (45) Days, in which case, Seller shall implement such recommendations within such longer commercially reasonable period of time agreed to by the Parties in writing. Failure to implement such recommendations within this period shall constitute a material breach of this Agreement. Unless the aforementioned written report and study are being completed, and any recommendations are being implemented, solely to address Seller's failure to satisfy the requirements of **Section 3(o)** (Round Trip Efficiency) of this **Attachment B** (Facility Owned by Seller), the Company shall have the right to declare the Facility derated and in Seller-Attributable Unavailability status until the Seller's aforementioned written report has been completed, any subsequent study commissioned by the Parties has been completed and any recommendations to resolve the non-compliance have been implemented to Company's reasonable satisfaction.

2. Operating Procedures. [NOTE: NUMERICAL SPECIFICATIONS IN THIS SECTION 2 MAY VARY DEPENDING ON THE SPECIFIC FACILITY AND THE RESULTS OF THE FACILITY-SPECIFIC IRS.]

(a) Reviews of the Facility. Company may require periodic reviews of the Facility, maintenance records, available operating procedures and policies, and relay settings, and Seller shall implement changes Company deems necessary for parallel operation or to protect the Company System from damages resulting from the parallel operation of the Facility with the Company System.

(b) Separation. Seller must separate from the Company System whenever requested to do so by the Company System Operator pursuant to **Article 12** (Dispatching and Charging the Facility; Scheduling) and **Article 16** (Personnel and System Safety) of the Agreement.

(c) Seller Logs. Logs shall be kept by Seller for information on unit availability including reasons for planned and forced outages; circuit breaker trip operations, relay operations, including target initiation and other unusual events. Company shall have the right to review these logs, especially in analyzing system disturbances. Seller shall maintain such records for a period of not less than six (6) years.

(d) Reclosing. Under no circumstances shall Seller, when separated from the Company System for any reason, reclose into the Company System without first obtaining specific approval to do so from the Company System Operator.

(e) Reserved.

(f) Reserved.

(g) Critical Infrastructure Protection. Seller shall comply with the critical infrastructure protection requirements set forth in **Section 1(b)(iii)(G)** of this **Attachment B** (Facility Owned by Seller).

(h) Allowed Operations. Facility shall be allowed to import or export net real power to the Company System only when the [_____] circuit is in normal operating configuration served by breaker [_____] at [_____] Substation. **[TO BE**

DETERMINED BY COMPANY BASED ON THE RESULTS AND REQUIREMENTS OF THE IRS.]

3. Performance Standards.

(a) Reactive Power Control. Seller shall control its reactive power by automatic voltage regulation control. Seller shall automatically regulate voltage at a point, the point of regulation, between the Seller's generator terminal and the Point of Interconnection to be specified by Company, to within 0.5% of a voltage specified by the Company System Operator to the extent allowed by the Facility reactive power capabilities as defined in **Section 3(b)** (Reactive Amount) of this **Attachment B** (Facility Owned by Seller). **[FOR FACILITIES CONNECTED TO THE DISTRIBUTION SYSTEM, THESE REQUIREMENTS MAY BE CHANGED BY COMPANY UPON COMPLETION OF THE IRS.]**

(b) Reactive Amount. **[THESE REQUIREMENTS MAY BE CHANGED BY COMPANY UPON COMPLETION OF THE IRS.]**

(i) Seller shall install sufficient equipment so that each _____ kVA energy storage unit inverter online at the Facility will have the ability to deliver or receive, at its terminal, reactive power as illustrated in the **[energy storage unit]** curve(s) attached to this Agreement as **Exhibit B-2** (Energy Storage Capability Curve(s)). **[NOTE: THE IRS WILL DETERMINE IF ANY ADDITIONAL REACTIVE POWER RESOURCES WILL BE REQUIRED.]**

(ii) The Facility shall contain equipment able to continuously and actively control the output of reactive power under automatic voltage regulation control reacting to system voltage fluctuations. The automatic voltage regulation response speed at the point of regulation shall be such that at least 90% of the initial voltage correction needed to reach the voltage control target will be achieved within one (1) second following a step change.

(iii) If the Facility does not operate in accordance with **Section 3(b)(i)** of this **Attachment B** (Facility Owned by Seller), Company may disconnect all or a part of Facility from Company System until Seller corrects its operation (such as by installing capacitors at Seller's expense).

(c) Ramp Rates.

(i) The Facility in start up, normal operations including when executing a command from the Company active power controls, and shut down shall adjust its net real power import or export at a ramp rate, as calculated in accordance with **Attachment C** (Methods and Formulas for Measuring Performance Standards), to be specified by the Company without intentional delay. Such ramp rate shall be in the range of ____ MW/min to ____ MW/min.

(ii) The Facility is allowed to exceed the Company-specified ramp rate when Facility net real power import or export is changed by the frequency response control described in **Section 3(m)** (Frequency Response) of this **Attachment B** (Facility Owned by Seller).

(d) Ride-Through Requirements. In meeting the voltage and frequency ride-through requirements in **Section 3(e)** (Undervoltage Ride-Through), **Section 3(f)** (Over Voltage Ride-Through), **Section 3(i)** (Underfrequency Ride-Through), and **Section 3(j)** (Overfrequency Ride-Through) of this **Attachment B** (Facility Owned by Seller), the Facility shall not enter momentary cessation of operations within the voltage and frequency zones and time periods where the Facility must remain connected to the Company System. **[THIS PROVISION MAY BE ADJUSTED BY COMPANY UPON COMPLETION OF THE IRS IF MOMENTARY CESSATION IS NEEDED TO PREVENT EQUIPMENT DAMAGE DUE TO A POWER EQUIPMENT LIMITATION. DOCUMENTATION FROM THE EQUIPMENT MANUFACTURER OF SUCH LIMITATION SHALL BE PROVIDED TO COMPANY IN WRITING FOR THE OWNER'S RFP SUBMITTAL AND THE CONDUCT OF THE IRS.]**

(e) Undervoltage Ride-Through. The Facility, as a whole, will meet the following undervoltage ride-through requirements during low voltage affecting one or more of the three voltage phases ("V" is the voltage of any three voltage phases at the Point of Interconnection). **[THESE VALUES MAY BE CHANGED BY COMPANY UPON COMPLETION OF THE IRS. WITHOUT LIMITATION, FOR A DISTRIBUTION-CONNECTED FACILITY, UPON COMPLETION OF THE IRS THE COMPANY MAY SPECIFY REQUIREMENTS FOR A MANDATORY DISCONNECTION FROM THE COMPANY SYSTEM.]**:

$0.88 \text{ pu} \leq V \leq 1.00 \text{ pu}$	The Facility remains connected to the Company System.
$0.70 \text{ pu} \leq V < 0.88 \text{ pu}$	The Facility may initiate disconnection from the Company System if the voltage remains in this range for more than 20 seconds.
$0.50 \text{ pu} \leq V < 0.70 \text{ pu}$	The Facility may initiate disconnection from the Company System if the voltage remains in this range for more than 10 seconds.
$0.00 \text{ pu} \leq V < 0.50 \text{ pu}$	The Facility may disconnection from the Company System if voltage remains in this range for more than 600 milliseconds.

Seller shall have sufficient capacity to fulfill the above-mentioned requirements to ride-through the following sequences or combinations thereof **[THE ACTUAL CLEARING TIMES WILL BE DETERMINED BY COMPANY IN CONNECTION WITH THE IRS]**:

- Normally cleared 138 kV transmission faults cleared after 5 cycles with one reclose attempt, cleared in 5 cycles, 30 cycles after the initial fault was cleared. The voltage at the Point of Interconnection will recover above the 0.80 p.u. level for the 30 cycles between the initial clearing time and the reclosing time.
- Normally cleared 46 kV subtransmission faults cleared in 7 cycles with one reclose attempt, cleared in 7 cycles, 23 cycles after the initial fault was cleared. The voltage at the Point of Interconnection will recover above the 0.80 p.u.

level for the 23 cycles between the initial clearing time and the reclosing time.

(f) Over Voltage Ride-Through. The overvoltage protection equipment at the Facility shall be set so that the Facility will meet the following overvoltage ride-through requirements during high voltage affecting one or more of the three voltage phases (as described below) (“V” is the voltage of any of the three voltage phases at the Point of Interconnection). **[THESE VALUES MAY BE CHANGED BY THE COMPANY UPON COMPLETION OF THE IRS. WITHOUT LIMITATION, FOR A DISTRIBUTION-CONNECTED FACILITY, UPON COMPLETION OF THE IRS THE COMPANY MAY SPECIFY REQUIREMENTS FOR A MANDATORY DISCONNECTION FROM THE COMPANY SYSTEM AT $V > 1.2$ pu. RIDE-THROUGH REQUIREMENTS FOR OTHER SYSTEMS WILL BE DETERMINED IN THE IRS.]**

- | | |
|--|--|
| $1.00 \text{ pu} < V \leq 1.10 \text{ pu}$ | The Facility remains connected to the Company System. |
| $1.10 \text{ pu} < V \leq 1.20 \text{ pu}$ | The Facility may initiate disconnection from the Company System if voltage remains in this range for more than 0.92 seconds. |
| $V > 1.20 \text{ pu}$ | The Facility may initiate disconnection from the Company System immediately. |

(g) Reserved.

(h) Reserved.

(i) Underfrequency Ride-Through. The Facility shall meet the following underfrequency ride-through requirements during an underfrequency disturbance (“f” is the Company System frequency at the Point of Interconnection):

- | | |
|---|---|
| $57.0 \text{ Hz} \leq f \leq 60.0 \text{ Hz}$ | The Facility remains connected to the Company System. |
| $56.0 \text{ Hz} \leq f \leq 57.0 \text{ Hz}$ | The Facility may initiate disconnection from the Company System if frequency remains in this range for more than twenty (20) seconds. |
| $f < 56.0 \text{ Hz}$ | The Facility may initiate disconnection from the Company System immediately. |

(j) Overfrequency Ride-Through. The Facility will behave as specified below for overfrequency conditions (“f” is the Company System frequency at the Point of Interconnection):

- | | |
|---|--|
| $60.0 \text{ Hz} \leq f \leq 63.0 \text{ Hz}$ | The Facility remains connected to the Company System. |
| $63.0 \text{ Hz} < f < 64.0 \text{ Hz}$ | The Facility shall initiate disconnection from the Company System if frequency remains in this range |

for more than 20 seconds.

$f > 64.0 \text{ Hz}$

The Facility shall initiate disconnection from the Company System immediately.

(k) Voltage Flicker. Any voltage flicker on the Company System caused by the Facility shall not exceed the limits stated in IEEE Standard 1453-2011, or latest version “Recommended Practice – Adoption of IEC 61000-4-15:2010, Electromagnetic compatibility (EMC) – Testing and measurement techniques – Flickermeter – Functional and design specifications.”

(l) Harmonics. Harmonic distortion at the Point of Interconnection caused by the Facility shall not exceed the limits stated in IEEE Standard 519-1992, or latest version “Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems.” Seller shall be responsible for the installation of any necessary controls or hardware to limit the voltage and current harmonics generated from the Facility to defined levels.

(m) Frequency Response. Seller Facility shall provide a primary frequency response with a frequency droop characteristic reacting to system frequency fluctuations at the Point of Interconnection in both the overfrequency and underfrequency directions except to the extent such response is not operationally possible because of the depletion of energy storage.

(i) The Facility frequency response control shall adjust, without intentional delay and without regard to the ramp rate limits in **Section 3(c)** (Ramp Rates) of this **Attachment B** (Facility Owned by Seller), the Facility’s net real power import or export when system frequency is not 60 Hz based on frequency deadband and frequency droop settings specified by the Company.

(ii) The Facility frequency response control shall be allowed to increase the net real power import or export above the Power Reference Set Point set under **Section 1(g)(viii)** of this **Attachment B** (Facility Owned by Seller) or further decrease the net real power import or export from the Power Reference Set Point in its operations.

(iii) The frequency deadband shall be settable in the range from +/- 0.01 Hz to +/- 0.10 Hz and the frequency droop shall be settable in the range of 0.1% to 10%

(iv) The Facility frequency response control shall be in continuous operation when the Facility is online and connected to the Company unless directed otherwise by the Company.

(n) Grid Forming. Seller Facility inverters shall be capable of operating in grid forming mode supporting system operation under normal and emergency conditions without relying on the characteristics of synchronous machines. This includes operation as a current independent ac voltage source during normal and transient conditions (as long as no limits are reached within the inverter), and the ability to synchronize to other voltage sources or operate autonomously if a grid

reference is unavailable.

(i) Seller shall operate the Facility in grid forming mode only as directed by the System Operator, in its sole discretion.

(ii) The Facility shall include safeguards to prevent the unintentional switching of the Facility into and out of grid forming mode. The safeguards shall be approved in writing by Company and implemented by Seller in the Facility prior to conducting the CSAT.

(o) **Round Trip Efficiency.** The round trip efficiency of the BESS as measured at the Point of Interconnection shall be not less than [] percent ([]%). [Note – The percentage for round trip efficiency shall be taken from Seller’s RFP Proposal.]

(p) **Fast Frequency Response.** [DRAFTING NOTE: This section only applies if Facility provides fast frequency response.] Seller Facility shall provide a fast frequency response to rapidly inject or absorb energy in the event of a sudden and rapid system frequency disturbance.

(i) The Facility fast frequency response control shall adjust, without intentional delay and without regard to the ramp rate limits in **Section 3(c)** (Ramp Rates) of this **Attachment B** (Facility Owned by Seller), the Facility's net real power import or export based on the rate of change of frequency setting(s) and deadband specified by the Company.

(ii) The Facility fast frequency response shall be proportional to or discrete but dynamically sized to the severity of the disturbance.

(iii) The Facility output as adjusted by the Facility fast frequency response control as measured at the POI shall reach the control's full commanded response in 200 milliseconds or less from the initiation of the disturbance.

(iv) The Facility fast frequency response control shall be allowed to increase the net real power import or export above the Power Reference Set Point under **Section 1(g)(viii)** of this **Attachment B** (Facility Owned by Seller) or further decrease the net real power import or export from the Power Reference Set Point in its operations. The fast frequency response control is not allowed to control the Facility net real power import or export to exceed the Maximum Power Import and Export Limits under **Section 1(g)(viii)** of this **Attachment B** (Facility Owned by Seller).

(v) The rate of change of frequency is proportional to the per unit generation-load mismatch and inversely proportional to the system inertial time constant. The Facility shall be capable of receiving a periodically updated signal from the Company EMS to assist in scaling the Facility fast frequency response. If the EMS signal becomes unavailable, the Facility shall be capable using a local look up table as a substitute.

(vi) The Facility fast frequency response control shall be in continuous operation when the Facility is online and connected to the Company unless directed

otherwise by the Company.

(vii) The Facility fast frequency response design shall be approved in writing by the Company and implemented by the Seller in the Facility prior to conducting the CSAT.

4. Maintenance of Seller-Owned Interconnection Facilities.

(a) Seller must address any Disconnection Event (as defined below) according to the requirements of this **Section 4** (Maintenance of Seller-Owned Interconnection Facilities) of **Attachment B** (Facility Owned by Seller). For this purpose, a “**Disconnection Event**” is a disconnection from Company System of at least ___ MW [**TO BE DETERMINED BY COMPANY FOLLOWING THE IRS**] from the Facility over a “rolling 120-second period,” (i) that is not the result of Company dispatch, frequency droop response, or isolation of the Facility resulting from designed protection fault clearing, and (ii) for which Company does not issue for such disconnection the written notice for failure to meet operational and performance requirements as set forth in **Section 1(j)** (Demonstration of Facility) of this **Attachment B** (Facility Owned by Seller). A “rolling 120-second period” means a period that is comprised of 120 seconds and such rolling period will change as each new one (1) second elapses. With the elapse of each new one (1) second, the newest one (1) second would be added to the 120-second period, and the oldest one (1) second would no longer be included in the rolling 120-second period. Company’s election to exercise its rights under **Section 1(j)** (Demonstration of Facility) shall not relieve Seller of its obligation to comply with the requirements of this **Section 4** (Maintenance of Seller-Owned Interconnection Facilities) for any future Disconnection Event during the pendency of such election or thereafter.

(b) For every Disconnection Event from the Company System, Seller shall investigate the cause. Within three (3) Business Days of the Disconnection Event, Seller shall provide, in writing to Company, an incident report that summarizes the sequence of events and probable cause of the Disconnection Event.

(c) Within forty-five (45) Days of a Disconnection Event, Seller shall provide, in writing to Company, Seller’s findings, data relied upon for such findings, and proposed actions to prevent reoccurrence of a Disconnection Event (“**Proposed Actions**”). Company may assist Seller in determining the causes of and recommendations to remedy or prevent a Disconnection Event (“**Company’s Recommendations**”). Seller shall implement such Proposed Actions (as modified to incorporate the Company’s Recommendations, if any) and Company’s Recommendations (if any) in accordance with the time period agreed to by the Parties.

(d) In the event Seller and Company disagree as to (i) whether a Disconnection Event occurred, (ii) the sequence of events and/or probable cause of the Disconnection Event, (iii) the Proposed Actions, (iv) Company’s Recommendations, and/or (v) the time period to implement the Proposed Actions and/or Company’s Recommendations, then the Parties shall follow the procedure set forth in **Section 5** (Expedited Dispute Resolution) of this **Attachment B** (Facility Owned by Seller).

(e) Upon the fourth (4th) Disconnection Event (and each subsequent

Disconnection Event) within any Contract Year, the Parties shall follow the procedures set forth in **Section 4(a)** and **Section 4(d)** of **Attachment B** (Facility Owned by Seller), to the extent applicable. If after following the procedures set forth in this **Section 4** (Maintenance of Seller-Owned Interconnection Facilities) of **Attachment B** (Facility Owned by Seller), Seller and Company continue to have a disagreement as to (i) the probable cause of the Disconnection Event, (ii) the Proposed Actions, (iii) the Company's Recommendations, and/or (iv) the time period to implement the Proposed Actions and/or the Company's Recommendations, then the Parties shall commission a study to be performed by a qualified independent third-party consultant ("**Qualified Consultant**") chosen from the Qualified Independent Third-Party Consultants List ("**Consultants List**") attached to the Agreement as **Attachment D** (Consultants List). Such study shall review the design of, review the operating and maintenance procedures dealing with, recommend modifications to, and determine the type of maintenance that should be performed on Seller-Owned Interconnection Facilities ("**Study**"). Seller and Company shall each pay for one-half of the total cost of the Study. The Study shall be completed within ninety (90) Days from such fourth Disconnection Event (and each subsequent Disconnection Event) within any Contract Year, unless the Qualified Consultant determines the Study cannot reasonably be completed within ninety (90) Days, in which case, such longer period of time as the Qualified Consultant determines is necessary to complete the Study shall apply. The Qualified Consultant shall send the Study to Company and Seller. Seller (and/or its third-party consultants and contractors), at Seller's expense, shall change the design of, change the operating and maintenance procedures dealing with, implement modifications to, and/or perform the maintenance on Seller-Owned Interconnection Facilities recommended by the Study. Such design changes, operating and maintenance procedure changes, modifications, and/or maintenance shall be completed no later than forty-five (45) Days from the Day the completed Study is issued by the Qualified Consultant, unless such design changes, operating and maintenance procedure changes, modifications, and/or maintenance cannot reasonably be completed within forty-five (45) Days, in which case, Seller shall complete the foregoing within such longer commercially reasonable period of time agreed to by the Parties in writing. Company shall have the right to derate the Facility to a level that maintains reliable operations in accordance with Good Engineering and Operating Practices, and the Facility shall be deemed to be in Seller-Attributable Unavailability status, until the study has been completed and the study's recommendations have been implemented by Seller to Company's reasonable satisfaction. Nothing in this provision shall affect Company's right of Company Dispatch/Charge as provided for in this Agreement.

(f) The Consultants List attached hereto as **Attachment D** (Consultants List) contains the names of engineering firms which both Parties agree are fully qualified to perform the Study. At any time, except when a Study is being conducted, either Party may remove a particular consultant from the Consultants List by giving written notice of such removal to the other Party. However, neither Party may remove a name or names from the Consultants List without approval of the other Party if such removal would leave the list without any names. Intended deletions shall be effective upon receipt of notice by the other Party, provided that such deletions do not leave the Consultants List without any names. Proposed additions to the Consultants List shall automatically become effective thirty (30) Days after notice is received by the other Party unless written objection is made by such other Party within said thirty (30) Day

period. By mutual agreement between the Parties, a new name or names may be added to the Consultants List at any time.

5. Expedited Dispute Resolution. If there is a disagreement between Company and Seller regarding (a) whether a Disconnection Event occurred, (b) the sequence of events and/or probable cause of the Disconnection Event, (c) the Proposed Actions, (d) the Company's Recommendations, and (e) the time period to implement the Proposed Actions and/or the Company's Recommendations, then authorized representatives from Company and Seller, having full authority to settle the disagreement, shall meet in Hawai'i (or by telephone conference) and attempt in good faith to settle the disagreement. Unless otherwise agreed in writing by the Parties, the Parties shall devote no more than five (5) Business Days to settle the disagreement in good faith. In the event the Parties are unable to settle the disagreement after the expiration of the time period, then such disagreement shall constitute a Dispute for which either Party may pursue the dispute resolution procedure set forth in **Section 26.2** (Dispute Resolution Procedures) of this Agreement.

6. Modeling.

(a) Seller's Obligation to Provide Models. Within thirty (30) Days of Company's written request, but no later than the Commercial Operations Date, Seller shall provide detailed data regarding the design and location of the Facility, in a form reasonably satisfactory to Company, to allow the modeling of the inverters and any other equipment within the Facility identified in the IRS which utilizes Source Code (such as energy storage system, STATCOM or DVAR equipment), including, but not limited to, integrated and validated power flow and transient stability models (such as PSS/E models), a short circuit model (such as an ASPEN model), and an electro-magnetic transient model (such as a PSCAD model) of the inverters and any additional equipment identified in the IRS as set forth above, applied assumptions, and pertinent data sets (each a "**Required Model**" and collectively, the "**Required Models**"). Thereafter, during the Term, Seller shall provide working updates of any Required Model within thirty (30) Days of (i) Company's written request, or (ii) Seller obtaining knowledge or notice that any Required Model has been modified, updated or superseded by the Source Code Owner.

(b) Escrow Establishment. If, pursuant to **Section 6(a)** (Seller's Obligation to Provide Models) of this **Attachment B** (Facility Owned by Seller), the Required Models are provided to the Company in a form other than Source Code, Seller shall arrange for and ensure that the Source Code for the relevant Required Model is deposited into the Source Code Escrow as set forth below in **Section 6(b)(i)** (Source Code Escrow) of this **Attachment B** (Facility Owned by Seller) no later than the time periods set forth in **Section 6(a)** (Seller's Obligation to Provide Models) of this **Attachment B** (Facility Owned by Seller) for delivery of the Required Models. Seller shall be responsible for all costs associated with establishing and maintaining the Source Code Escrow. If, however, Seller is unable to deposit the required Source Code into the Source Code Escrow within the time periods set forth in **Section 6(a)** (Seller's Obligation to Provide Models), Seller shall, no later than such time periods, instead establish a monetary escrow as set forth below in **Section 6(b)(ii)** (Monetary Escrow) of this **Attachment B** (Facility Owned by Seller).

(i) Source Code Escrow.

(A) Establishment of Source Code Escrow. If the Required Models are not provided to the Company in the form of Source Code pursuant to **Section 6(a)** of this **Attachment B** (Facility Owned by Seller), Seller shall: (1) arrange for and ensure the deposit of a copy of the current version of the Source Code and relevant documentation for all Required Models with the Source Code Escrow Agent under the terms and conditions of the Source Code Escrow Agreement, and (2) arrange for and ensure the update of the deposited Source Code and relevant documentation for Major Releases and Minor Releases of the Required Models as soon as reasonably possible after they are made generally available.

(B) Release Conditions. Company shall have the right to obtain from the Source Code Escrow Agent one copy of the escrowed Source Code for the Required Models, under the following conditions upon Company's request:

(1) A receiver, trustee, or similar officer is appointed, pursuant to federal, state or applicable foreign law, for the Source Code Owner;

(2) Any voluntary or involuntary petition or proceeding is instituted, under (a) U.S. bankruptcy laws or (b) any other bankruptcy, insolvency or similar proceeding outside of the United States, by or against the Source Code Owner;

(3) Failure of the Source Code Owner to function as a going concern or operate in the ordinary course; or

(4) Seller and the Source Code Owner fail to provide to Company the Required Models or updated Required Models, or, alternatively, fail to issue a Source Code LC, within the time periods set forth in **Section 6(a)** (Seller's Obligation to Provide Models) of this **Attachment B** (Facility Owned by Seller), Company gives written notice of such failure to Seller and the Source Code Owner, and Seller and Source Code Owner fail to remedy such breach within five (5) Days following receipt of such notice.

(C) Remedies. If Company has the right to obtain from the Source Code Escrow Agent one copy of the escrowed Source Code for the Required Models pursuant to **Section 6(b)(i)(B)** (Release Conditions) of **Attachment B** (Facility Owned by Seller), and Company finds that Seller failed to arrange for and ensure the update the Source Code Escrow with the modified and/or updated Source Code and relevant documentation for Major Releases and Minor Releases of the Required Models as provided in **Section 6(b)(i)** (Establishment of Source Code Escrow) of **Attachment B** (Facility Owned by Seller) or that the Source Code for the Required Models is incomplete or otherwise unusable, Seller shall be liable to Company for liquidated damages in the amount of \$500 per Day for each Day Seller fails to provide such Source Code to Company or such update to the Source Code to Company from the date such Major Release or Minor Release was first made available by the Source Code Owner to customers of the Source Code Owner. Failure to provide the updated Source Code of the Required Models within 30 Days' notice from Company of a breach of **Section 6(b)(i)(A)** (Establishment of Source Code Escrow) of **Attachment B** (Facility

Owned by Seller); provided, that Seller has also failed to provide a satisfactory Source Code LC as set forth in **Section 6(b)(ii)** (Source Code Security) of this **Attachment B** (Facility Owned by Seller) shall constitute an Event of Default pursuant to **Section 6.2(f)** under the Agreement.

(D) Certification. The Source Code Escrow Agent shall release the Source Code of the Required Models to Company upon receipt of a signed statement by a representative of Company that reads substantially as follows:

The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of Hawaiian Electric Company, Inc. ("**Hawaiian Electric**"), and (ii) Hawaiian Electric is entitled to a copy of the Source Code of the Required Models Pursuant to **Section 6(b)(i)(B)** (Release Conditions) of **Attachment B** (Facility Owned by Seller) of the Energy Storage Power Purchase Agreement dated as of _____, between _____, and Hawaiian Electric.

(E) Authorized Use. If Company becomes entitled to a release of the Source Code of the Required Models from escrow, Company may thereafter correct, modify, update and enhance the Required Models for the sole purpose of providing itself the support and maintenance it otherwise would have been entitled to if it had been provided the Required Models by Seller under **Section 6(a)** (Seller's Obligation to Provide Models) of this **Attachment B** (Facility Owned by Seller) (the "**Source Code Authorized Use**").

(F) Confidentiality Obligations. Company shall keep the Source Code of the Required Models confidential pursuant to the confidentiality obligations of the Source Code Escrow Agreement. Company shall restrict access to the Source Code of the Required Models to those employees, independent contractors and consultants of Company who have agreed in writing to be bound by confidentiality and use obligations consistent with those specified in the Escrow Agreement, and who have a need to access the Source Code of the Required Models on behalf of Company to carry out their duties for the Source Code Authorized Use. Promptly upon Seller's request, Company shall provide Seller with the names and contact information of all individuals who have accessed the Source Code of the Required Models, and shall take all reasonable actions required to recover any such Source Code in the event of loss or misappropriation, or to otherwise prevent their unauthorized disclosure or use.

(ii) Source Code Security.

(A) Establishment of Source Code Security. If the Required Models and their relevant Source Code are not provided to the Company in the form of Source Code pursuant to **Section 6(a)** (Seller's Obligation to Provide Models) of this **Attachment B** (Facility Owned by Seller) and if the Seller is unable to arrange for and ensure the deposit of the Source Code into the Source Code Escrow established for the benefit of the Company pursuant to **Section 6(b)(i)** (Source Code Escrow) of this **Attachment B** (Facility Owned by Seller) then, no later than the time periods set forth in **Section 6(a)** (Seller's Obligation to Provide Models) of this **Attachment B** (Facility Owned by Seller) for delivery of the Required Models and Source Code, Seller shall

provide an irrevocable standby letter of credit (the “**Source Code LC**”) with no documentation requirement in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) per Required Model (and its relevant Source Code) substantially in the form attached to this Agreement as **Attachment M** (Form of Letter of Credit) from a bank chartered in the United States with a credit rating of “A-” or better from Standard & Poor’s or A3 or better from Moody’s. Such letter of credit shall be issued for a minimum term of one (1) year. Furthermore, at the end of each year the security shall be renewed for an additional one (1) year term so that at the time of such renewal, the remaining term of any such security shall not be less than one (1) year. The letter of credit shall include a provision for at least thirty (30) Days’ advance notice to Company of any expiration or earlier termination of the letter of credit so as to allow Company sufficient time to exercise its rights under said security if Seller fails to extend or replace the security. In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the letter of credit shall be borne by Seller.

(B) Release Conditions. Company shall have the right to draw on the letter of credit the funds necessary to develop and recreate the Required Model or Required Models upon Company’s request if Seller fails to provide the Company the Required Models or updated Required Models within the time periods set forth in **Section 6(a)** (Seller’s Obligation to Provide Models) or **Section 6(b)(i)(C)** (Remedies) of this **Attachment B** (Facility Owned by Seller), Company gives written notice of such failure to Seller, and Seller fails to remedy such breach within five (5) Days following receipt of such notice for a breach under **Section 6(a)** (Seller’s Obligation to Provide Models), or within thirty (30) Days following receipt of such notice for a breach under **Section 6(b)(i)(C)** (Remedies).

(C) Extend Letter of Credit. If the letter of credit is not renewed or extended no later than thirty (30) Days prior to its expiration or earlier termination, Company shall have the right to draw immediately upon the full amount of the letter of credit and to place the proceeds of such draw (the “**Proceeds**”), at Seller’s cost, in an escrow account in accordance with **Section 6(b)(ii)(D)** (Proceeds Escrow), until and unless Seller provides a substitute form of letter of credit meeting the requirements of this **Section 6(b)(ii)** (Source Code Security) of this **Attachment B** (Facility Owned by Seller).

(D) Proceeds Escrow. If Company draws on the letter of credit pursuant to **Section 6(b)(ii)(C)** (Extend Letter of Credit) of this **Attachment B** (Facility Owned by Seller), Company shall, in order to avoid comingling the Proceeds, have the right but not the obligation to place the Proceeds in an escrow account as provided in this **Section 6(b)(ii)(D)** (Proceeds Escrow) of this **Attachment B** (Facility Owned by Seller) with a reputable escrow agent acceptable to Company (“**Proceeds Escrow Agent**”), subject to an escrow agreement acceptable to Company (“**Proceeds Escrow Agreement**”). Without limitation to the generality of the foregoing, a federally-insured bank shall be deemed to be a “reputable escrow agent.” Company shall have the right to apply the Proceeds as necessary to recover amounts Company is owed pursuant to this **Section 6** (Modeling) of this **Attachment B** (Facility Owned by Seller). To that end, the Proceeds Escrow Agreement governing such escrow account shall give Company the sole authority to draw from the account. Seller shall not be a party to such Proceeds Escrow Agreement and shall have no rights to the Proceeds. Upon full

satisfaction of Seller's obligations under **Section 6** (Modeling) of this **Attachment B** (Facility Owned by Seller), Company shall instruct the Proceeds Escrow Agent to remit to the bank that issued the letter of credit that was the source of the Proceeds the remaining balance (if any) of the Proceeds. If there is more than one escrow account with Proceeds, Company may, in its sole discretion, draw on such accounts in any sequence Company may select. Any failure to draw upon the Proceeds for any damages or other amounts due Company shall not prejudice Company's rights to recover such damages or amounts in any other manner.

(E) Seller's Obligation. If the letter of credit is not sufficient to cover Company's associated consultant fees, costs and expenses to develop and recreate the Required Models, Seller shall pay to Company the difference within ten (10) Days of Company's written notice to Seller.

(F) Model Verification. Seller shall work with the Company to validate the new Required Models developed by or on behalf of Company within sixty (60) Days of receiving such new Required Models. Seller shall also arrange for and ensure that Company may obtain new Required Models directly from the Source Code Owner in the event that Seller ceases to operate as a going concern or is subject to voluntary or involuntary bankruptcy and is unable or unwilling to obtain the new Required Models from the Source Code Owner.

(G) Certification. The terms of the letter of credit shall provide for a release of the funds, or in the event the funds have been placed into a Proceeds Escrow, the Proceeds Escrow Agent shall release the necessary funds to Company upon receipt of a signed statement by a representative of Company that reads substantially as follows:

The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of Hawaiian Electric Company, Inc. ("**Hawaiian Electric**"), and (ii) Hawaiian Electric is entitled to \$_____, pursuant to **Section 6(b)(ii)(B)** (Release Conditions) of **Attachment B** (Facility Owned by Seller) of the Energy Storage Power Purchase Agreement dated as of _____, between _____, and Hawaiian Electric.

(H) Authorized Use. If Company becomes entitled to a draw of funds from the Source Code Security or a release of funds from the Proceeds Escrow, Company may thereafter use such funds to develop, recreate, correct, modify, update and enhance the Required Models for the sole purpose of providing itself the support and maintenance it otherwise would have been entitled to if it had been provided the Required Models by Seller under **Section 6(a)** (Seller's Obligation to Provide Models) of this **Attachment B** (Facility Owned by Seller).

(iii) Supplementary Agreement. The parties stipulate and agree that the escrow provisions in this **Section 6(b)** (Escrow Establishment) of **Attachment B** (Facility Owned by Seller), and the Source Code Escrow Agreement and Proceeds Escrow Agreement are "supplementary agreements" as contemplated in 11 U.S.C. § 365(n)(1)(B). In any voluntary or involuntary bankruptcy proceeding involving Seller,

failure by Company to assert its rights to “retain its rights” to the intellectual property encompassed by the Source Code or the funds in the Proceeds Escrow, pursuant to 11 U.S.C. § 365(n)(1)(B), under an executory contract rejected in a bankruptcy proceeding, shall not be construed as an election to terminate the contract by Company under 11 U.S.C. § 365(n)(1)(A).

7. Testing Requirements.

(a) Testing Requirements. Once the Control System Acceptance Test has been successfully passed, Seller shall not replace and/or change the configuration of the Facility Control, inverter control settings, energy storage system controls and/or ancillary device controls, without prior written notice to Company. In the event of any such replacement and/or change, if after review, it is determined by the Company to have potential impact on the prior testing, the relevant test(s) of the Control System Acceptance Test shall be redone and must be successfully passed before the replacement or altered equipment is allowed to be placed in normal operations. In the event that Company reasonably determines that such replacement and/or change of controls makes it inadvisable for the Facility to continue in normal operations without a further Control Systems Acceptance Test, the Facility shall be deemed to be in Seller-Attributable Unavailability status until the new relevant tests of the Control System Acceptance Test have been successfully passed.

(b) Periodic Testing. Seller shall coordinate periodic testing of the Facility with Company to ensure that the Facility is meeting the performance standards specified under this Agreement.

8. Reserved.

9. Technology Specific Requirements.

(a) Reserved.

(b) Reserved.

(c) Inverter Systems.

(i) Direct current generators and non-power (i.e. other than 60 Hertz) alternating current generators can only be installed in parallel with the Company System using a non-islanding synchronous inverter. The design shall comply with the requirements of IEEE Std 1547-2003 (or latest version), except as described in **Section 3** (Performance Standards) of this **Attachment B** (Facility Owned by Seller), unless alternate designs are approved by Company.

(ii) Self-commutated inverters of the Company-interactive type shall synchronize to the Company System. Line-commutated, thyristor-based inverters are not recommended and will require additional technical study to determine harmonic and reactive power requirements. All interconnected inverter systems shall comply with the harmonic current limits of IEEE Std 519-1992 (or latest version).

(d) Battery Energy Storage System. The operating parameters of the

Facility shall be as follows:

(i) No more than [___]% of the BESS energy capacity can be charged from the grid prior to the fifth anniversary of the Commercial Operations Date. Thereafter, 100% of the BESS energy capacity can be charged from the grid.

[DRAFTING NOTE: 5-YEAR LIMITATION ON GRID CHARGING WILL BE DELETED IF INVESTMENT TAX CREDIT RECAPTURE IS NOT APPLICABLE TO THE BESS]

(ii) For Contract Years that are non-leap years, the Facility shall be discharged no more than the Contract Capacity multiplied by 365 Days in each such Contract Year. For Contract Years that are leap years, the Facility shall be discharged no more than the Contract Capacity multiplied by 366 Days in each such Contract Year.

(iii) The Facility will not be required to discharge more energy than available relative to the available State of Charge.

EXHIBIT B-1
REQUIRED MODELS

PSS/E

ASPEN

PSCAD

EXHIBIT B-2
ENERGY STORAGE CAPABILITY CURVE(S)

[This Attachment will be revised to reflect the results of the IRS]

ATTACHMENT C

MEASURING PERFORMANCE STANDARDS

1. Performance Standards as defined below shall be used, in part, to govern actions by Company to limit the Actual Output of the Facility for purposes of maintaining power quality on Company System. Specific standards are defined for:
 - Ramp Rate (RR)
2. Formulas for measuring the performance standards are presented below, and assume that the power fluctuations will be monitored on the Company's SCADA and EMS systems. These formulas are based on the periodicity at which analog data is retrieved from Telemetry and Control. This periodicity is called the "scan rate". Company presently uses a two-second analog scan rate. The formulas below are based on the two-second scans. The two-second scan rate, characteristics of transducers and Telemetry and Control reporting, and SCADA method of calculation, were considered and included in the proposed values for the performance standards.
3. Ramp Rate Calculation:

$$RR = MW_s - MW_{s-30}$$

RR = Ramp Rate, may be calculated once every scan

MW_{s-30} = The instantaneous MW analog value 30 scans (60 seconds) prior the present scan

MW_s = The instantaneous MW analog value for the present scan

4. All changes in output shall be implemented as a ramp rate, and not with one or two step changes within the period. It is not acceptable, for example, for a two MW/minute ramp rate compliance, that all values be zero except for a 2 MW change in the last scan value.

ATTACHMENT D
CONSULTANTS LIST

ATTACHMENT E
SINGLE-LINE DRAWING AND INTERFACE BLOCK DIAGRAM

(To be attached pursuant to **Section 1(a)** of **Attachment B**)

ATTACHMENT F
RELAY LIST AND TRIP SCHEME

(To be attached pursuant to **Section 1(a)** of **Attachment B**)

[This Attachment will be revised to reflect the results of the IRS]

ATTACHMENT G

COMPANY-OWNED INTERCONNECTION FACILITIES

1. Description of Company-Owned Interconnection Facilities.

(a) General. Company shall furnish or construct (or may have Seller furnish or construct, in whole or in part), own, operate and maintain all Interconnection Facilities required to interconnect Company System with Facility at ____ volts, up to the Point of Interconnection (collectively, the “**Company-Owned Interconnection Facilities**”).

(b) Site. Where any Company-Owned Interconnection Facilities are to be located on the Site, Seller shall provide, at no expense to Company, a location and access acceptable to Company for all such Company-Owned Interconnection Facilities, as well as an easement, license or right of entry to access such Company-Owned Interconnection Facilities. If power sources (120/240 VAC) are required, Seller shall provide such sources, at no expense to Company.

(c) IRS. An IRS addressing Facility requirements was completed for the Facility in accordance with the IRS Letter Agreements, and the results have been incorporated in **Attachment B** (Facility Owned by Seller) and this **Attachment G** (Company-Owned Interconnection Facilities) as appropriate.

(d) Seller’s Payment Obligations. Company-Owned Interconnection Facilities, for which Seller has agreed to pay, whether designed, engineered and constructed by Seller or Company, include **[ADD LIST OF COMPANY-OWNED INTERCONNECTION FACILITIES THAT ARE REQUIRED PURSUANT TO THE RESULTS OF THE IRS. THE FOLLOWING IS AN EXAMPLE OF THE TYPES OF FACILITIES THAT COULD BE LISTED]:**

(i) [Line extension];

(ii) A manually operated, lockable, group operated switch located on a pole prior to the Facility switching station. Company will install a ____ kV drop into Seller-provided deadend structure;

(iii) Substation additions and/or modifications of Company’s existing structures as necessary, including, but not be limited to, protective relaying and setting changes;

(iv) Supervisory control and communications equipment (including but not limited to, SCADA/Telemetry and Control, microwave, satellite, dedicated phone line(s) and/or any other acceptable communications means (determined by Company), fiber optics, copper cabling, installation of batteries and charger system, etc.);

(v) Revenue Metering Package, as provided in **Section 9.1** (Revenue Metering Package; Station Use Metering Equipment);

(vi) Any additional Interconnection Facilities needed to be installed as a result of final determination of Facility switching station site, final design of Facility to enable Company to complete the Interconnection Facilities and be compatible with Good Engineering and Operating Practices; and

(vii) If equipment that is not standard to Company is utilized, Seller shall, at the discretion of Company, provide adequate spares.

(e) **Revisions to Costs.** The list of Company-Owned Interconnection Facilities, and engineering and testing costs for Company-Owned Interconnection Facilities, for which Seller agrees to pay in accordance with this **Attachment G** (Company-Owned Interconnection Facilities), are subject to revision if (i) before approving this Agreement, the PUC approves an energy storage power purchase agreement for another non-Company owned battery energy storage system/facility (“**Second NUB Contract**”) making Energy Storage Services available to Company using the same line to which Facility is to be connected; or (ii) the line to which Facility is to be connected and/or the related transformer(s) need(s) to be upgraded and/or replaced as a result of this Agreement and a Second NUB Contract, and the PUC, in approving this Agreement, determines that Seller should pay for all or part of the cost of such upgrade and/or replacement.

(f) **Review of the Listing and Costs.** If the Commercial Operations Date is not achieved by the Guaranteed Commercial Operations Date, as such date may be extended as provided in **11.4** (Milestone Dates), the listing of the Company-Owned Interconnection Facilities required in this Agreement and the cost-estimates for such Company-Owned Interconnection Facilities are subject to review and revision. Such revision may include, but not be limited to, such items as reconductoring an existing transmission or distribution line, construction of a new line, increase transformer capacity, and alternative relay specifications. In addition, such review and revision may require that the Company re-perform or update the IRS at Seller’s expense.

(g) **Responsibility of Seller and Company.** The general responsibilities of Seller and Company for the design, procurement, installation, programming/testing, and maintenance/ownership of equipment at the Facility and the Company Owned Interconnection Facilities is specified in **Matrix G-1** (Substation Responsibilities) and **Matrix G-2** (Telecom Responsibilities). **[DRAFTING NOTE: MATRIXES WILL BE UPDATED FOLLOWING COMPLETION OF IRS.]**

2. Construction and Support Services By Seller.

(a) Construction and Support Services By Seller.

(i) Seller (and/or its third-party consultants or contractors (collectively, “**Contractors**”)) will design, engineer, construct, test and place in service, at Seller’s expense:

(A) The items identified in **Matrix G-1** (Substation Responsibilities) and **Matrix G-2** (Telecom Responsibilities) as being the responsibility of Seller to construct; and

(B) [ANY OTHER COMPANY-OWNED INTERCONNECTION FACILITIES TO BE CONSTRUCTED BY SELLER. NOTE: SUBPARTS “A” AND “B” BETWEEN THEM SHOULD GENERALLY INCLUDE A SUBSET OF THE LIST IN SECTION 1(d) ABOVE.]

(ii) Seller shall provide the necessary support for the Company’s ___kV overhead line extension work, which may include, but not limited to:

(A) Furnish surveyed topographical drawing including contour lines of project areas and beyond as needed in State Plane coordinates with overlay of the Facility and Company pole line route(s) indicating pole locations and anchors in CADD format acceptable to Company.

(B) Staking of Company proposed poles and anchors by surveyor.

(C) Graded access roads including gravel if required by Company to provide sufficient vehicle access to Company poles and anchors by Company trucks and cranes.

(D) Graded level pads to provide vehicle working areas around all Company poles and anchors.

(E) Grading of the areas beneath the Company’s overhead lines as needed to provide required ground clearance.

(F) Grubbing and clearing of vegetation within Company’s easement area or as required.

(b) Coordination of Construction. Prior to Seller engaging the Contractors, Seller shall obtain Company’s written approval, which approval shall not be unreasonably withheld. Prior to Seller and/or its Contractors first starting to work on the construction plans for Company-Owned Interconnection Facilities to be constructed by Seller (and/or its Contractors), such as the civil, structural, and construction drawings, specifications to vendors, vendor approved final drawings and materials lists (collectively, the “Plans”), Seller and/or its Contractors shall meet with Company to discuss the construction of such Company-Owned Interconnection Facilities, including but not limited to subjects concerning coordination of construction milestone dates, agreement on areas of interface design, and Company’s design/drawing layout and symbols standards, equipment specifications and construction specifications and standards. Company will provide the equipment specifications, and construction specifications and standards information so Seller can incorporate such information in its bid documents.

(c) Plans. Seller shall provide Company its complete Plans at 30%, 60% and 90% completion. No later than sixty (60) Days before Seller and/or its Contractors first start to order materials and equipment for Company-Owned Interconnection Facilities to be constructed by Seller and/or its Contractors, Seller shall provide Company with the final Plans. The Plans for Company-Owned Interconnection Facilities to be constructed by Seller (and/or its Contractors) shall comply with (i) all

applicable Laws; (ii) Company's design/drawing layout and symbol standards, equipment specifications, and construction specifications and standards; and (iii) Good Engineering and Operating Practices (collectively, the "**Standards**"). Seller shall submit design drawings in MicroStation format per Company standards.

(d) Company's Review of the Plans. Unless otherwise agreed to by the Parties, Company shall have thirty (30) Days following receipt of the complete Plans at each stage (30%, 60%, 90% and final) for it to review and comment on the Plans, and verify in writing to Seller that the Plans comply with the Standards, which verification shall not be unreasonably withheld. If Company reasonably determines that the Plans are not in accordance with the Standards, then it may request in writing a response from Seller to its comments and Seller shall respond in writing within thirty (30) Days of such request by providing (i) its justification for why its Plans conform to the Standards; or (ii) changes in the Plans responsive to Company's comments and in accordance with the Standards.

(e) Company Inspection. Construction work will be subject to Company inspections to ensure that construction is done in accordance with the Standards. Company inspectors will be allowed access to the construction sites for inspections and to monitor construction work. The inspector shall have the authority to work with the appropriate construction supervisor to stop any work that does not meet the Standards. All equipment and materials used in Company-Owned Interconnection Facilities to be constructed by Seller and/or its Contractors shall meet the Standards.

(f) Acceptance Test Procedures.

(i) Seller acknowledges that: (aa) Company has multiple on-going projects with other developers as well as its own capital improvement projects; (bb) Company has limited resources to provide engineering oversight (such as review of plans) to such projects and to participate in the testing of such projects; (cc) in order for Company to accommodate such oversight and testing, it is necessary for Company to sequentially allocate its resources for each project a year or more in advance; (dd) the result is a queue of such projects that reflects the scheduling commitments of Company's resources to conduct such oversight and to participate in such testing; (ee) if a project is behind the schedule on which Company's resources have been scheduled for the oversight of such project, or if a project is not ready for testing at the time Company's resources have been scheduled for the testing of such project, or if a project does not complete testing within the period for which Company's resources have been scheduled for such testing, the progress of projects later in the queue may be adversely affected; (ff) the Test Ready Deadline that is set forth in **Attachment K-1** (Seller's Conditions Precedent and Company Milestones) reflects the scheduling commitment of Company's resources to (i) conduct the oversight necessary to facilitate Seller's achievement of that Test Ready Deadline, (ii) commence the Acceptance Test on the Acceptance Testing Milestone Date that is set forth in **Attachment K-1** (Seller's Conditions Precedent and Company Milestones) and (iii) thereafter participate in the Control System Acceptance Test; and (gg) the Project will lose its place in the queue and will be assigned a new Acceptance Testing Milestone Date for commencement of the Acceptance Test that will be behind the other projects then in the queue if (i) Seller fails to satisfy any of the conditions precedent set forth in **Section 2(f)(ii)** of this **Attachment G** (Company-Owned Interconnection Facilities) within the time period

specified therein for the task in question or, if no time period is specified therein, by the Test Ready Deadline, (ii) the Seller fails to satisfy any of the Seller's Conditions Precedent set forth in **Attachment K-1** (Seller's Conditions Precedent and Company Milestones) and/or (iii) the Acceptance Test and the Control System Acceptance Test are not satisfactorily completed within the time allotted to complete such testing.

(ii) The Conduct of the Acceptance Test is subject to the satisfaction of the following conditions precedent within the time period specified below for the task in question or, if no time period is specified, by the Test Ready Deadline that is set forth in **Attachment K-1** (Seller's Conditions Precedent and Company Milestones):

(A) Final Single-Line Drawing, and notes, has received Company's written consent pursuant to **Section 1(a)(i)** (Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip Scheme) of **Attachment B** (Facility Owned by Seller) to this Agreement.

(B) Final Relay List and Trip Scheme have received Company's written consent pursuant to **Section 1(a)(i)** (Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip Scheme) of **Attachment B** (Facility Owned by Seller) to this Agreement.

(C) Final Interface Block Diagram has received Company consent pursuant to **Section 1(a)(i)** (Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip Scheme) of **Attachment B** (Facility Owned by Seller) to this Agreement.

(D) Final Control System Telemetry and Control List has received Company consent.

(E) Final phasor measurement unit (PMU) devices, if applicable, have received Company consent.

(F) Control system design and tunable parameters reviewed and mutually agreed upon as needed to meet the Company requirements in accordance with **Section 3** (Performance Standards) of **Attachment B** (Facility Owned by Seller) to this Agreement.

(G) Agreement on Active Power Control Interface.

(H) No later than fourteen (14) Days prior to commencement of the Acceptance Test:

(1) Seller shall have certified to Company that Seller-Owned Interconnection Facilities have been installed and commissioned and such certification has not, prior to the commencement of the Acceptance Test, been subsequently challenged by Company on the basis of onsite observations made by the Company's representatives following the walk-through to be conducted pursuant to **Section 2(f)(iii)** of this **Attachment G** (Company-Owned Interconnection Facilities).

(2) Seller shall have certified to Company that any

Company-Owned Interconnection Facilities built by Seller (and/or its Contractors) have been installed and commissioned and such certification has not, prior to the commencement of the Acceptance Test, been subsequently challenged by Company on the basis of onsite observations made by the Company's representatives following the walk-through to be conducted pursuant to **Section 2(f)(iii)** of this **Attachment G** (Company-Owned Interconnection Facilities).

(I) Any Company-Owned Interconnection Facilities not built by or on behalf of Seller have been installed and commissioned.

(J) No later than seven (7) Days prior to the commencement of the Acceptance Test, Seller and Company shall have participated in walk-through of fully constructed Interconnection Facilities.

(K) Redlined as-built drawings of the Seller-Owned Interconnection Facilities and any of the Company-Owned Interconnection Facilities built by Seller (and/or its Contractors) shall have been provided to Company.

(L) Continuous power is being supplied to Company's protection and SCADA equipment.

(M) Not less than four (4) weeks prior to the commencement of the Acceptance Test, the high speed communication lines required under this Agreement have been commissioned and are ready for use for EMS and revenue metering purposes.

(N) Not less than two (2) weeks prior to the commencement of the Acceptance Test, Seller and Company have participated in an on-Site Acceptance Test coordination meeting.

(ii) Seller shall provide Company with at least fourteen (14) Days advance written notice of the Acceptance Test, which shall be scheduled during normal business hours on a Business Day (and may take a minimum of thirty (30) Days to complete). No electric energy will be delivered from Seller to Company during this Acceptance Test. No later than thirty (30) Days prior to conducting the Acceptance Test, Company and Seller shall agree on a written protocol setting out the detailed procedure and criteria for passing the Acceptance Test. **Attachment N** (Acceptance Test General Criteria) provides general criteria to be included in the written protocol for the Acceptance Test. At the time that Seller provides its 14-Day notice of the Acceptance Test to Company, Seller shall concurrently schedule a site walk-through of the Facility with Company to occur no later than seven (7) Days prior to the Acceptance Test. Seller's 14-Day notice to Company of the Acceptance Test shall constitute its certification that (A) the installation and commissioning of the Seller-Owned Interconnection Facilities and the Company-Owned Interconnection Facilities built by Seller (and/or its Contractors) has been completed; and (B) a walk-through by Company shall demonstrate, to Company's reasonable satisfaction, Seller's readiness to commence with the Acceptance Test. If, after the site walk-through, Company representatives reasonably determine that Seller is not ready to commence with the Acceptance Test, the Project will lose its place in the queue and will be assigned a new Test Ready Deadline and a new Acceptance Testing Milestone Date

that will be behind the other projects then in the queue. In the meantime, Seller shall remediate the deficiencies identified by Company, and the process described in this **Section 1(f)** (Acceptance Test Procedures) of **Attachment G** (Company-Owned Interconnection Facilities), shall commence again until Seller's readiness for the Acceptance Test is demonstrated to Company's reasonable satisfaction. Successful completion of the Acceptance Test requires successful completion of each of the individual tests that comprise the Acceptance Test. Retesting of any individual test constitutes as restart of the Acceptance Test if such retesting is required because of a prior failure of such individual test or because a prior test could not be completed because of a problem with the Facility. Within fifteen (15) Business Days of successful completion of the Acceptance Test and Company's receipt of the final report setting forth the results of the Acceptance Test, Company shall notify Seller in writing whether the Acceptance Test has been passed and, if so, the date upon which the Acceptance Test was passed.

(iii) Company will be present when the Acceptance Test is conducted, and Seller shall promptly correct any deficiencies identified during the Acceptance Test. Seller will be responsible for the cost of Company personnel (and/or Company contractors) performing the duties (such as reviewing the Plans and reviewing the construction) necessary for Company-Owned Interconnection Facilities to be constructed by Seller (and/or its Contractors). If Company (A) does not make any inspection or test; (B) does not discover defective workmanship, materials or equipment; or (C) accepts Company-Owned Interconnection Facilities (that were constructed by Seller and or its Contractors), such action or inaction shall not relieve Seller from its obligation to do and complete the work in accordance with the Plans approved by Company.

(g) As-Built Drawings. Within thirty (30) Days of the successful completion of the Acceptance Test, Seller shall provide for Company review a set of the proposed as built drawings for the Company-Owned Interconnection Facilities constructed by Seller (and/or its Contractors). Within thirty (30) Days of Company's receipt of the proposed as-built drawings, Company shall provide Seller with either (i) its comments on the proposed as-built drawings; or (ii) notice of acceptance of the proposed as-built drawings as final as-built drawings. If Company provides comments on the proposed as-built drawings, Seller shall incorporate such comments into a final set of as-built drawings and provide such final as-built drawings to Company within twenty (20) Days of Seller's receipt of Company's comments.

3. Seller Payment to Company for Company-Owned Interconnection Facilities and Review of Facility.

(a) Seller Payment to Company.

(i) Seller shall pay the Total Estimated Interconnection Cost which is comprised of the estimated costs of (A) acquiring, constructing and installing the Company-Owned Interconnection Facilities to be designed, engineered and constructed by Company; (B) the engineering and design work (including but not limited to Company, affiliated Company and contracted engineering and design work) associated with (1) the application process for the PUC Approval Order; (2) developing such Company-Owned Interconnection Facilities; and (3) reviewing and specifying

those portions of Facility which allow interconnected operations as such are described in **Attachment B** (Facility Owned by Seller) (collectively, the “**Engineering and Design Work**”), and (cc) conducting the Acceptance Test and Control System Acceptance Test. The Total Actual Interconnection Cost (the actual cost of items (A) through (C)) are the “**Total Interconnection Cost.**”

(ii) Summary List of Company-Owned Interconnection Facilities and Related Services to be designed, engineered and constructed by Company:

[THIS LIST SHOULD GENERALLY INCORPORATE A SUBSET OF THE LIST IN ATTACHMENT G, SECTION 1(d), PLUS TESTING.]

(iii) The following summarizes the Total Estimated Interconnection Cost of the Company-Owned Interconnection Facilities to be designed, engineered and constructed by Company:

[THIS LIST SHOULD INCLUDE ESTIMATED COSTS FOR THE ITEMS LISTED IN ATTACHMENT G, SECTION 3(a)(ii).]

The Total Estimated Interconnection Cost is \$_____.

(b) **Total Estimated Interconnection Cost.** The Total Estimated Interconnection Cost, which, except as otherwise provided herein, is non-refundable, shall be paid in accordance with the following schedule:

(i) **Initial Payment.** Prior to the execution of the Interconnection Requirements Amendment, Seller shall pay to Company \$____,000.00.

(ii) **Company-Owned Interconnection Facilities Prepayment.** Within thirty (30) Days after the execution of the Interconnection Requirements Amendment, the total estimated costs related to the Engineering and Design Work are due and payable by Seller to Company. Company shall not be obligated to perform any work on Company-Owned Interconnection Facilities until Seller pays the amounts in **Section 3(b)(i)** (Initial Payment) and **Section 3(b)(ii)** (Company-Owned Interconnection Facilities Prepayment) of this **Attachment G** (Company-Owned Interconnection Facilities). Company’s receipt of such payments shall constitute Seller’s irrevocable authorization to Company to perform such engineering and design work.

(iii) **Balance of Company-Owned Interconnection Facilities Prepayment.** On the Guaranteed Procurement Payment Date, the difference between the portion of the Total Estimated Interconnection Cost paid to date and the Total Estimated Interconnection Cost is due and payable by Seller to Company. Company shall not be obligated to work on Company-Owned Interconnection Facilities until Seller pays the amount in this **Section 3(b)(iii)** (Balance of Company-Owned Interconnection Facilities Prepayment) of this **Attachment G** (Company-Owned Interconnection Facilities). Company’s receipt of such payment shall constitute Seller’s irrevocable authorization to Company to perform such procurement and construction work.

(c) True-Up. The final accounting shall take place within one hundred twenty (120) Days of the first to occur of (i) the Commercial Operations Date, (ii) the date this Agreement is declared null and void under either **Section 2.3** (Interconnection Requirements Study), **Section 3.4** (Prior to Effective Date), **Section 24.3** (Time Period for PUC Submittal Date), or **Section 24.4** (Time Period for PUC Approval Date) of this Agreement, or (iii) the date this Agreement is terminated. Company shall be entitled to an extension for a commercially reasonable amount of time to complete the final accounting if a delay in such completion is caused by Seller's delay or failure to respond to any Company request for information needed to complete the final accounting or take any action necessary for Company to complete the final accounting. Upon completion of the final accounting, Company shall deliver to Seller an invoice for payment of the amount, if any, of the difference between the Total Estimated Interconnection Cost paid to date and the Total Actual Interconnection Cost, which is the final accounting of the Total Interconnection Costs. Payment of such invoice shall be made within thirty (30) Days of receipt of such invoice from Company. If the Total Actual Interconnection Cost is less than the payments received by Company as the Total Estimated Interconnection Cost, Company shall repay the difference to Seller within thirty (30) Days of the final accounting.

(d) Audit Rights. Seller shall have the right for a period of one (1) year following receipt of the invoice: (i) upon reasonable prior notice, to audit the books and records of Company to the limited extent reasonably necessary to verify the basis for the amount (if any) by which the Total Actual Interconnection Cost invoiced to Seller exceeds the Total Estimated Interconnection Cost, and (ii) to dispute the amount of any such excess. Seller shall not have the right to audit any other financial records of Company. Company shall make such information available during normal business hours at its offices in Hawai'i. Seller shall pay Company's reasonable actual, verifiable costs for such audits, including allocated overhead.

(e) Ownership. All Company-Owned Interconnection Facilities including those portions, if any, provided, or provided and constructed, by Seller shall be the property of Company.

4. Ongoing Operation and Maintenance Charges.

(a) Prior to the Transfer Date. Seller shall operate and maintain, at its sole cost and expense, Company-Owned Interconnection Facilities that it or its Contractors constructed, if any, prior to the Transfer Date.

(b) On or After the Transfer Date. On and after the Transfer Date, Company shall own, operate and maintain Company-Owned Interconnection Facilities.

(c) Monthly Bill. Company shall bill Seller monthly (or periodically as costs are incurred) for any reasonable costs incurred in operating, maintaining and replacing (to the extent not covered by insurance) Company-Owned Interconnection Facilities. Company's costs will be determined on the basis of, but not limited to, direct payroll, material costs, applicable overhead at the time incurred, consulting fees and applicable taxes. Seller shall, within thirty (30) Days after receipt of an invoice, reimburse Company for such monthly billed operation and maintenance charges.

Company's invoice will include itemized charges reasonably necessary for Seller to verify the basis for such charges.

5. Relocation of Company-Owned Interconnection Facilities.

(a) In the event that the Land Rights include a relocation clause and such clause is exercised or if Company-Owned Interconnection Facilities must be relocated for any other reason not caused by Company, Seller shall bear the cost of such relocation. Prior to the relocation of the Company-Owned Interconnection Facilities Company shall invoice Seller for the total estimated cost of relocating the Company-Owned Interconnection Facilities (the "**Total Estimated Relocation Cost**"). Seller shall, within thirty (30) Days after the invoice date, pay to Company the Total Estimated Relocation Cost.

(b) Once the relocation of the Company-Owned Interconnection Facilities is complete, Company shall conduct a final accounting of all costs related thereto. Within thirty (30) Days of the final accounting, which shall take place within one hundred and twenty (120) Days of completion of the relocation of Company-Owned Interconnection Facilities, Seller shall remit to Company the difference between the Estimated Relocation Cost paid to date and the total actual relocation cost incurred by Company (the "**Total Actual Relocation Cost**"). If the Total Actual Relocation Cost is less than the payments received by Company as the Total Estimated Relocation Cost, Company shall repay the difference to Seller within thirty (30) Days of the final accounting.

6. Guarantee for Interconnection Costs.

(a) **Standby Letter of Credit.** To ensure payment by Seller of all costs and expenses incurred by Company (i) in excess of the Total Estimated Interconnection Cost paid in connection with the Company-Owned Interconnection Facilities to be provided and/or constructed by Company described in **Section 3** (Seller Payment to Company for Company-Owned Interconnection Facilities and Review of Facility) of this **Attachment G** (Company-Owned Interconnection Facilities), and (ii) if applicable, in excess of the Total Estimated Relocation Costs paid in connection with the relocation of the Company-Owned Interconnection Facilities as provided in **Section 5** (Relocation of Company-Owned Interconnection Facilities) of this **Attachment G** (Company-Owned Interconnection Facilities), Seller shall obtain an Irrevocable Standby Letter of Credit with no Documentary Requirement ("**Standby Letter of Credit**") in accordance with the requirements of **Section 6(b)** (Requirements of the Standby Letter of Credit) of this **Attachment G** (Company-Owned Interconnection Facilities), wherein Company shall receive payment from the bank upon request by Company.

(b) **Requirements of the Standby Letter of Credit.** The Standby Letter of Credit shall be (i) in an amount not less than twenty-five percent (25%) of the Total Estimated Interconnection Cost or Total Estimated Relocation Cost, as applicable, and (ii) in substantially in the form attached to this Agreement as **Attachment M** (Form of Letter of Credit) from a bank chartered in the United States with a credit rating of "A-" or better. If the rating (as measured by Standard & Poor's) of the bank issuing the Standby Letter of Credit falls below A-, Company may require Seller to replace the Standby Letter of Credit with a Standby Letter of Credit from another bank chartered

in the United States with a credit rating of “A-” or better. In connection with the construction of the Company-Owned Interconnection Facilities, the Standby Letter of Credit shall be effective from the earlier of (aa) thirty (30) Days following the Effective Date, or (bb) the date that Seller requests Company to order equipment or commence construction on Company-Owned Interconnection Facilities. In connection with the relocation of the Company-Owned Interconnection Facilities, if applicable, the Standby Letter of Credit shall be effective within thirty (30) Days after Seller receives the invoice from Company for the Total Estimated Relocation Cost as set forth in **Section 5** (Relocation of Company-Owned Interconnection Facilities) of this **Attachment G** (Company-Owned Interconnection Facilities). The Standby Letter of Credit shall be in effect through the earlier of forty-five (45) Days after the final accounting or seventy-five (75) Days after the Agreement is terminated. Seller shall provide to Company within fourteen (14) Days of the date the Standby Letter of Credit is to be effective as aforesaid, a document from the bank which indicates that such a Standby Letter of Credit has been established.

(c) Other Form of Security. Notwithstanding the foregoing, in lieu of a Standby Letter of Credit, Company may, at its sole discretion, agree in writing to accept such other form of security it deems to provide protection equivalent to a Standby Letter of Credit.

7. Land Restoration.

(a) Removal of Interconnection Facilities. After termination of this Agreement or in the event this Agreement is declared null and void under either **Section 2.3** (Interconnection Requirements Study), **Section 3.4** (Prior to Effective Date), **Section 24.3** (Time Period for PUC Submittal Date), or **Section 24.4** (Time Period for PUC Approval) of this Agreement, Seller shall, at its sole cost and expense, remove the Company-Owned Interconnection Facilities and the Seller-Owned Interconnection Facilities from the Land, and, in conjunction with such removal, shall develop and implement a program to recycle, to the fullest extent possible, or to otherwise properly dispose of, all such removed infrastructure; provided, however, that, Company may elect to remove all or part of the Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities from the Land because of operational concerns over the removal of such Interconnection Facilities, in which case Seller shall reimburse Company for its costs to remove such Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities. To the extent Seller is obligated to remove Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities, Seller shall complete such removal within ninety (90) Days of termination of this Agreement (or declaration that the Agreement is null and void under either **Section 2.3** (Interconnection Requirements Study), **Section 3.4** (Prior to Effective Date), **Section 24.3** (Time Period for PUC Submittal Date), or **Section 24.4** (Time Period for PUC Approval) of this Agreement, or as otherwise agreed to by both Parties in writing.

(b) Restoration of the Land. After the termination of this Agreement (or declaration that the Agreement is null and void under either **Section 2.3** (Interconnection Requirements Study), **Section 3.4** (Prior to Effective Date), **Section 24.3** (Time Period for PUC Submittal Date), or **Section 24.4** (Time Period for PUC Approval) of this Agreement) and removal of the Company-Owned Interconnection

Facilities and/or Seller-Owned Interconnection Facilities, as the case may be, Seller shall, at its sole cost and expense, restore the Land to its condition prior to construction of such Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities, as applicable. Land restoration shall be completed within ninety (90) Days of termination of this Agreement (or declaration that the Agreement is null and void under either **Section 2.3** (Interconnection Requirements Study), **Section 3.4** (Prior to Effective Date), **Section 24.3** (Time Period for PUC Submittal Date), or **Section 24.4** (Time Period for PUC Approval) of this Agreement), or as otherwise agreed to by both Parties in writing.

8. Transfer of Ownership/Title.

(a) Transfer of Ownership and Title. On the Transfer Date, Seller shall transfer to Company all right, title and interest in and to Company-Owned Interconnection Facilities to the extent such facilities were designed and constructed by Seller and/or its Contractors together with (i) all applicable manufacturers' or Contractors' warranties which are assignable; and (ii) all Land Rights necessary to own, operate and maintain Company-Owned Interconnection Facilities on and after the Transfer Date. Seller shall provide a written list of the manufacturers' and Contractors' warranties which will be assigned to Company and the expiration dates of such warranties no later than thirty (30) Days before the Transfer Date.

(b) No Liens or Encumbrances. Company's title to and ownership of Company-Owned Interconnection Facilities that were designed and constructed by Seller and/or its Contractors shall be free and clear of liens and encumbrances.

(c) Form of Documents. The transfers to be made to Company pursuant to this **Section 8** (Transfer of Ownership/Title) of **Attachment G** (Company-Owned Interconnection Facilities) shall not require any further payment by Company. The form of the document to be used to convey title to the Company-Owned Interconnection Facilities that were designed and constructed by or on behalf of Seller shall be substantially in the form set forth in **Attachment H** (Form of Bill of Sale and Assignment). The form of the document(s) to be used to assign leases shall be substantially in the form set forth in **Attachment I** (Form of Assignment of Lease and Assumption). To the extent Land Rights other than leases are transferred to Company, appropriate modifications will be made to **Attachment I** (Form of Assignment of Lease and Assumption) to effectuate the transfer of such Land Rights.

9. Governmental Approvals for Company-Owned Interconnection Facilities. Seller shall obtain at its sole cost and expense all Governmental Approvals necessary to the construction, ownership, operation and maintenance of the Company-Owned Interconnection Facilities. For Company-Owned Interconnection Facilities to be constructed by Company, Seller shall provide all Governmental Approvals necessary for the construction of such Company-Owned Interconnection Facilities prior to the commencement of construction by Company. For Company-Owned Interconnection Facilities to be constructed by Seller, Seller shall obtain all Governmental Approvals necessary for construction of the Company-Owned Interconnection Facilities prior to commencement of the construction activity for which such Governmental Approval is required. For all other Governmental Approvals for Company-Owned Interconnection Facilities, Seller shall provide these prior to the Transfer Date. On or before the

Transfer Date, Seller shall provide Company with (a) copies of all such Governmental Approvals obtained by Seller regarding the construction, ownership, operation and maintenance of Company-Owned Interconnection Facilities that Seller (and/or its Contractors) constructed; and (b) documentation regarding the satisfaction of any condition or requirement set forth in any Governmental Approvals for Company-Owned Interconnection Facilities or that such Governmental Approvals have otherwise have been closed with the issuing Governmental Authority.

10. Land Rights. Seller shall, prior to the commencement of construction of the Company-Owned Interconnection Facilities (whether to be built by Seller or by Company), obtain at its sole cost and expense all Land Rights that are required to construct, own, operate and maintain the Company-Owned Interconnection Facilities. Without limitation to the preceding sentence, Seller shall pay all surveying and mapping costs, appraisal fees, document preparation fees, recording fees or other costs. Seller shall use commercially reasonable efforts to obtain on behalf of the Company perpetual Land Rights for the Company-Owned Interconnection Facilities. Such Land Rights shall contain terms and conditions which are acceptable to Company and the documents setting forth the Land Rights shall be provided in advance of execution to Company for its review and approval and shall be recorded if required by Company. Following the Execution Date, Seller shall provide as part of the Monthly Progress Report the status of negotiations with landowner(s) regarding the Land Rights. Notwithstanding the foregoing, Company shall have the right in its sole discretion, at any time upon notice to Seller, to communicate directly with the landowner(s) and/or participate in the negotiations with landowner(s) for the Land Rights. For so long as Seller has the right under this Agreement to make available Facility's Energy Storage Services to Company, Seller shall pay for any rents and other payments due under such Land Rights that are associated with Company-Owned Interconnection Facilities.

11. Contracts for Company-Owned Interconnection Facilities. For all contracts entered into by or on behalf of Seller for Company-Owned Interconnection Facilities to be designed, engineered and constructed, in whole or in part, by or on behalf of Seller: (a) Company shall be made an intended third-party beneficiary of such contracts; and (b) Company shall be provided with copies of such executed contracts, which may be redacted but only to the extent required to prevent disclosure of confidential or proprietary information of Seller or the counterparty to such agreement; provided, however, that such redactions may not conceal information that is necessary for the Company to determine and exercise Company's rights under such contracts as a third-party beneficiary.

MATRIX G-1
SUBSTATION RESPONSIBILITIES

MATRIX G-2
TELECOM RESPONSIBILITIES

ATTACHMENT H
FORM OF BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT ("**Bill of Sale**"), made as of the _____ day of _____, 20____, by _____ ("**Transferor**") and _____ ("**Transferee**").

W I T N E S S E T H:

1. Bill of Sale. In consideration of the mutual covenants and agreements of Transferor and Transferee under the Energy Storage Power Purchase Agreement between Transferor and Transferee dated _____, 20____ ("**ESPPA**") and other good and valuable consideration paid to Transferor by Transferee, the receipt and sufficiency of which are hereby acknowledged, Transferor does hereby sell, assign and transfer over to Transferee all of Transferor's right, title and interest, in and to (i) all the tangible personal property and fixtures (including but not limited to the items set forth in **Schedule H-1** (Description of Tangible Personal Property and Fixtures) attached hereto and incorporated herein), that constitutes what is referred to as the "Company-Owned Interconnection Facilities to be installed by or on behalf of Seller" (or words to similar effect) as set forth in **Attachment G** (Company-Owned Interconnection Facilities) to the ESPPA between [**Transferor and Transferee**] and (ii) the intangible personal property (including but not limited to the intangible personal property set forth in **Schedule H-2** (Description of Intangible Personal Property) attached hereto and incorporated herein) owned by Transferor and used or to be used in the ownership, operation and maintenance of the aforesaid tangible personal property, to the extent assignable by Transferor, including without limitation, certificates of occupancy, permits, licenses, transferable warranties and guaranties, instruments, documents of title, and general intangibles pertaining to the aforesaid intangible personal property.

2. Warranty of Title. Transferor hereby warrants to Transferee that Transferor is the legal owner of the aforesaid tangible personal property and the aforesaid intangible personal property (including but not limited to the property set forth in **Schedule H-1** (Description of Tangible Personal Property and Fixtures) and **Schedule H-2** (Description of Intangible Personal Property)), and that said property is being sold, assigned and transferred to Transferee free and clear of all liens and encumbrances.

3. Governing Law. This Bill of Sale shall be governed by, and construed and interpreted in accordance with, the laws of the State of Hawai'i.

**[Signatures for Bill of Sale and Assignment
Appear on the Following Page]**

IN WITNESS WHEREOF, Transferor and Transferee have executed this instrument on the day and year first above written.

_____,
a _____ corporation

_____,
a Hawai'i corporation

By: _____

By: _____

Name:

Name:

Title:

Title:

("Transferor")

("Transferee")

Schedule H-1
Description of Tangible Personal Property and Fixtures

Schedule H-2
Description of Intangible Personal Property

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup () To:

Tax Map Key Nos.:

Total pages: _____

ATTACHMENT I
FORM OF ASSIGNMENT OF LEASE AND ASSUMPTION

THIS ASSIGNMENT is made as of this ____ day of _____, 20__, by _____, a _____, whose principal place of business and post office address is _____, hereinafter called the "**Assignor**," and _____, a Hawai'i corporation, whose principal place of business and post office address is _____, Honolulu, Hawai'i 968__, hereinafter called the "**Assignee**,"

W I T N E S S E T H:

THAT the Assignor, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration to it paid by the Assignee, the receipt and sufficiency of which are hereby acknowledged, and of the covenants and agreements of the Assignee hereinafter contained and on the part of the Assignee to be faithfully kept and performed, does hereby sell, assign, delegate, transfer, set over and deliver unto the Assignee, and its successors and assigns, all of Assignor's right, title and interest in and to the lease described in **Schedule 1** (the "**Lease**"); together with all interests thereto appertaining, and together with the personal property located on the land thereby demised.

And all of the estate, right, title and interest of the Assignor in and to the land thereby demised, and all buildings, improvements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or used, occupied and

enjoyed in connection with said Lease and the land thereby demised.

TO HAVE AND TO HOLD the same unto Assignee and its successors and assigns, for and during the respective unexpired term of said Lease, and as to said personal property (if any) absolutely and forever.

AND, in consideration of the premises, the Assignor does hereby covenant with the Assignee that the Assignor is the lawful owner of the herein described real property; that said Lease is in full force and effect and is not in default; that said real property is free and clear of and from all liens and encumbrances, except for the lien of real property taxes not yet by law required to be paid; that the Assignor is the lawful owner of said personal property (if any) and that Assignor's title thereto is free and clear of and from all liens and encumbrances, that the Assignor has good right to sell and assign said real property and personal property (if any) as aforesaid; and, that the Assignor will WARRANT AND DEFEND the same unto the Assignee against the lawful claims and demands of all persons, except as aforesaid.

AND, in consideration of the foregoing, the Assignee does hereby promise, covenant and agree to and with the Assignor and to and with the lessor under the Lease, that the Assignee will, effective as of and from the date of the execution and delivery of this instrument and during the residue of the term of said Lease, pay the rents thereby reserved as and when the same become due and payable pursuant to the provisions of said Lease, and will also faithfully observe and perform all of the covenants and conditions contained in said Lease which from and after the date hereof are or ought to be observed and performed by the lessee therein named, and will at all times hereafter indemnify and save harmless the Assignor from and against the nonpayment of said rent and the nonobservance or nonperformance of said covenants and conditions and each of them.

The terms "Assignor" and "Assignee," as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context hereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein. The term "**Lease**," as and when used herein, means the lease or sublease demising the leasehold estate described in **Schedule 1**, together with all recorded amendments thereof, if any, whether or not listed in **Schedule 1**. The term "rent," as and when used herein, means and includes all rents, taxes, assessments and any other sums charged pursuant to the Lease.

This instrument may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument binding on all the Parties hereto, notwithstanding that all the Parties are not signatory to the original or the same counterpart.

**[Signatures for Assignment of Lease and Assumption are
on following page.]**

IN WITNESS WHEREOF, Company and Assignor have executed this instrument as of the date first above written.

By _____
Name:
Title:

By _____
Name:
Title:

“Assignor”

By _____
Name:
Title:

By _____
Name:
Title:

“Assignee”

STATE OF HAWAI'I)
) SS:
CITY AND COUNTY OF HONOLULU)

On this ____ day of _____, 20____, before me personally
appeared _____ and _____, to me
known to be the persons described in and who executed the foregoing instrument, and
acknowledged that such persons executed such instrument as the free act and deed of
such persons and if applicable in the capacity shown, having been duly authorized to
execute such instrument in such capacity.

(Official Stamp or Seal) Signature: _____
Print Name: _____
Notary Public, State of Hawai'i
My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or
Description: _____

Doc. Date _____ No. of Pages: ____

Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary Date of Notarization and
Certification Statement_ (Official Stamp or Seal)

Printed Name of Notary

SCHEDULE 1

- Description of Lease
- To Be Attached

ATTACHMENT J
ADJUSTMENT TO LUMP SUM PAYMENT

Under the Company's previous forms of as-available power purchase agreements for renewable energy, the independent power producer was compensated for the production and delivery of electrical energy and assumed the risk of non-payment for events such as Force Majeure that prevented such production and delivery. Although under this Agreement Seller's compensation will be in the form of a Lump Sum Payment rather than for the production and delivery of electrical energy, it is not the intent of the Parties that Seller should be entitled to unrestricted compensation in circumstances in which an independent power producer would not have been able to earn compensation under the Company's prior form of power purchase agreements (i.e., if the Facility or any portion thereof is unable to receive and/or deliver electric energy). Although the liquidated damages that are payable if the Annual EAF fails to satisfy the EAF Performance Metric address this issue in certain of the circumstances when the Facility or a portion thereof is unable to receive or deliver electric energy, the Annual EAF does not account for events of Force Majeure because such events are included in the ExcludedTime classification under **Attachment U** (Annual Equivalent Availability Factor) to this Agreement. Accordingly, the monthly Lump Sum Payment shall be adjusted downward pro rata for each Day or portion thereof during the calendar month in question that the Facility inverter(s) or a portion thereof was not available to respond to Company Dispatch/Charge because of a Force Majeure condition (a) affecting the Facility or any portion thereof or (b) that otherwise delays or prevents Seller from making the Facility inverter(s) in question or a portion thereof available for Company Dispatch.

Example: If a Facility has forty (40) battery energy storage system inverter(s) and, during the month of June (which has 30 calendar days), one (1) inverter is not available to respond to Company Dispatch/Charge for a period of ten (10) Days due to a Force Majeure condition as aforesaid, the monetary amount of the resulting downward adjustment to the monthly Lump Sum Payment for the month of June would be calculated as follows:

$$\text{Monetary Amount of Downward Adjustment} = \text{MLSP} \times \frac{1}{40} \times \frac{10}{30}$$

where:

MLSP = The monthly Lump Sum Payment that would be payable for such month but for the downward adjustment

For purposes of determining the monetary amount of the foregoing downward adjustment, the product obtained by multiplying a monetary value by a fraction shall be rounded to the nearest cent.

[Attachment K will be revised to reflect the results of the IRS]

ATTACHMENT K
GUARANTEED PROJECT MILESTONES

[For Developer Interconnection Build]

Guaranteed Project Milestone Date	Description of Each Guaranteed Project Milestone
[SPECIFY DATE CERTAIN]	<u>Construction Financing Milestone</u> : Seller shall provide Company with documentation reasonably satisfactory to Company evidencing (a) the closing on financing for the Facility including ability to draw on funds by [insert same date certain as in left column] or (b) the financial capability to construct the Facility
[SPECIFY DATE CERTAIN]	<u>Permit Application Filing Milestone</u> : Seller shall provide Company with documentation reasonably satisfactory to Company evidencing the filing by or on behalf of Seller of the following applications for Governmental Approvals required for the ownership, construction, operation and maintenance of the Facility: [INSERT LIST OF GOVERNMENTAL APPROVALS]
[SPECIFY DATE CERTAIN]	Guaranteed Commercial Operations Date

[Attachment K will be revised to reflect the results of the IRS]

**ATTACHMENT K-1
SELLER'S CONDITIONS PRECEDENT AND COMPANY
MILESTONES**

[For Developer Interconnection Build]

Seller's Conditions Precedent Date	Description of Each of Seller's Conditions Precedent
	Seller shall make payment to Company of the amount required under Section 3(b)(ii) of Attachment G (Company-Owned Interconnection Facilities)
	Seller shall provide Company a right of entry for the Company-Owned Interconnection Facilities site(s).
	Seller shall make payment to Company of the amount required under Section 3(b)(iii) of Attachment G (Company-Owned Interconnection Facilities)
	Seller's EPC Contractor shall obtain grading permit.
	Seller's EPC Contractor shall obtain and provide Company all permits (other than any required occupancy permits, if applicable), licenses, easements and approvals to construct the Company-Owned Interconnection Facilities, including the building permit.
No later than three (3) months prior to commencement of the Acceptance Test	Seller shall provide station service power, if applicable, as required by Company.
No later than three (3) months prior to the commencement of the Acceptance Test	Seller or Seller's EPC Contractor shall have Hawaiian Telcom Backup (or equivalent) installed which shall consist of a 1.5 Mbps Routed Network Services circuit for backup SCADA communications from Company's Substation at Seller's Facility to Company's EMS located at 820 Ward Avenue, Honolulu, Hawai'i.
	Seller's EPC Contractor shall complete installation of physical bus and structures within Company's substation up to the demark point as necessary to interconnect.

[specify date] (“Test Ready Deadline”)	Seller’s EPC Contractor shall complete construction of the Seller-Owned Interconnection Facilities, Seller shall have satisfied the conditions precedent to the conduct of the Acceptance Test set forth in Section 2(f)(ii) of Attachment G (Company-Owned Interconnection Facilities) and Seller is otherwise ready to conduct the Acceptance Test.
	Seller shall close grading permit, unless Seller provides documentation establishing, to Company's reasonable satisfaction, that closing the grading permit is not required by the relevant Governmental Authority prior to energization, testing and use of the Facility.

COMPANY MILESTONES

If Seller satisfies the foregoing Seller's Conditions Precedent, the following Company Milestones shall apply:

Company Milestone Date	Description of Each Company Milestone
[] Business Days following the Test Ready Deadline	Company shall, subject to Seller’s continued satisfaction of the requirements set forth in Section 2(f)(ii) and Section 2(f)(iii) of Attachment G (Company-Owned Interconnection Facilities), commence Acceptance Testing.
	Energization of Company-Owned Interconnection Facilities, provision of back-feed power to support commissioning.

[Attachment L will be revised to reflect the results of the IRS]

ATTACHMENT L
REPORTING MILESTONES

[For Developer Interconnection Build]

Reporting Milestone Date	Description of Each Reporting Milestone
[Date]	Seller shall provide Company with a redacted copy of the executed Facility equipment, engineering, procurement and construction, or other general contractor agreements; provided, that, under no circumstances shall redactions conceal information that is necessary for Company to verify its rights under the Agreement
[Date]	Seller shall provide Company with redacted copies of executed purchase orders/contracts for the delivery and installation of Facility inverters
[Date]	Seller shall provide Company with copies, as applicable, of executed Facility operating agreements
[Date]	Construction Start Date (defined as the start of civil work on Site)
[Date]	Seller shall have laid the foundation for all Facility buildings and step-up transformer facilities
[Date]	All inverters for the Facility shall have been installed at the Site
[Date]	The step-up transformer shall have been installed at the Site

ATTACHMENT M
FORM OF LETTER OF CREDIT

[Bank Letterhead]

[Date]

Beneficiary: Hawaiian Electric Company, Inc.

[Address]

[Bank's Name]

[Bank's Address]

Re: **[Standby Letter of Credit Number]**

Ladies and Gentlemen:

We hereby establish, in your favor, our standby Letter of Credit Number _____ (this "**Letter of Credit**") for the account of **[Applicant's Name]** and **[Applicant's Address]** in the initial amount of \$_____ **[dollar value]** and authorize you, Hawaiian Electric Company, Inc. ("**Beneficiary**"), to draw at sight on **[Bank's Name]**.

Subject to the terms and conditions hereof, this Letter of Credit secures **[Project Entity Name]**'s certain obligations to Beneficiary under the Energy Storage Power Purchase Agreement dated as of _____ between **[Project Entity Name]** and Beneficiary.

This Letter of Credit is issued with respect to the following obligations:
_____.

This Letter of Credit may be drawn upon under the terms and conditions set forth herein, including any documentation that must be delivered with any drawing request.

Partial draws of this Letter of Credit are permitted. This Letter of Credit is not transferable. Drafts on us at sight shall be accompanied by a Beneficiary's signed statement signed by a representative of Beneficiary as follows:

The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of Hawaiian Electric Company, Inc., and [(ii) the amount of the draft accompanying this certification is due and owing to Hawaiian Electric Company, Inc. under the terms of the Energy Storage Power Purchase Agreement dated as of _____, between _____ and Hawaiian Electric Company, Inc.] [(ii) the Letter of Credit will expire in less than thirty (30) days, it has not been replaced or extended and collateral is still required under **Section** ___ of the Energy Storage Power Purchase Agreement.¹]

¹ For draw relating to lapse of Letter of Credit while credit support is still required pursuant to the Energy Storage Power Purchase Agreement.

Such drafts must bear the clause “Drawn under **[Bank's Name and Letter of Credit Number _____ and date of Letter of Credit.]**”

All demands for payment shall be made by presentation of originals or copies of documents, or by facsimile transmission of documents to **[Bank Fax Number]** or other such number as specified from time to time by the bank, with originals or copies of documents to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at **[Bank Phone Number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation. If presented by facsimile, original documents are not required.

This letter of credit shall expire one year from the date hereof. Notwithstanding the foregoing, however, this letter of credit shall be automatically extended (without amendment of any other term and without the need for any action on the part of the undersigned or Beneficiary) for one year from the initial expiration date and each future expiration date unless we notify you and Applicant in writing at least thirty (30) days prior to any such expiration date that this letter of credit will not be so extended. Any such notice shall be delivered by registered or certified mail, or by FedEx, both to:

Beneficiary at:

Director, Renewable Acquisition Division
Hawaiian Electric Company, Inc.
Central Pacific Plaza
220 South King Street, 21st Floor
Honolulu, Hawaii 96813

and to

SVP and Chief Financial Officer
Hawaiian Electric Company, Inc.
900 Richards Street, 4th Floor
Honolulu, Hawai'i 96813

And to Applicant at:

We hereby agree with drawers that drafts and documents as specified above will be duly honored upon presentation to **[Bank's Name]** and **[Bank's Address]** if presented on or before the then-current expiration date hereof.

Payment of any amount under this Letter of Credit by **[Bank]** shall be made as

the Beneficiary shall instruct on the next Business Day after the date the **[Bank]** receives all documentation required hereunder, in immediately available funds on such date. As used in this Letter of Credit, the term "Business Day" shall mean any day other than a Saturday or Sunday or any other day on which banks in the State of **[Insert State of issuing Bank's location]** are authorized or required by law to be closed.

Unless otherwise expressly stated herein, this irrevocable standby letter of credit is issued subject to the rules of the International Standby Practices, International Chamber of Commerce publication no. 590 ("**ISP98**").

[Bank's Name]:

By: _____
[Authorized Signature]

ATTACHMENT N

ACCEPTANCE TEST GENERAL CRITERIA

[This Attachment to be modified based on the type/design of the Facility and the results of the IRS]

Upon final completion of Company review of the Facility's drawings, final test criteria and procedures shall be agreed upon by Company and Seller no later than thirty (30) Days prior to conducting the Acceptance Test in accordance with the Agreement. The Acceptance Test may include the following:

1. Interconnection:

(a) Based on manufacturer's specification, test the local operation of the Facility's kV breakers, which connect the Facility to Company System – must open and close locally using the local controls. Test and ensure that the status shown on the Energy Management System is the same as the actual physical status in the field.

(b) Remotely test the operation of the Facility's ___kV breakers which connect the Facility to Company System – must open and close remotely from Company's EMS. Test and ensure that the status shown on the EMS is the same as the actual physical status in the field.

(c) Relay test engineers to connect equipment and simulate certain inputs to test and ensure that the protection schemes such as any under/over frequency and under/over voltage protection or the Direct Transfer Trip operate as designed. (For example, a fault condition may be simulated to confirm that the breaker opens to sufficiently clear the fault. Additional scenarios may be tested and would be outlined in the final test criteria and procedures.) Seller to also test the synchronizing mechanisms to which the Facility would be synchronizing and closing into the Company System to ensure correct operation. Other relaying also to be tested as specified in the protection review of the IRS and on the single line diagram, **Attachment E** (Single-Line Drawing and Interface Block Diagram) for the Facility.

(d) All ___kV breaker disconnects and other high voltage switches will be inspected to ensure they are properly aligned and operated manually or automatically (if designed).

(e) Switching Station inspections – The Switching Station may be inspected to test and ensure that the equipment that Seller has installed is installed and operating correctly based upon agreed-to design. Wiring may be field verified on a sample basis against the wiring diagrams to ensure that the installed equipment is wired properly. The grounding mat at the Switching Station may be tested to make sure there is adequate grounding of equipment.

(f) Communication testing – Communication System testing to occur to ensure correct operation. Detailed scope of testing will be agreed by Company and Seller to reflect installed systems and communication paths that tie the Facility to Company's communications system and Company's revenue meter data acquisition system.

(g) Various contingency scenarios to be tested to ensure adequate operation, including testing contingencies such as loss of communications, and fault simulations to ensure that the Facility's ___ kV breakers, if any, open as they are designed to open. (Back up relay testing)

2. Witness of Facility protection scheme testing:

(a) Company may have a representative on-site when Seller performs any testing dealing with Seller's protection schemes such as any under/over voltage or under/over frequency protection schemes to ensure they meet the performance requirements of this Agreement and the IRS.

3. Telephone Communication:

(a) Test to confirm Company has a direct line to the Facility control room at all times and that it is programmed correctly.

(b) Test to confirm that the Facility operators can sufficiently reach Company System Operator.

If agreed by the Parties in writing, some requirements may be postponed to the Control Systems Acceptance Test.

ATTACHMENT O

CONTROL SYSTEM ACCEPTANCE TEST CRITERIA

[This Attachment to be modified based on the type/design of the Facility and the results of the IRS]

Final test criteria and procedures shall be agreed upon by Company and Seller no later than thirty (30) Days prior to conducting the Control System Acceptance Test in accordance with Good Engineering and Operating Practices and with the terms of this Agreement. The Control System Telemetry and Control List is necessary for the effective operation of the Company System and will be tested during the Control System Acceptance Test.

The Control System Acceptance Test is comprised of two parts, a set of onsite (at Facility) specific tests and a monitoring performance test. These tests may include the following:

On-site Tests (Between Facility and Company Dispatch Center):

1. SCADA Test to verify the status and analog telemetry, and if the remote controls between the Company's EMS and the Facility are working properly end-to-end.
2. Dispatch Test to verify if the Facility's active power controls and the Active Power Control Interface with the Company's EMS are working properly. This test is generally conducted by setting different active power setpoints and limits and observing the proper dispatch of the appropriate ramp rate of the Facility's real power output.
3. Control Test for Voltage Regulation to verify the Facility can properly perform automatic voltage regulation as defined in this Agreement. This test is generally conducted by making small adjustments of the voltage setpoint and verifying by observation that the Facility regulates the voltage at the point of regulation to the setpoint by delivering/receiving reactive power to/from the Company System to maintain the applicable setpoint according to the reactive power control and the reactive amount requirements of **Section 3** (Performance Standards) of **Attachment B** (Facility Owned by Seller) to this Agreement.
4. Frequency Regulation Control Test to verify the Facility provides a frequency droop response as defined in this Agreement. This test is generally conducted by making adjustments of the frequency reference setting and verifying by observation that the Facility responds per droop and deadband settings.
5. Test other controls defined in this Agreement or mutually agreed upon in writing by the Parties to enable, disable, dispatch and/or schedule the energy storage system real power and energy operations.
6. Fast Frequency Response Control Test to verify the Facility provides the fast frequency response required in this Agreement. Test is generally conducted by simulating rate of change of frequency and/or frequency inputs and verifying by

observation that the Facility responds per design and settings. **[DRAFTING NOTE: This test only applies if Facility provides fast frequency response.]**

7. Loss-of-Communication Test to verify the Facility will properly shutdown upon the failure of the direct-transfer-trip communication system. This test is generally conducted by simulating a communications failure and observing the proper shutdown of the Facility.
8. Round Trip Efficiency Test, as described in **Attachment T** (Facility Tests) to verify that the round trip efficiency of the BESS is not less than [_____] percent ([__]%). **[Note – The round trip efficiency percentage will be taken from Seller’s RFP Proposal.]**
9. Capacity Test to verify the Capacity Ratio.

Monitoring Test:

- (a) The monitoring test requires the Facility to operate as it would in normal operations.
- (b) To ensure useful and valid test data is collected, the monitoring test shall end seven (7) continuous Days from the start of the Monitoring Test.
- (c) The performance of the Facility during the period of a successfully completed monitoring test is evaluated for, e.g., voltage regulation, frequency response, dispatch control, operating limits and ramp rate performance, to verify the performance meets the requirements of this Agreement.

ATTACHMENT P
SALE OF FACILITY BY SELLER

1. Company's Right of First Negotiation Prior to End of the Term.

(a) Right of First Negotiation. Commencing as of the Commercial Operations Date, should Seller desire to sell, transfer or dispose of its right, title, or interest in the Facility, in whole or in part, including a Change in Control (as defined below), then, other than through an "**Exempt Sale**" (as defined below):

(i) Seller shall first offer to sell such interest to Company by providing Company with written notice of the same (the "**Offer Notice**"), which notice shall identify the proposed purchase price for such interest (including a description of any consideration other than cash that will be accepted) (the "**Offer Price**") and any other material terms of the intended transaction, and Company may, but shall not be obligated to, purchase such interest at the Offer Price and upon the other material terms and conditions specified in the Offer Notice, and in accordance with the terms and conditions of this **Attachment P** (Sale of Facility by Seller). Seller shall provide to Company as part of the Offer Notice, information in its possession regarding the Facility to allow Company to conduct due diligence on the potential purchase, including, but not limited to information on the operational status of the Facility and its components, and the amount of debt or other material Seller obligations remaining with respect to the Facility (the Offer Notice and due diligence information on the Facility are collectively referred to as, the "**Offer Materials**"). Within five (5) Days of Company's receipt of the Offer Materials, if Company believes the due diligence information is incomplete, Company shall specify in writing the additional information Company requires to conduct its due diligence. The date on which Company receives the Offer Materials from Seller is referred to hereinafter as the "**Offer Date.**"

(ii) If Company desires to purchase such interest, Company shall indicate so by delivering to Seller a binding, written offer to purchase such interest at the Offer Price and on the terms and conditions specified in the Offer Notice within thirty (30) Days of the Offer Date (an "**Acceptance Notice**"). In the event Company timely delivers an Acceptance Notice, Seller shall sell and transfer to Company the interest substantially on the terms and conditions contained in the Offer Notice consistent with this **Attachment P** (Sale of Facility by Seller) and in accordance with definitive documentation to be entered into between Seller and Company. The Parties shall have sixty (60) Days from the Company's Acceptance Notice, or such other extended timeframe as agreed to by the Parties in writing, to negotiate in good faith, the terms and conditions of a purchase and sale agreement. The period beginning with the Offer Date and ending with such sixty (60) Day period (as may be extended as aforesaid) is referred to as the "**Right of First Negotiation Period.**"

(iii) Seller shall not solicit any offers for the sale of such interest to any other party during the Right of First Negotiation Period unless, during that period, Company provides Seller with written notice that Company no longer desires to purchase such interest, whereupon negotiations shall terminate.

(iv) In the event that (A) Company fails to timely deliver an Acceptance Notice, (B) Company delivers a notice to Seller that it no longer desires to purchase the interest, or (C) the Parties are not able to execute a purchase and sale agreement within the 60-Day period set forth in **Section 1(a)(ii)** of this **Attachment P** (Sale of Facility by Seller), Seller may for a period of two hundred seventy (270) Days following the event specified in subsection (A), (B) or (C) above, commence solicitation of offers and negotiations from and with other parties for the sale of such interest. If the interest is not transferred to a purchaser or purchasers for any reason within the two hundred seventy (270) Day period, the interest may only be transferred by again complying with the procedures set forth in this **Section 1(a)** (Right of First Negotiation) of **Attachment P** (Sale of Facility by Seller); provided, however, if Seller and the prospective purchaser have entered into definitive agreement(s) for the sale of the interest that was reasonably expected to close within such two hundred seventy (270) Day period and such agreement(s) remain in full force and effect between Seller and such prospective purchaser and are subject to conditions precedent that are expected to be satisfied within a reasonable period, the two hundred seventy (270) Day period shall be extended as to such agreement(s) and such prospective purchaser for up to one hundred eighty (180) additional Days or, if sooner, until such date that such agreement(s) have been terminated, cancelled or otherwise become no longer in full force and effect.

(v) After expiration of the Right of First Negotiation Period, Company will not be precluded from providing offers or proposals to Seller along with other prospective purchasers in accordance with any offer or bid procedures established by Seller in its discretion.

(b) Change in Ownership Interests and Control of Seller. Commencing as of the Commercial Operations Date, the Right of First Negotiation shall also be triggered by a transfer or sale of an ownership interest in Seller (whether in a single transaction or a series of related or unrelated transactions) following which **[Insert Parent Entity]** or an entity controlled by **[Parent Entity]** is no longer a direct or indirect owner of at least fifty-one percent (51%) of the equity interest or voting control of Seller (excluding any equity interest or voting control of Seller held by a tax equity investor or for Financing Purposes (as defined below)) (such transfer of ownership interest and change in control collectively referred to as a “**Change in Control**”); provided, however that a transfer or sale whereby **[Parent Entity]** retains the possession, directly or indirectly, or the power to direct or cause the direction of the management and policies of Seller, whether through ownership, by contract, or otherwise, shall not be deemed a Change in Control.

(c) Exempt Sales. Exempt Sales shall not trigger a Right of First Negotiation and shall not require the consent of Company. As used herein, “**Exempt Sales**” means: (i) a change in ownership of the Facility or equity interests in Seller resulting from the direct or indirect transfer or assignment by or of Seller in connection with financing or refinancing of the Facility (“**Financing Purposes**”), including, without limitation, any exercise of rights or remedies (including foreclosure) with respect to Seller’s right, title, or interest in the Facility or equity interests in Seller undertaken by any financing party in accordance with applicable financing documents, and including, without limitation, (x) a sale and leaseback of the Facility, (y) an inverted lease, (z) a sale or transfer of equity in Seller to facilitate a tax credit

financing (including any partnership "flip" transaction), (ii) a disposition of equipment in the ordinary course of operating and maintaining the Facility, (iii) a sale that does not result in a Change in Control, and (iv) a sale or transfer of any interest in Seller or the Facility to one or more companies directly or indirectly controlling, controlled by or under common control with Seller.

(d) Seller's Right to Transfer. The provisions of this **Section 1(d)** (Seller's Right to Transfer) shall apply (i) from the Execution Date through the Commercial Operations Date and (ii) from the Commercial Operations Date in the event that Company does not consummate a purchase pursuant to its exercise of the Right of First Negotiation in accordance with the terms and conditions of this **Attachment P** (Sale of Facility by Seller). In such circumstances, Seller shall, subject to the prior written consent of Company, which consent shall not be unreasonably withheld, conditioned or delayed, have the right to transfer or sell the Facility to any person or entity which proposes to acquire the Facility with the intent to continue the operation of the Facility in accordance with the provisions of this Agreement pursuant to an assignment of this Agreement. Company shall consent to the assignment of this Agreement to such prospective purchaser upon receiving documentation from Seller establishing, to Company's reasonable satisfaction, that the assignee (i) has a tangible net worth of \$100,000,000 or a credit rating of "BBB-" or better and has the ability to perform its financial obligations hereunder (or provides a guaranty from an entity that meets this description) in a manner consistent with the terms and conditions of this Agreement; (ii) has experience in the ownership of battery energy storage systems; and (iii) has at least five (5) years of experience in the operation (or contracts with an entity that has at least five (5) years of experience in the operation) of battery energy storage systems. Notwithstanding the foregoing, Company consent shall not be required for any Exempt Sale.

(e) Purchase and Sale Agreement and PUC Approval. In the event that Company exercises its Right of First Negotiation under **Section 1(a)** (Right of First Negotiation) of this **Attachment P** (Sale of Facility by Seller) and the Parties conclude a purchase and sale agreement, such agreement shall contain, at a minimum, the terms set forth in **Section 4** (Purchase and Sale Agreement) of this **Attachment P** (Sale of Facility by Seller), and such agreement shall be subject to PUC Approval as provided in **Section 5** (PUC Approval) of this **Attachment P** (Sale of Facility by Seller).

(f) Right of First Refusal. In the event the Parties fail to agree upon a sale of the Facility or an interest in the Facility to Company prior to the expiration of the Right of First Negotiation Period, the provisions of this **Section 1(f)** (Right of First Refusal) of this **Attachment P** (Sale of Facility by Seller) shall apply if (i) Seller thereafter offers to sell the Facility to a third party for less than (as applicable) the final amount Company had offered to purchase the Facility or (ii) an ownership interest in the Facility that would result in a Change in Control is offered for sale to a third party that is less than the proportionate share of (as applicable) the final amount Company had offered to purchase the Facility. (By way of example, if the final amount offered by Company to purchase the Facility was \$100, and the ownership interest being offered for sale is 75%, the "proportionate share" is \$75, such that an offer to sell such ownership interest for less than \$75 would trigger this **Section 1(f)** (Right of First Refusal) of this **Attachment P** (Sale of Facility by Seller).) Seller shall notify Company in writing of an offer that triggers this **Section 1(f)** (Right of First Refusal) of

this **Attachment P** (Sale of Facility by Seller) and Company shall have the right to purchase the Facility for the amount of such offer on similar terms and conditions consistent with this **Attachment P** (Sale of Facility by Seller) and subject to PUC Approval; provided, that Company shall have one (1) month in which to notify Seller of its intent to exercise this right. If the offer of which Seller notifies Company as aforesaid is an offer to sell the Facility, Company shall have the right to purchase the Facility for the amount of such offer on similar terms and conditions. If the offer of which Seller notifies Company as aforesaid is an offer to sell an ownership interest that could result in a Change in Control, Company shall have the right to purchase the Facility by a price that is proportionate to the amount at which such ownership interest was offered on the terms and conditions to be negotiated by the Parties on the basis of **Section 4** (Purchase and Sale Agreement) of this **Attachment P** (Sale of Facility by Seller), and otherwise consistent with this **Attachment P** (Sale of Facility by Seller). (By way of example, if a 75% ownership Interest is being offered for sale at \$75, the proportionate amount at which Company shall have the right to purchase the Facility would be \$100.)

2. Company's Right of First Negotiation to Purchase at End of Term.

(a) Option of Exclusive Negotiation Period. Company shall have the option of an exclusive negotiation period to negotiate a purchase of the Facility on the last Day of the Term, and all rights of Seller therein or relating thereto. Company shall indicate its preliminary interest in exercising the option for exclusive negotiation by delivering to Seller a notice of its preliminary interest not less than two (2) years prior to the last Day of the Term. If Company fails to deliver such notice by such date, Company's option shall terminate.

(b) Negotiations. Once Company has given such notice of preliminary interest to Seller, for a period not to exceed three (3) months, Company shall have the exclusive right to negotiate in good faith with Seller the terms of a purchase and sale agreement pursuant to which Company may purchase the Facility, which purchase and sale agreement shall include, without limitation, the terms set forth in **Section 4** (Purchase and Sale Agreement) of this **Attachment P** (Sale of Facility by Seller) and a price equal to the Offer Price as presented by Seller in accordance with the procedures identified in **Section 1(a)(i)** through **(v)** of this **Attachment P** (Sale of Facility by Seller). The Parties may agree in writing to extend this period for negotiations. (Such period, as extended as aforesaid, is referred to herein as the "**Exclusive Negotiation Period**.") Seller shall not solicit any offers or negotiate the terms for the sale of the Facility with any other entity during the Exclusive Negotiation Period, unless, during the Exclusive Negotiation Period, Company gives written notice that such negotiations are terminated.

(c) Purchase and Sale Agreement and PUC Approval. In the event that Company exercises its right of exclusive negotiation under **Section 2(a)** (Option of Exclusive Negotiation Period) of this **Attachment P** (Sale of Facility by Seller) and the Parties conclude a purchase and sale agreement pursuant to **Section 2(b)** (Negotiations) of this **Attachment P** (Sale of Facility by Seller), such agreement shall contain, at a minimum, the terms set forth in **Section 4** (Purchase and Sale Agreement) of this **Attachment P** (Sale of Facility by Seller), and such agreement shall

be subject to PUC Approval as provided in **Section 5** (PUC Approval) of this **Attachment P** (Sale of Facility by Seller).

(d) Right of First Refusal. In the event the Parties fail to agree upon a sale of the Facility to Company prior to the expiration of the Exclusive Negotiation Period provided in **Section 2(b)** (Negotiations) of this **Attachment P** (Sale of Facility by Seller), and Seller thereafter offers to sell the Facility to a third party for less than the final amount Company had offered to purchase the Facility, Seller shall notify Company in writing of such offer and Company shall have the right to purchase the Facility for the amount of such offer and on no less favorable terms and conditions consistent with this **Attachment P** (Sale of Facility by Seller) and subject to PUC Approval; provided, however, that Company shall have one (1) month in which to notify Seller of its intent to exercise this right. The Right of First Refusal shall not apply to any offer to purchase the Facility received from a third party more than twelve (12) months after the end of the Term.

3. Procedure to Determine Fair Market Value of the Facility.

(a) If the Parties have agreed to effectuate a sale of the Facility pursuant to **Section 23.5** (Consolidation) and are unable to agree on the fair market value of the Facility, each of Company and Seller shall engage the services of an independent appraiser experienced in appraising battery energy storage system assets similar to the Facility to determine separately the fair market value of the Facility. Subject to the appraisers' execution and delivery to Seller of a suitable confidentiality agreement in form reasonably acceptable to Seller, Seller shall provide both appraisers full access to the books, records and other information related to the Facility required to conduct such appraisal. Company shall pay all reasonable fees and costs of both appraisers, subject to **Section 3(c)** of this **Attachment P** (Sale of Facility by Seller). Each of Company and Seller shall use reasonable efforts to cause its appraisal to be completed within two (2) months following the engagement of the independent appraisers. If for any reason (other than failure by Seller to provide full access to Company's appraiser) one of the appraisals is not completed within such two (2) month period, the results of the other, completed appraisal shall be deemed to be the Appraised Fair Market Value of the Facility. Each Party may provide to both appraisers (with copies to each other) a list of factors which the Parties suggest be taken into consideration when the appraisers generate their appraisals.

(b) Company and Seller shall exchange the results of their respective appraisals when completed and, in connection therewith, the Parties and their appraisers shall confer in an attempt to agree upon the fair market value of the Facility.

(c) If, within thirty (30) Days after completion of both appraisals, the Parties cannot agree on a fair market value for the Facility, within ten (10) Days thereafter the first two appraisers shall by mutual consent choose a third independent appraiser. If the first two appraisers fail to agree upon a third appraiser, such appointment shall be made by DPR upon application of either Party. The Parties shall direct the third appraiser (i) to select one of the appraisals generated by the first two appraisers as the Appraised Fair Market Value of the Facility (without compromise, aka "baseball" arbitration), and (ii) to complete his or her work within one month following his or her

retention. If the third appraiser selects the appraisal originally generated by Seller's appraiser, Company shall pay the fees and costs of the third appraiser. If the third appraiser selects the appraisal originally generated by Company's appraiser, Seller shall pay the fees and costs of the third appraiser and shall pay or reimburse Company for the costs of Seller's original appraiser.

(d) The "**Appraised Fair Market Value of the Facility**" means the fair market value determined by appraisal pursuant to **Section 3(a)** or **Section 3(c)** of this **Attachment P** (Sale of Facility by Seller) as applicable.

4. Purchase and Sale Agreement. The purchase and sale agreement ("**PSA**") concluded by the Parties pursuant to this **Attachment P** (Sale of Facility by Seller) (as applicable) shall contain, among other provisions, the following:

(a) Seller shall, as of the closing of the sale, convey title to the Facility consistent with the state of title in existence as of the date of execution of the PSA, including all rights of Seller in the Facility or relating thereto, free and clear of all liens, claims, encumbrances, or rights of others, except any Permitted Lien;

(b) To the extent assignable or transferrable, Seller shall assign or transfer to Company all of Seller's interest in all Project Documents and Governmental Approvals that are then in effect and that are utilized for the operation or maintenance of the Facility;

(c) Seller shall execute and deliver to Company such deeds, bills of sale, assignments and other documentation as Company may reasonably request to convey title to the Facility consistent with the state of title in existence as of the date of execution of the PSA, free from all liens, claims, encumbrances, or rights of others, except any Permitted Lien;

(d) Seller shall cause all liens on the Facility for monies owed (including liens arising from Financing Documents), and any liens in favor of Seller's affiliates, to be released prior to closing on the sale of the Facility to Company;

(e) Seller shall warrant, as of the date of the closing of the sale of the Facility to Company, title to the Facility consistent with the state of title in existence as of the date of execution of the PSA, is free and clear of all other liens, claims, encumbrances and rights of others, except any Permitted Lien;

(f) Company shall have no liability for damages (including without limitation, any development and/or investment losses, liabilities or damages, and other liabilities to third parties) incurred by Seller on account of Company's purchase of the Facility, nor any other obligation to Seller except for the purchase price, and Seller shall indemnify Company against any such losses, liabilities or damages;

(g) Company shall assume all of Seller's obligations with respect to the Facility accruing from and after the date of closing on the sale of the Facility to Company, including (i) to the extent assignable, all permits held by, for, or related to the Facility, and (ii) all of Seller's agreements with respect to the Facility provided to and approved by Company at least thirty (30) Days prior to the date of closing on the

sale of the Facility to Company, except for such agreements Company has elected to terminate, in which case any related termination expenses shall be, at Company's option, paid directly by Company and deducted from the purchase price;

(h) Seller shall indemnify Company against all of Seller's obligations with respect to the Facility accruing through the date of closing the sale of the Facility to Company, and Company shall indemnify Seller against all of Company's obligations with respect to the Facility accruing from and after the date of closing on the sale of the Facility to Company;

(i) Unless otherwise agreed to by the Parties, Seller makes no representations or warranties with respect to the condition of the Facility, and Company shall purchase the Facility on an as-is basis;

(j) Seller shall warrant that, except as disclosed to and approved by Company in writing at least thirty (30) Days prior to the date of closing on the sale of the Facility to Company, the Facility has been operated by Seller in conformity with all Laws;

(k) Seller shall warrant that Seller provided full access to Company and each appraiser in connection with the procedure to determine fair market value provided in **Section 3** (Procedure to Determine Fair Market Value of the Facility) of this **Attachment P** (Sale of Facility by Seller);

(l) If applicable, Seller's lease of the Site from Company will terminate and Seller will relinquish all rights, privileges and obligations relating to such lease; and

(m) Seller shall maintain the Facility in accordance with Good Engineering and Operating Practices between appraisal and the closing date.

As used in this **Attachment P** (Sale of Facility by Seller), "**Permitted Lien**" shall mean (i) any lien for taxes not yet due or delinquent or being contested in good faith by appropriate proceedings, (ii) any lien arising in the ordinary course of business by operation of applicable Laws with respect to a liability not yet due or delinquent or that is being contested in good faith, (iii) all matters that are disclosed (whether or not subsequently deleted or endorsed over) on any survey, in the title policies insuring any Land Rights or in any title commitments, title reports or other title materials, (iv) any matters that would be disclosed by a complete and correct survey of the Site, (v) zoning, planning, and other similar limitations and restrictions, and all rights of any Governmental Authority to regulate the Site and/or the Facility, (vi) all matters of record, (vii) any lien that is released on or prior to closing of the sale of the Facility to Company, (viii) statutory or common law liens in favor of carriers, warehousemen, mechanics and materialmen, and statutory or common law liens to secure claims for labor, materials or supplies arising in the ordinary course of business which are not delinquent, and (ix) the matters agreed by the Parties, to the extent that such Permitted Liens are taken into account at arriving at the appraised value.

5. PUC Approval. Any purchase and sale agreement related to the Facility entered into by the Parties is subject to approval by the PUC and the Parties'

respective obligations thereunder are conditioned upon receipt of such approval, except as specifically provided otherwise therein.

(a) Company shall submit the purchase and sale agreement to the PUC for approval promptly after execution by both Parties, but Company does not extend any assurances that PUC approval will be obtained. Seller will provide reasonable cooperation to expedite obtaining an approval order from the PUC, including providing information requested by the PUC and parties to the PUC proceeding in which approval is being sought. Seller understands that lack of cooperation may result in Company's inability to file an application with the PUC and/or failure to receive PUC approval. Unless otherwise agreed to in writing by the Parties, neither Company nor Seller shall seek reconsideration, appeal, or other administrative or judicial review of any unfavorable PUC order. The Parties agree that neither Party has control over whether or not a PUC approval order will be issued and each Party hereby assumes any and all risk arising from, or relating in any way to, the inability to obtain a satisfactory PUC order and hereby releases the other Party from any and all claims relating thereto.

(b) Seller shall seek participation without intervention in the PUC docket for approval of the purchase and sale agreement pursuant to applicable rules and orders of the PUC. The scope of Seller's participation shall be determined by the PUC. However, Seller expressly agrees to seek participation for the limited purpose and only to the extent necessary to assist the PUC in making an informed decision regarding the approval of the purchase and sale agreement. If the Seller chooses not to seek participation in the docket, then Seller expressly agrees and knowingly waives the right to claim, before the PUC, in any court, arbitration or other proceeding, that the information submitted and the application requesting the PUC approval are insufficient to meet Company's burden of justifying that the terms of the purchase and sale agreement are just and reasonable and in the public interest, or otherwise deficient in any manner for purposes of supporting the PUC's approval of the purchase and sale agreement. Seller shall not seek in the docket and Company shall not disclose any confidential information to Seller that would provide Seller with an unfair business advantage or would otherwise harm the position of others with respect to their ability to compete on equal and fair terms.

(c) In order to constitute an approval order from the PUC under this **Section 5** (PUC Approval) of this **Attachment P** (Sale of Facility by Seller), the order must approve the purchase and sale agreement, Company's funding arrangements and Company's acquisition of the Facility, shall not contain any terms and conditions deemed to be unacceptable by Company, and be in a form deemed reasonable by Company in its sole, but non-arbitrary, discretion.

(d) The Final Non-Appealable Order from the PUC must be obtained within six (6) months of the submission of the purchase and sale agreement to the PUC, or any extension of such period as agreed by the Parties in writing within ten (10) Days of the expiration of the six (6) month period; provided, however, that if the purchase and sale agreement governs a sale of the Facility executed pursuant to **Section 23.5** (Consolidation) of this Agreement, the Final Non-Appealable Order must be obtained within twelve (12) months of the submission of the purchase and agreement to the PUC, or any extension of such period as agreed by the Parties in writing within ten

(10) Days of the expiration of the twelve (12) month period. The term “**Final Non-Appealable Order from the PUC**” means an Approval Order from the PUC (i) that is not subject to appeal to any Circuit Court of the State of Hawai‘i, Intermediate Court of Appeals of the State of Hawai‘i, or the Supreme Court of the State of Hawai‘i, because the period permitted for such an appeal has passed without the filing of notice of such an appeal, or (ii) that was affirmed on appeal to any Circuit Court of the State of Hawai‘i, Intermediate Court of Appeals of the State of Hawai‘i, or the Supreme Court of the State of Hawai‘i, or was affirmed upon further appeal or appellate process, and that is not subject to further appeal, because the jurisdictional time permitted for such an appeal and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari has passed without the filing of notice of such an appeal or the filing for further appellate process. Such Final Non-Appealable Order from the PUC shall constitute and be referred to as “**PUC Approval**” for purposes of this **Attachment P** (Sale of Facility by Seller).

(e) If a Final Non-Appealable Order from the PUC has not been obtained prior to the deadline provided in **Section 5(b)** of this **Attachment P** (Sale of Facility by Seller), either Party may give written notice to the other Party that it does not wish to proceed further with a sale of the Facility to Company.

(f) If the Final Non-Appealable Order from the PUC does not satisfy the conditions set forth in **Section 5(a)** of this **Attachment P** (Sale of Facility by Seller), either (i) the Parties may agree to renegotiate and submit a revised purchase and sale agreement to the PUC, or (ii) either Party may give written notice to the other Party that it does not wish to proceed further with a sale of the Facility to Company.

6. Make Whole Amount. For purposes of **Section 23.5** (Consolidation) the “**Make Whole Amount**” shall be equal to the sum of the following: (a) Seller’s book value (including depreciation on a fifteen (15) year straight line basis) of all actual verifiable costs of studies, designs, engineering, and construction of the Facility and all Interconnection Facilities (including any Company-Owned Interconnection Facilities paid for by Seller), including cancellation charges and other costs of unwinding construction and demobilization if the determination is made prior to the Commercial Operations Date, (b) Seller’s book value of all actual verifiable costs and expenses acquiring real estate rights for the Facility and Interconnection Facilities, (c) Seller’s book value of all actual verifiable costs and expenses incurred in obtaining Governmental Approvals, (d) Seller’s book value of all actual verifiable costs of financing the Facility and the Interconnection Facilities, including fees and expenses of bankers, consultants and counsel, and any discounts or premiums paid in connection with any financing, (e) any actual verifiable costs of repaying any financing in connection with a sale, including prepayment penalties or premiums, make whole payments, minimum interest payments, breakage fees, payments on account of taxes, duties and other costs, and other costs of unwinding swaps or other hedges, (f) other breakage, make whole or indemnity payments arising as the result of Company’s purchase of the Facility, (g) tax costs, including recapture of federal or state tax credits and payment of transfer taxes, and (h) interest on the foregoing amounts at annual rate equal to the Prime Rate plus two percent (2%) as in effect from time to time from the date incurred through the date of payment, with all such costs being demonstrated by Seller with support and verified by Company. The items described in

clauses (e), (f) and (g) (and clause (h) to the extent applicable to clauses (e), (f) and/or (g)) are referred to as the “**Financial Termination Cost.**”

ATTACHMENT Q
REQUIRED INSURANCE

(See also **Article 21** (Insurance))

1. Worker's Compensation and Employers' Liability. This coverage shall include Worker's Compensation, Temporary Disability and other similar insurance required by applicable State or U.S. federal laws. If exposure exists, coverage required by the Longshore and Harbor Worker's Compensation Act (33 U.S.C. § 688) shall be included. Employers' Liability coverage limits shall be no less than:

Bodily Injury by Accident - \$1,000,000 each Accident

Bodily Injury by Disease - \$1,000,000 each Employee

Bodily Injury by Disease - \$1,000,000 policy limit

2. General Liability Insurance.

(a) This coverage shall include Commercial General Liability Insurance or the reasonable equivalent thereof, covering all operations by or on behalf of Seller. Such coverage shall provide insurance for bodily injury and property damage liability for the minimum limits of liability indicated below and shall include coverage for:

- (i)** Premises, operations, and mobile equipment,
- (ii)** Products and completed operations,
- (iii)** Claims resulting from alleged damage to the environment and damage or injury caused by hazardous conditions or hazardous materials to the extent such coverage is appropriate and available at a commercially reasonable cost,
- (iv)** Blanket contractual liability,
- (v)** Broad form property damage (including completed operations),
- (vi)** Explosion, collapse and underground hazard, and
- (vii)** Personal injury liability.

(b) Limits of liability for Bodily Injury & Property Damage shall be:

- (i)** \$10,000,000 combined single limit per occurrence and;
- (ii)** \$20,000,000 aggregate annually.

(c) Coverage limits may be satisfied using Umbrella and/or Excess Liability insurance policies.

3. Automobile Liability Insurance. This insurance shall include coverage for owned, leased and non-owned automobiles. The minimum limits of liability shall be a combined single limit for bodily injury and property damage of Two Million Dollars (\$2,000,000) for each occurrence and in the aggregate annually. The policy shall be endorsed to include Transportation Pollution Liability insurance, covering hazardous materials to be transported by Seller, as appropriate.

4. Builders All Risk Insurance. This insurance shall include but not be limited to coverage for wind including named windstorm, earthquake, flood, perils, property in transit (excluding ocean transit), off-site storage - property in temporary storage or assembly away from the project site, testing, covering all materials, equipment, machinery and supplies of any nature whatsoever, the property of the Seller or of others for which the Seller may have assumed responsibility, used or to be used in or incidental to the site preparation, demolition of existing structures, erection and/or fabrication and/or reconstruction and/or repair of the project insured, including temporary works (all scaffolding, formworks, fences, shoring, hoarding, false work and temporary buildings and all incidental to the project) from the start of construction through the earlier of the Commercial Operations Date or the effective date of the policy coverage set forth in **Section 5** (All Risk Property/Mechanical and Electrical Breakdown Insurance (Upon Completion of Construction)) of this **Attachment Q** (Required Insurance). The amount of coverage shall be purchased on a full replacement cost basis, except for named windstorm, earthquake, and flood perils which shall be provided as sublimits and aggregate limits supported by a Probable Maximum Loss (PML) study and/or Catastrophe (CAT) Modeling report, if such insurance amounts are appropriate and available on commercially reasonable terms. The coverage shall be written on an "All Risks" completed value form and may allow for reasonable other sublimits for transit and for incidental offsite storage. Coverage shall be extended to include testing. Such policies shall be endorsed to require that the coverage afforded shall not be canceled (except for nonpayment of premiums) or reduced without at least thirty (30) Days' prior written notice to Seller and Company; provided, however, that such endorsement shall provide (a) that the insurer may not cancel the coverage for non-payment of premium without giving Seller and Company ten (10) Days' notice that Seller has failed to make timely payment thereof, and (b) that, subject to the consent of the Facility Lender, Seller or Company shall thereupon have the right to pay such premium directly to the insurer.

5. All Risk Property/Mechanical and Electrical Breakdown Insurance (Upon Completion of Construction). This insurance shall provide All Risk Property Coverage (including the perils of wind including named windstorm, earthquake, and flood) and Mechanical and Electrical Breakdown Coverage against damage to the Facility. The amount of coverage shall be purchased on a full replacement cost basis (no coinsurance shall apply) except for named windstorm, earthquake, and flood perils which shall be provided as sublimits and aggregate limits supported by a Probable Maximum Loss (PML) study and/or Catastrophe (CAT) Modeling report, if such insurance amounts are appropriate and available on commercially reasonable terms. Such coverage may allow for other reasonable sublimits. Such policies shall be endorsed to require that the coverage afforded shall not be canceled (except for nonpayment of premiums) or reduced without at least thirty (30) Days' prior written notice to Seller and Company; provided, however, that such endorsement shall provide (a) that the insurer may not cancel the coverage for non-payment of premium without

giving Seller and Company ten (10) Days' notice that Seller has failed to make timely payment thereof, and (b) that, subject to the consent of the Facility Lender, Seller or Company shall thereupon have the right to pay such premium directly to the insurer.

6. Business Interruption Insurance (Upon Completion of Construction). This insurance shall provide coverage for all of Seller's costs to the extent that they would not be eliminated or reduced by the failure of the Facility to operate for a period of at least twelve (12) months following a covered physical damage loss deductible period or reasonable dollar deductible or waiting period.

7. Project Liability Errors and Omissions. Seller shall obtain adequate protection against project liability errors and omissions on account of negligent actions or inactions of architects, engineers, contractors and subcontractors involved in the design and/or construction of the Facility.

8. Ocean Transit. Seller shall take reasonable action to ensure that the risk of loss or damage to any material items of equipment which are subject to ocean transit is adequately protected against by the terms of delivery from contractors or suppliers of such equipment or Seller's own insurance coverage.

9. Pollution Liability Insurance. This insurance shall provide coverage for losses involving hazardous material(s) and caused by pollution incidents or conditions that arise from the Facility, including but not limited to, coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, property damage including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed, and defense costs. The coverage must be maintained for a period of not less than three (3) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than three (3) years after this Agreement terminates. Such policy shall have minimum limits of \$5,000,000 each occurrence; and \$5,000,000 annual aggregate.

ATTACHMENT R
FORM OF MONTHLY PROGRESS REPORT

1. Instructions

Any capitalized terms used in this report which are not defined herein shall have the meaning ascribed to them in the Energy Storage Power Purchase Agreement by and between _____, a **[Delaware limited liability company]** (“**Seller**”), and Hawaiian Electric Company, Inc., a Hawai‘i corporation, dated _____, 20____ (the “**Agreement**”).

In addition to the remedial action plan requirement set forth in **Article 11** (Construction Period and Milestones) of the Agreement, Seller shall review the status of each Construction Milestone of the construction schedule (the “**Schedule**”) for the Facility and identify such matters referenced in clauses (a)-(e) below as known to Seller and which in Seller’s reasonable judgment are expected to adversely affect the Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the Construction Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

(a) Any material matter or issue arising in connection with a Government Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a law, actual or threatened opposition to the granting of a necessary Governmental Approvals, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Facility, attaining any Construction Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Construction Milestone or which otherwise reasonably could be expected to materially threaten Seller's ability to attain any Construction Milestone.

(b) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller's business or prospects which reasonably could be expected to materially threaten financing of the Facility, attainment of any Construction Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Construction Milestone or could otherwise reasonably be expected to materially threaten Seller's ability to attain any Construction Milestone;

(c) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller's ability to attain any Construction Milestone;

(d) Any material change in the Seller’s schedule for initiating or completing any material aspect of the Facility;

(e) The status of any matter or issue identified as outstanding in any prior Monthly Progress Report and any material change in the Seller’s proposed actions to remedy or overcome such matter or issue.

2. Executive Summary

2.1 Major activities completed

Please provide a cumulative summary of the major activities completed for each of the following aspects of the Facility (provide details in subsequent sections of this report):

- 2.1.1 **[Insert Construction Milestones from Attachment K and Attachment L, if needed]**
- 1.1.2 Financing
- 2.1.3 Governmental Approvals for Development
- 2.1.4 Site Control
- 2.1.5 Land Rights for Company-Owned Interconnection Facilities
- 2.1.6 Design and Engineering
- 2.1.7 Major Equipment Procurement
- 2.1.8 Construction
- 2.1.9 Interconnection
- 2.1.10 Startup Testing and Commissioning

2.2. Major activities recently performed

Please provide a summary of the major activities performed for each of the following aspects of the Facility since the previous report (provide details in subsequent sections of this report):

- 2.2.1 **[Insert Construction Milestones from Attachment K and Attachment L, if needed]**
- 2.2.2 Financing
- 2.2.3 Development Permits
- 2.2.4 Site Control
- 2.2.5 Land Rights for Company-Owned Interconnection Facilities
- 2.2.6 Design and Engineering
- 2.2.7 Major Equipment Procurement
- 2.2.8 Construction

- 2.2.9 Interconnection
- 2.2.10 Startup Testing and Commissioning

2.3 Major activities planned but not completed

Please provide a summary of the major activities that were planned to be performed since the previous report but not completed as scheduled, including the reasons for not completing the activities, for each of the following aspects of the Facility:

- 2.3.1 **[Insert Construction Milestones from Attachment K and Attachment L, if needed]**
- 2.3.2 Financing
- 2.3.3 Governmental Approvals for Development
- 2.3.4 Site Control
- 2.3.5 Land Rights for Company-Owned Interconnection Facilities
- 2.3.6 Design and Engineering
- 2.3.7 Major Equipment procurement
- 2.3.8 Construction
- 2.3.9 Interconnection
- 2.3.10 Startup Testing and Commissioning

2.4 Major activities expected during the current month

Please provide a summary of the major activities to be performed during the current month for each of the following aspects of the Facility (provide details in subsequent sections of this report):

- 2.4.1 Construction Milestones
- 2.4.2 Financing
- 2.4.3 Governmental Approvals
- 2.4.4 Site Control
- 2.4.5 Land Rights for Company-Owned Interconnection Facilities
- 2.4.6 Design and Engineering
- 2.4.7 Major Equipment procurement

- 2.4.8 Construction
- 2.4.9 Interconnection
- 2.4.10 Startup Testing and Commissioning

3. Milestones

3.1 Milestone schedule

Please list all Construction Milestones specified in **Attachment K** and state the current status of each.

Construction Milestone	Milestone Date Specified in the Agreement	Status (e.g., on schedule, delayed due to [<i>specify reason</i>]; current expected completion date)
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3.2 Remedial Action Plan (if applicable)

Provide a detailed description of Seller’s course of action and plan to achieve the missed Construction Milestones and all subsequent Construction Milestones by the Guaranteed Commercial Operations Date using the outline provided below.

- 3.2.1 Identify Missed Construction Milestone
- 3.2.2 Explain plans to achieve missed Construction Milestone
- 3.2.3 Explain plans to achieve subsequent Construction Milestones
- 3.2.4 Identify and discuss (a) delays in engineering schedule, equipment procurement, and construction and interconnection schedule and (b) plans to remedy delays as a result of the missed Construction Milestones

4. Financing

Please provide the schedule Seller intends to follow to obtain financing for the Facility. Include information about each stage of financing.

Activity (e.g., obtain \$xx for yy stage from zz)	Completion Date
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

5. Project Schedule

Please provide a copy of the current version of the overall Facility schedule (e.g., Work

6.4 Governmental Approval activities expected during the current month

Please list all Governmental Approval activities that are expected to occur during the current month.

6.5 Governmental Approval Notices received from EPC Contractor

Please attach to this Monthly Progress Report copies of any notices related to Governmental Approval activities received since the previous report, whether from EPC Contractor or directly from Governmental Authorities.

7. Site Control

7.1 Table of Site Control schedule

If not obtained prior to execution of the Agreement, please provide the schedule Seller intends to follow to obtain control of the Site (e.g., purchase, lease).

Activity	Completion Date
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

7.2 Site Control activities recently performed

Please explain in detail the property acquisition activities that were performed since the previous report.

7.3 Site Control activities expected during the current month

Please explain in detail the site control activities that are expected to be performed during the current month.

8. Land Rights for the Company-Owned Interconnection Facilities

8.1 Table of Land Rights schedule for Company-Owned Interconnection Facilities

If not obtained prior to execution of the Agreement, please provide the schedule Seller intends to follow to obtain control of the land for the Company-Owned Interconnection Facilities (e.g., purchase, lease).

Activity	Completion Date
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

8.2 Land Control activities recently performed

Please explain in detail the property acquisition activities that were performed since the previous report.

8.3 Land Control activities expected during the current month

Please explain in detail the Land control activities that are expected to be performed during the current month.

9. Design and Engineering

9.1 Design and engineering schedule

Please provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a full notice to proceed (or equivalent).

Please list all major design and engineering activities, both planned and completed, to be performed by Seller and the EPC Contractor.

Name of EPC Contractor / Subcontractor	Activity	Completion Date
		__/__/____ (expected / actual)
		__/__/____ (expected / actual)

9.2 Design and engineering activities recently performed

Please explain in detail the design and engineering activities that were performed since the previous report.

9.3 Design and engineering activities expected during the current month

Please explain in detail the design and engineering activities that are expected to be performed during the current month.

10. Major Equipment Procurement

10.1 Major equipment to be procured

Please list all major equipment to be procured by Seller or the EPC Contractor:

Equipment Description	Manufacturer	Delivery Date (indicate whether expected or actual)	Installation Date (indicate whether expected or actual)
		__/__/____ (expected / actual)	__/__/____ (expected / actual)
		__/__/____ (expected / actual)	__/__/____ (expected / actual)

Equipment Description	No. Ordered	No. Made	No. On-Site	No. Installed	No. Tested

10.2 Major Equipment procurement activities recently performed

Please explain in detail the major equipment procurement activities that were performed since the previous report.

10.3 Major Equipment procurement activities expected during the current month

Please explain in detail the major equipment procurement activities that are expected to be performed during the current month.

11. Construction

11.1 Construction activities

Please list all major construction activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	EPC Contractor / Subcontractor	Completion Date
		//___ (expected / actual)
		//___ (expected / actual)

11.2 Construction activities recently performed

Please explain in detail the construction activities that were performed since the previous report.

11.3 Construction activities expected during the current month

Please explain in detail the construction activities are expected to be performed during the current month.

11.4 EPC Contractor Monthly Construction Progress Report

Please attach a copy of the Monthly Progress Reports received since the previous report from the EPC Contractor pursuant to the construction contract between Seller and EPC Contractor, certified by the EPC Contractor as being true and correct as of the date issued.

12. Interconnection

12.1 Interconnection activities

Please list all major interconnection activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		//___ (expected / actual)
		//___ (expected / actual)

12.2 Interconnection activities recently performed

Please explain in detail the interconnection activities that were performed since the previous report.

12.3 Interconnection activities expected during the current month

Please explain in detail the interconnection activities that are expected to be performed during the current month.

13. Startup Testing and Commissioning

13.1 Startup testing and commissioning activities

Please list all major startup testing and commissioning activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		//___ (expected / actual)
		//___ (expected / actual)

13.2 Startup testing and commissioning activities recently performed

Please explain in detail the startup testing and commissioning activities that were performed since the previous report.

13.3 Startup testing and commissioning activities expected during the current month

Please explain in detail the startup testing and commissioning activities that are expected to be performed during the current month.

14. Safety and Health Reports

14.1 Accidents

Please describe all Facility-related accidents reported since the previous report.

14.2 Work stoppages

Please describe all Facility-related work stoppages from that occurred since the previous report, and the effect of work stoppages on the Facility schedule.

15. Community Outreach

Please describe all community outreach efforts undertaken since the last report.

16. Certification

I, _____, on behalf of and as an authorized representative of [_____], do hereby certify that any and all information contained in this Seller's Monthly Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Facility as of the date specified below.

By: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT S
QUARTERLY REPORTING AND DISPUTE RESOLUTION BY
INDEPENDENT EVALUATOR

1. Quarterly Report. Commencing with the month during which the Commercial Operations Date is achieved, and for each Measurement Period thereafter during the Term, Seller shall provide to Company a Quarterly Report in Excel, Lotus or such other format as Company may require, which Quarterly Report shall include (a) the data for the Measurement Period in question populated into the form of “Quarterly Report” below; and (b) Seller’s calculations of the Performance Metrics, other than the Fast Frequency Response Performance Metric, and any liquidated damages assessments for the LD Period ending with such Measurement Period as set forth below. Seller shall deliver such Quarterly Report to Company by the fifth (5th) Business Day following the close of the Measurement Period in question. Seller shall deliver the Quarterly Report electronically to the address provided by the Company. Company shall have the right to verify all data set forth in the Quarterly Report by inspecting measurement instruments and reviewing Facility operating records. Upon Company's request, Seller shall promptly provide to Company any additional data and supporting documentation necessary for Company to audit and verify any matters in the Quarterly Report.

QUARTERLY REPORT

NAME OF IPP FACILITY: [Facility Name]

QUARTERLY REPORT PERIOD: [Month Day, Year] to [Month Day, Year]

Enter the applicable information from which the IPP is using to demonstrate satisfaction of the Capacity Performance Metric during the reporting period. This can either be from a Capacity Test performed during the period or taken from operational data reflecting the net output of the BESS.

Date/Time Start	Date/Time End	Total MWh delivered to the POI (A)	BESS Contract Capacity (MWh) (B)	BESS Capacity Ratio 100% x (A ÷ B)

Enter the applicable information from which the IPP is using to demonstrate satisfaction of the RTE Performance Metric during the reporting period. This can either be from a RTE Test performed during the period or taken from operational data reflecting the charging/discharging of the BESS.

Date/Time Start	Date/Time End	Total MWh delivered to the POI during Capacity Test (A)	Charging Energy measured at POI (MWh) (B)	RTE Ratio 100% x (A ÷ B)

Enter the information for each ExcludedTime event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, maximum rated output, and equivalent hours should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B - A)	Size of Reduction (MW) (D)	Maximum Rated Output (MW) (E)	Equivalent Hours (hrs) (C x D) ÷ E
...					

Calendar hours in the reporting period: _____

Total equivalent ExcludedTime for the reporting period (from above): _____

Period Hours (PH) in the reporting period: _____

PH from the last three (3) reporting periods: _____

PH for the last four (4) reporting periods: _____

Enter the information for each Outage during the reporting period. Dates and times should be entered to the nearest minute. Duration should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (B - A)
...		

Calendar hours in the reporting period: _____

Total Outage hours for the reporting period (from above): _____

Available Hours (AH) in the reporting period: _____

AH from the last three (3) reporting periods: _____

AH for the last four (4) reporting periods: _____

Enter the information for each Planned Deration event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, maximum rated output, and equivalent hours should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B - A)	Size of Reduction (MW) (D)	Maximum Rated Output (MW) (E)	Equivalent Hours (hrs) (C x D) ÷ E
...					

Total equivalent planned derated hours (EPDH) for the reporting period: _____

EPDH from the last three (3) reporting periods: _____

EPDH for the last four (4) reporting periods: _____

Enter the information for each Unplanned Deration event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, maximum rated output, and equivalent hours should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B - A)	Size of Reduction (MW) (D)	Maximum Rated Output (MW) (E)	Equivalent Hours (hrs) (C x D) ÷ E
...					

Total equivalent unplanned derated hours (EUDH) for the reporting period: _____

EUDH for the last three (3) reporting periods: _____

EUDH for the last four (4) reporting periods: _____

Enter the Available Hours, EPDH, EUDH, and Period Hours for the last four (4) reporting periods as calculated above.

AH (A)	EPDH (B)	EUDH (C)	PH (D)	BESS Annual Equivalent Availability Factor 100% x (A - B - C) ÷ D

Enter the information for each Forced Outage during the reporting period. Dates and times should be entered to the nearest minute. Duration should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (B - A)
...		

Total Forced Outage Hours (FOH) for the reporting period (from above): _____

FOH from the last three (3) reporting periods: _____

FOH for the last four (4) reporting periods: _____

Enter the FOH and EUDH for the last four (4) reporting periods as calculated above.

FOH (A)	EUDH (B)	BESS Annual Equivalent Forced Outage Factor

		$100\% \times (A + B) \div 8760$

2. Quarterly Report Disagreements.

(a) Notice of Disagreement With Quarterly Report. Within ten (10) Business Days following the close of the Measurement Period in question, Seller shall provide to Company the Quarterly Report for the LD Period and the Measurement Period in question, as provided in **Section 1** (Quarterly Report) of this **Attachment S** (Quarterly Reporting and Dispute Resolution by Independent Evaluator). Within ten (10) Business Days after Company’s receipt of a Quarterly Report, Company shall provide written notice to Seller of any Quarterly Report Disagreement, including with respect to the data for the Measurement Period covered by such Quarterly Report and Seller’s calculation of, as applicable, any of the Capacity Ratio, the RTE Ratio, the Annual EAF or the Annual EFOF for the Measurement Period in question (“**Notice of Disagreement**”). Together with any such Notice of Disagreement, the Company shall include its own calculations and other support for its position. If Company fails to provide a Notice of Disagreement within said 10-Business Day period, the Quarterly Report provided by Seller shall be deemed to be accepted by Company and shall no longer be subject to dispute by Company or Seller.

(b) Submission of Quarterly Report Disagreement to Independent Evaluator. Upon issuance of a Notice of Disagreement, the Parties shall review the contents of the Quarterly Report(s) together with such Notice of Disagreement and attempt to resolve such Quarterly Report Disagreement. If the Parties are able to agree on a resolution of any Quarterly Report Disagreement, the resulting corrected Quarterly Report(s) in question shall be set forth in a writing executed by both Parties, following which (i) such corrected Quarterly Reports shall no longer be subject to dispute by either Party and (ii) to the extent such resolution of such Quarterly Report Disagreement affects future Quarterly Reports, such future Quarterly Reports shall be prepared, and the Annual EAF and the Annual EFOF in such future Quarterly Reports shall be calculated, in a manner consistent with such resolution. If the Parties are unable to resolve such Quarterly Report Disagreement within ten (10) Business Days after Company's issuance of such Notice of Quarterly Report Disagreement, either Party may, within five (5) Business Days after the end of such 10-Business Day period, submit the unresolved Quarterly Report Disagreement to an Independent Evaluator for resolution.

(c) Appointment of Independent Evaluator. If either Party decides to submit an unresolved Quarterly Report Disagreement to an Independent Evaluator, it shall provide written notice to that effect (the “**Submission Notice**”) to the other Party, which notice shall designate which of the engineering firms on the Consultants List is to act as the Independent Evaluator for purposes of resolving such dispute; provided, however, for purposes of facilitating consistency in the resolution of Quarterly Report Disagreements, all Quarterly Report Disagreements concerning the same Performance Metric arising out of any one or more of the twelve (12) Quarterly Reports issued for a given Contract Year shall be submitted to the same Independent Evaluator unless such Independent Evaluator declines to accept any such submission(s). A Submission Notice must be provided within the 5-Business Day period provided in **Section 2(b)**

(Submission of Quarterly Report Disagreement to Independent Evaluator) of this **Attachment S** (Quarterly Reporting and Dispute Resolution by Independent Evaluator). The Parties shall each pay fifty percent (50%) of the fees and expenses charged by the Independent Evaluator.

(d) Eligibility for Appointment as Independent Evaluator. Both Parties agree that the engineering firms listed in **Attachment D** (Consultants List) are fully qualified to serve as Independent Evaluator. By mutual agreement between the Parties in writing, a name or names may be added to or removed from the OEPR Consultants List at any time. In no event shall there be less than three (3) names on the Consultants List.

(e) Participation of Parties. Promptly following the issuance of a Submission Notice as provided in **Section 2(c)** (Appointment of Independent Evaluator) of this **Attachment S** (Quarterly Reporting and Dispute Resolution by Independent Evaluator), Seller and Company shall provide the Independent Evaluator which such data as they consider to be material to the resolution of the disputed issue(s). Seller and Company shall also provide such additional data and information as the Independent Evaluator may reasonably request. The Parties shall assist the Independent Evaluator throughout the process of resolving such dispute, including making key personnel and records available to the Independent Evaluator, but neither Party shall be entitled to participate in any meetings with personnel of the other Party or review of the other Party's records. However, the Independent Evaluator will have the right to conduct meetings, hearing or oral arguments in which both Parties are represented.

(f) Written Decision of Independent Evaluator. The terms of engagement with the Independent Evaluator shall require the Independent Evaluator to issue its written decision resolving the disputed issues submitted to it within the applicable time period set forth below, which time periods are subject to any tolling that may be applicable pursuant to **Section 2(g)** (Sequence to Resolving Interrelated Disagreements) of this **Attachment S** (Quarterly Reporting and Dispute Resolution by Independent Evaluator): (a) 30 Days as measured from the issuance of the Submission Notice; or (b) such other time period as the Parties may agree in writing. Unless otherwise agreed by the Parties in writing:

(i) for a Performance Metric Disagreement concerning the Capacity Ratio or the RTE Ratio, the written decision of the Independent Evaluator shall set forth the Capacity Ratio and/or RTE Ratio (as applicable) for the Measurement Period in question, as applicable;

(ii) for a Performance Metric Disagreement concerning the Annual EAF, the written decision of the Independent Evaluator shall set forth (aa) the correct values to be used for AH, EPDH, EUDH and PH under **Attachment U** (Annual Equivalent Availability Factor) for the Measurement Period in question if any such values were in dispute and (bb) the Annual EAF for the Measurement Period in question if such Annual EAF was in dispute; and

(iii) for a Performance Metric Disagreement concerning the Annual EFOF, the written decision of the Independent Evaluator shall set forth (aa) the correct

values for FOH and EUDH under **Attachment V** (Annual Equivalent Forced Outage Factor) for the Measurement Period in question if any such values were in dispute and (bb) the Annual EFOF for the Measurement Period in question if such Annual EFOF was in dispute.

(g) Sequence for Resolving Interrelated Disagreements. If at the time a Performance Metric Disagreement is submitted to an Independent Evaluator pursuant to **Section 2(c)** (Appointment of Independent Evaluator) of this **Attachment S** (Quarterly Reporting and Dispute Resolution by Independent Evaluator) there are one or more other unresolved Performance Metric Disagreements concerning the same Performance Metric and the same LD Period that are pending before a different Independent Evaluator, and the resolution of such other Performance Metric Disagreement(s) is necessary to the resolution of the Performance Metric Disagreement that has been newly submitted to a new Independent Evaluator as aforesaid, the time period for such new Independent Evaluator to issue its written decision resolving such newly submitted Performance Metric Disagreement shall be tolled until such pending Performance Metric Disagreement(s) have been resolved. For avoidance of doubt, it is the intent of the Parties that disagreements over performance ratio data and calculations for a given Measurement Period shall (i) not be subject to resolution twice and (ii) once resolved, shall not be reopened.

(h) Final, Conclusive and Binding. The Parties acknowledge the inherent uncertainty in calculating the Performance Metrics, and hereby assume the risk of such uncertainty and waive any right to dispute the qualification of the person or entity appointed as the Independent Evaluator pursuant to **Section 2(c)** (Appointment of Independent Evaluator) of this **Attachment S** (Quarterly Reporting and Dispute Resolution by Independent Evaluator) and/or the appropriateness of the methodology used by Independent Evaluator in resolving such Performance Metric Disagreements. Without limitation to the generality of the preceding sentence, the decision of the Independent Evaluator as to each Performance Metric Disagreement submitted to an Independent Evaluator shall be final, conclusive and binding upon Company and Seller and shall not be subject to further dispute under **Article 26** (Dispute Resolution) of the Agreement.

3. Periodic Review of Method of Calculating and Reporting Performance Metric. At least once per Contract Year, Company shall review the method of calculating and reporting Performance Metrics under this Agreement to determine if other variables should be incorporated into such calculations. Any revisions to the Performance Metric calculations in this Agreement shall be mutually agreed to by both Seller and Company.

4. Future Changes in Reporting Requirements. Seller shall reasonably cooperate with any Company requested revisions to the Quarterly Report to include additional data that may be necessary from time to time to enable Company to comply with any new reporting requirements directed by the PUC or otherwise imposed under applicable Laws.

ATTACHMENT T **FACILITY TESTS**

Prior to achieving Commercial Operations and in each Measurement Period, unless waived by Company, Seller shall demonstrate that the Facility satisfies the following:

Maintains output provided by the Company through a control setpoint, as measured at the Point of Interconnection, and is able to continuously dispatch the full Contract Capacity (the “**Capacity Test**”)

Demonstrates the charging/discharging requisite to satisfy the performance standard set forth in **Section 3(o)** (Round Trip Efficiency) of **Attachment B** (Facility Owned by Seller) (the “**RTE Test**”)

The RTE Test requires measurement of “Charging Energy” at the Point of Interconnection (MWh from the grid) from Facility 0% State of Charge to bring the Facility to a 100% State of Charge, followed by measurement of the MWh delivered to the grid to bring the Facility to a 0% State of Charge. The RTE Test will be conducted concurrently with the Capacity Test.

The Capacity Test can only be performed when the Facility is at the lower of: (i) its maximum State of Charge or (ii) 100% State of Charge prior to the start of the Capacity Test and during the Capacity Test the Company Dispatch/Charge allows for continuous dispatch of the Facility to 0% State of Charge with energy delivered to the Point of Interconnection.

For the purposes of evaluating the Capacity Test, the “**Capacity Ratio**” shall be equal to the number, expressed as a percentage, equal to the total MWh delivered to the Point of Interconnection during the Capacity Test, divided by the Contract Capacity. Further, the Capacity Test will be deemed to be “passed” or “satisfied” to the extent the Capacity Ratio is not less than **100%** (the “**Capacity Performance Metric**”).

For the purposes of evaluating the RTE Test, the RTE Ratio shall be equal to the number, expressed as a percentage, equal to the total MWh delivered to the Point of Interconnection during the Capacity Test, divided by the “Charging Energy” measured at the Point of Interconnection. For purposes of the RTE Test, the charging cycle shall begin when the Facility is at a 0% State of Charge prior to the commencement of the Capacity Test and the Charging Energy is the amount of energy imported from the grid, as measured at the Point of Interconnection, that brings the Facility to a 100% State of Charge. The formula is RTE Ratio = MWh discharge ÷ MWh charge. The RTE Test will be deemed to have been “passed” or “satisfied” to the extent the RTE Ratio is not less than the performance standard (the “**RTE Performance Metric**”) set forth in **Section 3(o)** (Round Trip Efficiency) of **Attachment B** (Facility Owned by Seller).

Except for the Capacity Test conducted prior to Commercial Operations, Seller shall, in lieu of conducting a Capacity Test, be permitted to demonstrate satisfaction of the Capacity Performance Metric by reference to the operational data reflecting the net output of the Facility from the Point of Interconnection for such Measurement Period.

Except for the RTE Test conducted prior to Commercial Operations, Seller shall, in lieu of conducting a RTE Test, be permitted to demonstrate satisfaction of the RTE Performance Metric by reference to the operational data reflecting the charging/discharging of the Facility from the Point of Interconnection during such Measurement Period.

Any Capacity Test or RTE Test (each a “**Facility Test**” and collectively, the “**Facility Tests**”), other than where the Capacity Performance Metric or RTE Performance Metric, as applicable, is demonstrated by reference to operational data as provided below, shall be performed at a time reasonably requested by the Company in its sole discretion. Within a Measurement Period, Seller shall be permitted up to a total of three (3) Facility Tests to demonstrate satisfaction of the Capacity Performance Metric and the RTE Performance Metric for such Measurement Period, unless additional such tests are authorized by Company. Company shall provide notice to Seller no less than three (3) Business Days prior to conducting a Facility Test.

At any time prior to conducting the third (3rd) Capacity Test noticed by Company for a Measurement Period, Seller may demonstrate satisfaction of the Capacity Performance Metric by reference to operational data reflecting the net output of the Facility from the Point of Interconnection for such Measurement Period. If, during a Measurement Period, Seller both fails to pass a Capacity Test noticed by Company and fails to demonstrate satisfaction of the Capacity Performance Metric by reference to operational data for such Measurement Period, the Facility shall nevertheless be deemed to have satisfied the Capacity Performance Metric for the applicable Measurement Period if either (i) Company failed to notice at least three (3) Capacity Tests during such Measurement Period, or (ii) Seller was unable to perform at least two (2) such noticed Capacity Tests during such Measurement Period due to (a) conditions on the Company System other than Seller-Attributable Unavailability or (b) an act or omission by Company.

At any time prior to conducting the third RTE Test noticed by Company for a Measurement Period, Seller may demonstrate satisfaction of the RTE Performance Metric by reference to operational data reflecting charging/discharging of the Facility from the Point of Interconnection during such Measurement Period. If, during a Measurement Period, Seller both fails to pass a RTE Test noticed by Company and fails to demonstrate satisfaction of the RTE Performance Metric by reference to operational data for such Measurement Period, the Facility shall nevertheless be deemed to have satisfied the RTE Performance Metric for the applicable Measurement Period if either (i) Company failed to notice at least three RTE Tests during such Measurement Period, or (ii) Seller was unable to perform at least two (2) such noticed RTE Tests during such Measurement Period due to (a) conditions on the Company System other than Seller-Attributable Unavailability or (b) an act or omission by Company.

Company shall have the right to attend, observe and receive the results of all Facility Tests. Seller shall provide to Company the results of each Facility Test (including time stamped graphs of system performance based in operational data or test data) no later than ten (10) Business Days after the performance of such Facility Test.

ATTACHMENT U
ANNUAL EQUIVALENT AVAILABILITY FACTOR

To the extent the Commercial Operations Date occurs on a date other than the first day of a Measurement Period, the period between the Commercial Operations Date and the first (1st) day of the next Measurement Period if any, shall be ignored for purposes of this availability test.

For the purposes of calculating the Annual EAF for the first three (3) full Measurement Periods in the first Contract Year, the calculation will assume that the Facility is one hundred percent (100%) available for the remaining hours of the Contract Year.

The Annual Equivalent Availability Factor shall be calculated as follows:

$$\text{Annual Equivalent Availability Factor} = 100\% \times \frac{AH - EPDH - EUDH}{PH}$$

Where:

PH is period hours (8760 hours; except leap year is 8784) minus ExcludedTime.

Available Hours (AH) is the number of hours that the Facility is not on Outage. It is sum of all Service Hours (SH) + Reserve Shutdown Hours (RSH).

An "Outage" exists whenever the entire Facility is offline and unable to charge or discharge electric energy and is not in Reserve Shutdown state.

Service Hours (SH) is the number of hours during the LD Period the Facility is online and (i) charging from the Company System or (ii) discharging electric energy to the Company System.

Reserve Shutdown Hours (RSH) is the number of hours the Facility is available but not charging or discharging electric energy or is offline for reasons other than Seller-Attributable Unavailability.

EPDH is the equivalent planned derated hours, including Planned Derations (PD) and Maintenance Derations (D4). A Planned Deration is when the Facility experiences a Deration scheduled well in advance and for a predetermined duration. A Maintenance Deration is a Deration that can be deferred beyond the end of the next weekend (Sunday at midnight or before Sunday turns into Monday) but requires a reduction in capacity before the next Planned Deration (PD). Each individual Deration is transformed into equivalent full outage hour(s) by multiplying the actual duration of the Deration (hours) by (i) the size of the reduction (MW) divided by (ii) Maximum Rated Output. These equivalent hour(s) are then summed.

EUDH is the equivalent unplanned derated hours. An Unplanned Deration (Forced Derating) occurs when the Facility experiences a Deration that requires

a reduction in availability before the end of the nearest following weekend. Unplanned Derations include only those due to Seller-Attributable Unavailability or those by Company pursuant to **Section 12.1** (Failure to Comply; Seller-Attributable Unavailability). Each individual Unplanned Deration is transformed into equivalent full outage hour(s) by multiplying the actual duration of the Deration (hours) by (i) the size of the reduction (MW) divided by (ii) the Maximum Rated Output. These equivalent hour(s) are then summed.

A “Deration” exists when, due to Seller-Attributable Unavailability, the Facility is available but at less than full capacity. Each individual Deration is transformed into equivalent full outage hour(s) by multiplying the actual duration of the derating (hours) by the size of the reduction (MW) and dividing by the Maximum Rated Output. These equivalent hour(s) are then summed.

ExcludedTime is unavailability as a result of the entire Facility or a portion thereof being unavailable due to Force Majeure. The hours and/or equivalent hours of ExcludedTime shall not be added to Available Hours and shall be subtracted from Period Hours. Each event that counts as ExcludedTime is transformed into equivalent full outage hour(s) by multiplying the actual duration of the event by the size of the reduction (MW) and dividing by Maximum Rated Output. These hour(s) are then summed.

The effect of Force Majeure is taken into account in calculating the Annual EAF over a twelve (12) calendar month period as follows: When such 12-month period contains a month during which the Facility or a portion thereof is unavailable due to Force Majeure, then such month shall be excluded from the twelve (12) month period and the calculation period shall be extended back in time to include the next previous month during which there was no such unavailability of the Facility or a portion thereof due to Force Majeure.

The following examples are provided as illustrative examples only:

Example A: The Facility was continuously available, with no maintenance or Unplanned (Forced) Derations. In this case AH = 8760, EPDH and EUDH = 0 hours

$$\text{Annual EAF} = 100\% \times \frac{8,760-0}{8,760} = 100\%$$

Example B: Maintenance Deration Hours = 168 hours

Equivalent Unplanned (Forced) Derated Hours = 100 hours

AH = 8,760 – 168 = 8,592

$$\text{Annual EAF} = 100\% \times \frac{8,592-100}{8,760} = 96.9\%$$

ATTACHMENT V
ANNUAL EQUIVALENT FORCED OUTAGE FACTOR

$$EFOF = 100\% \times \frac{(FOH + EUDH)}{8760}$$

Where:

EUDH is the equivalent unplanned (forced) derated hours. Each Unplanned (Forced) Deration of the Facility is transformed into equivalent full outage hour(s). This is calculated by multiplying the actual duration of the Deration (hours) by (i) the size of the reduction (MW) divided by (ii) the Maximum Rated Output. These equivalent hour(s) are then summed for the Measurement Period and added to the sum of the EUDH for the immediately preceding three (3) full Measurement Periods.

- (Hours of Deration x Size of Reduction) ÷ Maximum Rated Output

Forced Outage Hours (FOH) = Sum of all hours experienced during Forced Outages during the applicable Measurement Period and the sum of all hours experienced during Forced Outages during the immediately preceding three (3) full Measurement Periods, in each case caused by Seller-Attributable Unavailability.

Unplanned (Forced) Derating: A Deration that requires a reduction in capacity of the Facility before the end of the nearest following weekend.

Unplanned (Forced) Outage: An outage that requires removal of the entire Facility from service before the end of the nearest following weekend that is not planned.

EXAMPLE CALCULATION:

Assume a 50 MW Facility that for the Measurement Period in question was completely out of service for 50 hours. For the Measurement Period in question, it also had the following deratings:

<u>Duration of Derating</u>	<u>MW Size Reduction</u>
100 Hours	25 MW
20 Hours	20 MW
50 Hours	5 MW

During the three preceding Measurement Periods, the Facility had a total of 150 Forced Outage Hours and a total of 100 Equivalent Forced Derated Hours.

FOH = 50 hours + 150 hours = 200 hours

EUDH = [(100 x 25) ÷ 50] + [(20 x 20) ÷ 50] + [(50 x 5) ÷ 50] + 100 = 163 hours

$$EFOF = 100\% \times \frac{(200 + 163)}{8760} = 4.1\%$$

ATTACHMENT W
SUMMARY OF MAINTENANCE AND INSPECTION PERFORMED
IN PRIOR CALENDAR YEAR

(See **Article 13**)

DATE WORK ORDER SUBMITTED: 06/28/96

WO#: 11451

EQUIPMENT #: 1CCF-TNK-1

EQUIPMENT DESCRIPTION: AMMONIA STORAGE TANK 1

PROBLEM DESCRIPTION: PURCHASE EMERGENCY ADAPTER FITTINGS FOR UNLOADING GASPRO TANKS TO STORAGE TANK

WORK PERFORMED: PURCHASED THE NEW ADAPTERS AND VERIFIED THEIR OPERATION.

COMPLETION DATE: 06/28/96

WORK ORDER COMPLETED BY: AA

-----END OF CURRENT WORK ORDER-----

DATE WORK ORDER SUBMITTED: 05/19/96

WO#: 11136

EQUIPMENT #: 1WSA-BV-12

EQUIPMENT DESCRIPTION: MAKE-UP PI ISOLATION

PROGRAM DESCRIPTION: 'D' MAKE-UP PUMP PI ISOLATION FITTING LEAKING ON SPOOL SIDE

WORK PERFORMED: REMOVED AND REPLACED FITTINGS AND FLANGES WITH STAINLESS STEEL. THIS WORK WAS DONE DURING PUMP OVERHAUL ON WO 1374. JH

COMPLETION DATE: 06/28/96

WORK ORDER COMPLETED BY: BB

-----END OF CURRENT WORK ORDER-----

[This Attachment sets forth the terms and conditions which shall apply if Seller elects to utilize a Company-owned Site.]

ATTACHMENT X **COMPANY-OWNED SITE**

1. Description of Company-Owned Site.

(a) General. At the request of Seller, Company shall make available to Seller an area on Company's property to allow performance of Seller's obligations under this Agreement, provided that Company shall make available only as much acreage as necessary for Seller's performance (the "**Company-Owned Site**").

(i) During Construction of the Facility. During such time as Seller is actively constructing the Facility, the Company shall make available a reasonable area on Company's property, as determined by Company, for Seller's construction activities, which shall be no larger than _____ acres, as shown on the site plan attached as **Exhibit X.1** (Site Plan) to this **Attachment X** (Company-Owned Site). The Company shall work with Seller to physically demarcate, at Seller's expense, the boundaries of the area that will be made available to Seller during construction of the Facility.

(ii) Upon Completion of the Facility.

(A) Upon Seller's completion of the Facility, Company shall make available to Seller only as much area as necessary for ongoing operation of the Facility under the terms of this Agreement. The Company shall work with Seller to physically demarcate, at Seller's expense, the boundaries of the area that will be made available to Seller for the remainder of the Term after Seller's completion of the Facility.

(B) Upon Seller's request during the Term of this Agreement, Company, in its sole discretion, may make available to Seller additional acreage, on a temporary basis, for Seller's maintenance, repair or replacement of the Facility, or any portion thereof, on an as-needed basis; provided, however, that the additional acreage shall not exceed the boundaries of the area shown on the site plan attached as **Exhibit X.1** (Site Plan) to this **Attachment X** (Company-Owned Site). At any time during the Term, the actual available area that may be available to Seller for such maintenance, repair or replacements activities may change in accordance with the Company's needs and then-current utilization plans for the area, all of which the Company hereby reserves in its sole and absolute discretion.

(b) Utilization of Site. Seller shall utilize the Company-Owned Site solely in connection with and for the purposes of constructing a Facility and meeting Seller's obligations to Company under this Agreement. Seller waives and relinquishes any right it may have under Title 11, United States Code, and any other or successor state or federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters ("**Bankruptcy Law**"), in any proceeding, whether voluntary or

involuntary, under any Bankruptcy Law, or otherwise to assert the Company-Owned Site should be used for any purpose other than in connection with and for the purposes of meeting Seller's obligations under this Agreement.

2. Security and Access to Site.

(a) During Construction of the Facility.

(i) Security. During such time as Seller is actively constructing the Facility, Seller at its option may secure the Company-Owned Site with fencing and gates to prevent unauthorized persons or vehicles from entering or crossing through the Company-Owned Site and/or adjacent lands owned or operated by Company. Such fencing and gating shall require the prior written approval of the Company before erecting such fencing and gating.

(ii) Access to Company-Owned Site. During such time as Seller is actively constructing the Facility, Company shall provide access to the Company-Owned Site through a separate contractor's entrance, if available, or through other reasonable means as may be determined by Company in its sole discretion.

(b) Upon Completion of the Facility.

(i) Secured Facility. Seller shall secure the Facility on the Company-Owned Site and prevent access to the Facility by unauthorized personnel in the same manner or higher as Company secures its power generating facilities in the county in which the Company-Owned Site is located. Notwithstanding Company's then current security procedures for its other facilities, in the event of security concerns as may be determined by the Company's security personnel, Company may require Seller to temporarily maintain personnel at the Company-Owned Site 24 hours a day 7 days a week to monitor the security and safety of the Company-Owned Site and Facility.

(ii) Limited Access to Company-Owned Site. Seller shall maintain barriers on the Company-Owned Site to prevent unauthorized persons or vehicles from entering or crossing through the Company-Owned Site and/or adjacent lands owned or operated by Company.

(c) Personnel. At all times during the Term of this Agreement, Seller shall conduct security and background checks on all Seller representatives, employees, independent contractors, agents, and other persons who will be allowed access to the Facility by Seller and shall require all such persons to take periodic drug tests. Seller shall not allow on the Company-Owned Site any persons who do not pass such security checks or drug tests. Due to the critical nature of Company's operations where the Company-Owned Site is situated, Seller agrees that if Company, in its sole discretion and after reasonable consultation with Seller, determines that the continued presence of any Seller representative, employee, contractor or agent on Company property is not consistent with the best interests of Company, then in such an instance Company may request that Seller remove such representative, employee, contractor or agent from the Company-Owned Site and Seller shall forthwith comply with such request. Seller may replace such representative, employee, contractor or agent with another who meets Company's standards at no additional cost to

Company.

(d) Access and Inspection. At all times during the Term of this Agreement, Company and its agents, representatives, and designees may enter the Company-Owned Site upon reasonable notice for any reason, including but not limited to the following: to (a) ascertain whether Seller is complying with this Agreement; (b) cure any failure of Seller to comply with this **Attachment X** (Company-Owned Site); (c) inspect the Company-Owned Site and any construction or improvements, including the Facility; (d) perform such tests, borings, and other analyses as Company determines may be necessary or appropriate relating to (non)compliance with any Laws or possible Hazardous Substances Discharge (hereinafter defined). Company and its designees shall not unreasonably interfere with operations of the Facility and shall comply with Seller's reasonable instructions.

3. Compliance

(a) Generally. Seller shall, at Seller's expense, in all material respects: (i) comply with all Laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Governmental Authority affecting the Company-Owned Site; (ii) comply with all rules regulating the use of and activities and conduct upon the Company's property, including the Company-Owned Site, as may be established and amended from time to time by the Company in its sole discretion; (iii) comply with the covenants, conditions, and restrictions set forth in any documents recorded against the Company-Owned Site; (iv) procure any and all licenses, permits (including building, demolition, alteration, use, and special permits), approvals, consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or amendments to any of the foregoing as shall be necessary or appropriate under any Laws to construct and operate the Facility and to perform repair, alteration, demolition, or other work affecting the Facility ("**Approvals**"); and (v) comply with all Approvals.

(b) Notice of Inspections. Seller shall give Company notice of any proposed inspection of the Company-Owned Site or the Facility by any Governmental Authority immediately upon Seller's receipt of notice of such inspection.

4. Seller's Investigation of the Company-Owned Site.

(a) Investigations and Reports. Seller shall make such independent investigations as Seller deems necessary or appropriate concerning Seller's utilization of the Company-Owned Site for the purposes of meeting Seller's obligations under this Agreement. Notwithstanding the foregoing, if Seller wishes to conduct an environmental or soil assessment on the Company-Owned Site, including but not limited to any Baseline Assessment conducted under **Section 7(a)** (Baseline Assessment) of this **Attachment X** (Company-Owned Site), Company shall select the environmental or engineering consultant to conduct the investigation and shall contract with the consultant to provide the report at Seller's cost. The provision of any such report to Seller shall be subject to the confidentiality provisions of **Section 7(l)** (Confidentiality) of this **Attachment X** (Company-Owned Site).

(b) Permits, Assurances, and Approvals. Seller agrees to provide Company

with copies of all permits, Approvals and assurances pertaining to Seller's construction on the Company-Owned Site, including but not limited to building and grading permits, special management area permits, assurances from Governmental Authorities, utility commitments and service agreements, and any permits, Approvals or assurances regarding the development or use of water, roadways, utilities or other infrastructure.

(b) Acceptance of Company-Owned Site. Seller acknowledges that it has, or has had the opportunity, to inspect carefully the Company-Owned Site, and accepts the Company-Owned Site in AS IS condition WITH ALL FAULTS. Seller further acknowledges that neither Company nor its agents or employees have made any representations or warranties of any kind whatsoever as to the suitability or fitness of the Company-Owned Site for the construction or operation of the Facility or for any other purpose, nor has Company or its agents or employees agreed to make any repairs, undertake any alterations, or construct any improvements on or with respect to the Company-Owned Site other than such Company-Owned Interconnection Facilities as Company has or may agree to build or install.

(c) No Company Services. Seller acknowledges and agrees that Company is under no obligation to provide any services such as security, water, utilities or infrastructure to the Company-Owned Site.

5. Construction, Maintenance and Interference.

(a) Construction. At Seller's sole cost and expense, Seller shall construct the Facility in accordance with the requirements of this Agreement. Seller shall not commence any demolition, construction, reconstruction, restoration, or other work affecting the Company-Owned Site, including construction of the Facility ("**Construction**") until it has the applicable necessary Approvals. Prior to commencement of any Construction, Seller shall cause each entity involved in such Construction, who is a direct contractor of Seller and who has mechanic lien rights under Chapter 507 of the Hawaii Revised Statutes, to deliver to Company a performance and payment bond in a form acceptable to Company and from a surety reasonably acceptable to Company, covering the faithful performance of such entity's contract with the Seller and the payment of all obligations arising thereunder, and naming Company as an obligee. Seller shall complete Construction of the Facility within the time periods required by this Agreement. Seller shall pay for all Construction when and as required by the parties that perform such Construction. All improvements that Seller constructs on the Company-Owned Site other than Company-Owned Interconnection Facilities shall be the property of the Seller for the Term of this Agreement.

(b) Plans and Specifications. Seller shall promptly provide Company with plans and specifications or surveys (including working plans and specifications and "as-built" plans and specifications and surveys) for any Construction.

(c) Applications. Upon Seller's request, Company shall, without cost to Company, promptly join in and execute any Application (hereinafter defined) as Seller reasonably requests, provided that: (i) such Application is in customary form and imposes no material obligations (beyond obligations ministerial in nature or merely

requiring compliance with applicable Laws) upon Company; (ii) no uncured Event of Default exists; and (iii) Seller reimburses Company's attorneys' fees and costs. Promptly upon Seller's request and without charge (except reimbursement of Company's attorneys' fees and costs), Company shall furnish all information in its possession that Seller reasonably requests for any Application. For the purposes of this **Attachment X** (Company-Owned Site), "**Application**" shall mean any agreement, application, certificate, document, or submission (or amendment of any of the foregoing): (i) necessary or appropriate for any Construction allowed under this **Attachment X** (Company-Owned Site), including any application for any building permit, certificate of occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision plat, or such other instrument as Seller may from time to time reasonably request for such Construction; (ii) to enable Seller from time to time to seek any Approval or to use and operate the Facility in accordance with this Agreement; or (iii) otherwise reasonably necessary and appropriate to allow Seller to meet its obligations under this **Attachment X** (Company-Owned Site).

(d) Obligation to Maintain. Seller shall remove trash and debris from the Company-Owned Site and the adjoining sidewalk, if any, and maintain them in a reasonably clean condition.

(e) Interference. The Company-Owned Site is located on or adjacent to property and infrastructure owned and operated by Company. Seller acknowledges and agrees that such property and infrastructure includes Company's existing communications configurations, equipment, and frequencies that exist on or adjacent to the Company-Owned Site as of the Effective Date ("**Pre-existing Communications**"). Seller shall not construct, install, operate, use, maintain, repair, or remove any new or existing equipment that will materially interfere with the Pre-existing Communications and shall be responsible for resolving any technical interference problems between the Facility and the Pre-existing Communications. Seller additionally agrees to ensure that the Facility complies with any commercially reasonable communications requirements, specifications or rules developed by Company and provided to Seller with respect to the Company-Owned Site throughout the Term of this Agreement. Seller shall inform and obtain Company's prior written approval before replacing any of its communications equipment or communications service providers (including internet equipment and internet service providers).

6. Prohibited Liens.

(a) Seller's Covenant. Seller shall not permit any mechanic's, vendor's, laborer's, or material supplier's statutory lien or other similar lien arising from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to Seller (or anyone claiming through Seller) ("**Prohibited Lien**") to attach to the Company-Owned Site or to any adjacent land owned by the Company. If a Prohibited Lien is filed, Seller shall, within 30 Days after receiving notice from Company of such filing (but in any case within 15 Days after Company notifies Seller of commencement of any application for a mechanic's lien or foreclosure proceedings), commence appropriate action to cause such Prohibited Lien to be paid, discharged, bonded, or cleared from title. Seller shall thereafter prosecute such action with reasonable diligence and continuity. If Company receives notice of any such filing, then Company shall promptly notify Seller. Nothing in this Agreement shall be construed to obligate

Seller regarding any lien that results from any act or omission by Company.

(b) Protection of Company. Nothing in this Agreement shall be deemed or construed in any way to constitute Company's giving Seller any right, power or authority to contract for, or permit the rendering of, any services, or the furnishing of any materials that would give rise to the filing of any liens against the Company-Owned Site. Seller shall indemnify Company against any claims arising out of Construction undertaken by Seller or anyone claiming through Seller, and against all Prohibited Liens.

7. Hazardous Substances.

(a) Baseline Assessment. At Seller's request, Company shall obtain a Phase I and/or Phase II Environmental Assessment (hereinafter defined), at Seller's sole cost, revealing the environmental conditions of the Company-Owned Site prior to Seller's commencement of Construction on the Company-Owned Site ("**Baseline Assessment**") and, subject to the confidentiality provisions of **Section 7(l)** (Confidentiality) of this **Attachment X** (Company-Owned Site), shall provide Seller with a copy of the results of the Baseline Assessment. Any Hazardous Substances (hereinafter defined) not disclosed in any Baseline Assessment and discovered on the Company-Owned Site after the Effective Date shall be presumed to be present as a result of Seller's utilization of the Company-Owned Site during the Term, unless Seller shall prove, by clear and convincing proof, that the Hazardous Substances: (i) were present on the Company-Owned Site prior to the Term; (ii) migrated onto the Company-Owned Site as the result of the activities of a third party; or (iii) are present on the Company-Owned Site as the result of Company's improper actions.

(i) For the purposes of this **Attachment X** (Company-Owned Site):
(A) "**Phase I Environmental Assessment**" means an environmental assessment and report prepared by a qualified environmental professional reasonably acceptable to Company that meets or exceeds the minimum requirements outlined in the then current version of the American Society of Testing and Materials Standard E 1527-00 (Standard Practice of Environmental Site Assessments: Phase I Environmental Site Assessment Process); and (B) "**Phase II Environmental Assessment**" means an environmental assessment and report prepared by a qualified environmental professional reasonably acceptable to Company that goes beyond the investigations of a Phase I Environmental Assessment and involves sampling and testing of the Company-Owned Site, including (1) an asbestos survey conducted according to the standards of the Asbestos Hazard Emergency Response Act protocol; (2) testing of any transformers on the Company-Owned Site for PCBs; (3) testing for lead based paints; (4) soil and groundwater sampling to measure the effect of any actual or suspected release or discharge of Hazardous Substances on the Company-Owned Site; and (5) such other sampling and testing reasonably necessary to determine the environmental condition of the Company-Owned Site.

(ii) For the purposes of this **Attachment X** (Company-Owned Site), "**Hazardous Substances**" shall include flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, petroleum

and petroleum products, and any “hazardous” or “toxic” material, substance or waste that is defined by those or similar terms or is regulated as such under any Laws, including any material, substance or waste that is: (A) defined as a “hazardous substance” under Section 311 of the Water Pollution Control Act (33 U.S.C. §1317), as amended; (B) defined as a “hazardous waste” under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901, et seq., as amended; (C) defined as a “hazardous substance” or “hazardous waste” under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. §9601 et seq. or any so-called “superfund” or “superlien” law; (D) defined as a “pollutant” or “contaminant” under 42 U.S.C. §9601(33); (E) defined as “hazardous waste” under 40 C.F.R. Part 260; (F) defined as a “hazardous chemical” under 29 C.F.R. Part 1910; or (G) subject to any other Laws regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source.

(b) Compliance with Environmental Law. Seller shall keep and maintain the Company-Owned Site, including the land, the air above the land, the surface and run-off water on the land, and the groundwater under the land, in compliance with, and shall not cause or permit the Company-Owned Site or any portion of the Company-Owned Site to be in violation of any Laws regarding: (i) air, environmental, ground water, soil conditions, or threatened or endangered species; or (ii) clean-up, control, disposal, generation, storage, release, transportation, or use of, or liability or standards of conduct concerning, Hazardous Substances (“**Environmental Law**”).

(c) Use of Hazardous Substances. Seller shall not cause or allow any deposit, discharge, generation, release, or spill of Hazardous Substances at or from the Company-Owned Site, or that arises at any time from Seller’s operation of the Facility or any activities conducted on the Company-Owned Site or any adjacent or nearby real property, or resulting from seepage, leakage, or other transmission of Hazardous Substances from other real property to the Company-Owned Site, whether or not caused by Seller or the Company and whether occurring before or after the Effective Date (“**Hazardous Substances Discharge**”), except (i) in the ordinary course of Seller’s business (ii) in accordance with the instructions of the manufacturer and for the purpose described in such instructions, and (iii) in strict compliance with all applicable Environmental Law. Seller shall not install or remove any tank or combination of tanks (including pipes connected to the tanks) used to contain an accumulation of Hazardous Substances, and the volume of which (including the volume of the underground pipes connected to the tanks) is ten percent or more beneath the surface of the ground (“**Underground Storage Tank**”) on, within, under or about the Company-Owned Site without first obtaining Company’s written approval. Seller shall not accept hazardous waste (as defined under any Environmental Law) generated off the Company-Owned Site for any purpose, including treatment, storage or disposal.

(d) List of Hazardous Substances. On the Effective Date and on each anniversary of the Effective Date, and at any other time Company requests, Seller shall provide Company with a written list identifying any Hazardous Substances then

used, stored, or maintained upon the Company-Owned Site, the use and approximate quantity of each such material, a copy of any material safety data sheet (MSDS) issued by the manufacturer thereof, written information concerning the removal, transportation, and disposal of the same, and such other information as Company may reasonably require or as may be required by Law.

(e) Notice of Disturbance of Any Hazardous Substances. Seller shall provide Company 30 Days' prior notice before commencing any activities, including repair or remodeling of the Facility or the Company-Owned Site or installation or removal of any personal property from the Company-Owned Site, which could result in the disturbance of any Hazardous Substances. Together with such notice, Seller shall advise Company of protective measures to be taken by Seller to ensure that Hazardous Substances shall not be released and to ensure compliance with Environmental Law. Seller shall comply with all reasonable conditions (including adequate assurance of financial resources to comply with Environmental Law) that may be imposed by Company in connection with Seller's proposed activities.

(f) Hazardous Substances Claims. Seller shall immediately notify Company of: (i) any Hazardous Substances Claims (hereinafter defined); or (ii) Seller's discovery of any occurrence or condition of the Company-Owned Site which could subject Seller or Company to any liability, or restrictions on ownership, occupancy, transferability or use of the Company-Owned Site under any Environmental Law. For the purposes of this **Attachment X** (Company-Owned Site), "**Hazardous Substances Claims**" shall mean (i) any actual, alleged or threatened Hazardous Substances Discharge; (ii) any and all enforcement, cleanup, removal, mitigation, remediation or other government actions instituted, contemplated or threatened pursuant to Environmental Law affecting the Company-Owned Site; and (iii) all claims made or threatened by any third party against Seller or the Company-Owned Site relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Substances.

(g) Remediation and Removal. Except for the use of Hazardous Substances permitted by this **Attachment X** (Company-Owned Site), Seller shall cause any Hazardous Substances Discharge to be: (i) remediated on-site in accordance with applicable Environmental Law; or (ii) removed from the Company-Owned Site for remediation or disposal and to be transported solely by duly licensed Hazardous Substances transporters to duly licensed disposal facilities for final disposition to the extent required by and in accordance with applicable Environmental Law. Seller shall deliver to Company copies of any hazardous waste manifest reflecting the proper disposition of such Hazardous Substances. Except in emergencies or as otherwise required by Law, Seller shall not take any remedial or removal action in response to a Hazardous Substances Discharge without first notifying Company.

(h) Proceedings on Hazardous Substances Claims; Indemnity. Seller shall not enter into any legal proceeding or other action, settlement, consent decree or other compromise with respect to any Hazardous Substances Claims without first notifying Company of Seller's intention to do so and affording Company the opportunity to join and participate as a party if Company so elects in such proceedings. Seller shall be solely responsible for and shall indemnify Company

against any Hazardous Substances Claims, including: (i) the costs of any required or necessary removal, repair, cleanup or remediation of the Company-Owned Site, and the preparation and implementation of any closure, removal, remedial or other required plans; and (ii) all reasonable costs and expenses incurred by Company in connection therewith, including legal costs.

(i) Assurance of Performance.

(i) Company's Phase II Environmental Assessment. Company may, but shall not be required to, engage such contractors as Company determines to be appropriate to perform from time to time a Phase II Environmental Assessment, including environmental sampling and testing, of: (A) the Company-Owned Site, the surrounding soil and any adjacent areas, and any ground water located under or surface water located adjacent to the Company-Owned Site or any adjoining property; (B) Seller's compliance with all Environmental Law and the provisions of this **Attachment X** (Company-Owned Site); and (C) the provisions made by Seller for carrying out any removal or remedial action that may be required by reason of the nature of Seller's business and operations on the Company-Owned Site.

(ii) Cost of Assessment. All costs and expenses incurred by Company in connection with any such Phase II Environmental Assessment shall be paid by Company, except that if any such Phase II Environmental Assessment shows that: (A) the environmental condition of the Company-Owned Site has materially declined in comparison to any Baseline Assessment; (B) Seller has failed to comply with the provisions of this **Attachment X** (Company-Owned Site) with respect to Hazardous Substances; (C) the Company-Owned Site (including surrounding soil and any underlying groundwater or adjacent surface water) has become contaminated due to operations or activities not attributable to the Company; or (D) an event that is the basis for a Hazardous Substances Claim occurred during the Term, then all of the costs and expenses of such assessment shall be paid by Seller.

(iii) Conducting Assessment. Each Phase II Environmental Assessment shall be conducted: (A) only after advance notice of such assessment has been provided to Seller at least 10 Days prior to the date of the assessment; and (B) in a manner reasonably designed to minimize the interruption of Seller's operations and use of the Company-Owned Site. Company shall repair any substantial damage to the Company-Owned Site or to the Facility that is directly caused by Company (but not the environmental consultant) during the Phase II Environmental Assessment.

(j) Seller's Obligations Prior to End of Term.

(i) Seller's Phase I and Phase II Environmental Assessment Deposit. No later than 18 months prior to the date upon which this Agreement terminates, i.e., the end of the Term, Seller shall deposit with Company a sum equal to the then current estimated cost of conducting a Phase I and Phase II Environmental Assessment of the Company-Owned Site. Company shall hold such sum for Seller and shall apply or reimburse such sum as provided in this section.

(ii) Phase I (or Phase II) Environmental Assessment.

(A) No later than the beginning of the last year of the Term, or immediately upon earlier termination of the Term, Company shall cause a Phase I Environmental Assessment of the Company-Owned Site to be conducted and may apply the sums previously deposited by Seller to pay for such assessment.. If the assessment costs more than the amount of the deposit, Seller shall pay to Company, upon demand, the difference. If the assessment costs less than the amount of the deposit, and if the Phase I Environmental Assessment does not identify areas of concern that in Company's reasonable judgment indicate that further investigation is required, Company shall, no later than 30 Days after payment in full of the cost of the Phase I Environmental Assessment, return to Seller a sum equal to the amount by which the deposit exceeds the actual costs of such assessment. In addition, no later than the end of the Term, Seller shall (1) cause all Hazardous Substances previously owned, stored or used by Seller to be removed from the Company-Owned Site and disposed of in accordance with all Environmental Law; and (2) remove any Underground Storage Tanks or other containers installed or used by Seller to store any Hazardous Substances on the Company-Owned Site, and repair any damage to the Company-Owned Site caused by such removal.

(B) If Company's Phase I Environmental Assessment identifies areas of concern that in Company's reasonable judgment indicate that further investigation is required, Company shall cause a Phase II Environmental Assessment of the Company-Owned Site to be conducted and may apply the sums previously deposited by Seller to pay for such assessment. If the assessment costs more than the amount of the deposit, Seller shall pay to Company, upon demand, the difference. If the assessment costs less than the amount of the deposit, Company shall, no later than 30 Days after payment in full of such costs, return to Seller a sum equal to the amount by which the deposit exceeds the actual costs of such assessment. Seller expressly acknowledges and agrees that Seller's covenant and obligation to pay all costs and expenses associated with any Phase II Environmental Assessment required under this section, whether commissioned by Seller or Company, shall survive termination of this Agreement.

(k) Clean-up.

(i) Environmental Report. If any written report containing results of any Phase I Environmental Assessment ("**Environmental Report**") shall: (A) reveal that the environmental condition of the Company-Owned Site has materially declined in comparison to the Baseline Assessment; or (B) Seller has materially violated any warranty, representation, or covenant of this **Attachment X** (Company-Owned Site); or (C) recommend the repair, closure, remediation, removal or other clean-up (collectively, the "**Clean-up**") of any Hazardous Substances found on or about the Company-Owned Site, and if Company determines that Seller is responsible for such Clean-up, then:

(A) Company shall provide Seller with a copy of such Environmental Report and with a written explanation of the reasons why Company believes that Seller is responsible under the principles of this section for conducting the Clean-up identified in such Environmental Report.

(B) If, within 30 Days after receiving a copy of such

Environmental Report and such written statement, Seller fails either (1) to complete the Clean-up, or (2) with respect to any Clean-up which cannot be completed within such 30-Day period, fails to proceed with reasonable diligence to complete such Clean-up as promptly as practicable, then Company shall have the right, but not the obligation, to carry out any Clean-up recommended by the Environmental Report or required by any Governmental Authority, and to recover all of the costs and expenses of such Clean-up from Seller from the date Company incurred such costs and expenses until paid in full.

(ii) Emergency. If the Environmental Report reveals a situation which, in Company's sole discretion, constitutes an emergency, then Company shall have the right, but not the obligation, to carry out any Clean-up recommended by the Environmental Report or required by any Governmental Authority, and to recover all of the costs and expenses of such Clean-up from Seller from the date Company incurred such costs and expenses until paid in full.

(iii) Submission of Report to Government. To the extent required by Laws, Company shall be entitled to submit the Environmental Report to any Governmental Authority.

(iv) Completion of Clean-up Before Termination. Seller shall complete Clean-up prior to termination of this Agreement, and shall fully comply with all Environmental Law and requirements of any Governmental Authority over the Clean-up, including any requirement to file such assessment, mitigation plan, risk assessment or other information with any such Governmental Authority prior to such termination.

(v) Seller's Inability to Complete. Should any such Clean-up for which Seller is responsible not be completed or should Seller not receive any Approvals regarding the Company-Owned Site or areas adjacent to the Company-Owned Site required under Environmental Law prior to the expiration or sooner termination of this Agreement, including any extensions of this Agreement, then Seller shall deposit with Company an amount of money equal to the balance of the estimated costs of the Clean-up.

(I) Confidentiality.

(i) Keeping Information Confidential. Except if required to do so by Law, or compelled by subpoena or discovery proceedings in any legal action or governmental proceeding, Seller agrees that Seller shall not disclose, discuss, disseminate or copy any information, data, findings, communications, conclusions and reports regarding the environmental condition of the Company-Owned Site, to any person, including any Governmental Authority, without the prior written consent of Company. Upon completion of any Clean-up of the Company-Owned Site, Seller shall deliver and return to Company, all information, data, findings, communications, conclusions and reports regarding the environmental condition of the Company-Owned Site whether provided to Seller by Company or not.

(ii) Scope of Obligation. Seller's obligation to maintain the confidentiality of all information, data, findings, communications, conclusions and

reports regarding the environmental condition of the Company-Owned Site, include but are not limited to Seller's officers, employees, agents, attorneys, environmental consultants and contractors. Seller's obligation to maintain the confidentiality of all information, data, findings, communications, conclusions and reports regarding the environmental condition of the Company-Owned Site, shall survive the termination of this Agreement.

(m) Copies of Environmental Reports. Seller shall provide Company with a copy of any and all environmental assessments, audits, studies and reports regarding Seller's past or current activities on the Company-Owned Site or the environmental condition of the Company-Owned Site within 30 Days of Seller's receipt of such materials. Seller shall be obligated to provide Company with a copy of such materials without regard to whether they are generated by Seller or prepared for Seller, or how Seller comes into possession of such materials.

(n) Survival of Agreements. The covenants of this section, including the indemnification provision, shall survive the expiration or termination of this Agreement, or any termination of Seller's utilization of the Company-Owned Site.

8. Archeological and Historical Items.

(a) Discovery of Items. In the event any human remains, artifacts, historical items, or any of them (collectively the "**Discovered Items**") are discovered on the Company-Owned Site, Seller shall, at Seller's sole expense and subject to the approval of Company, be responsible to: (i) cause all excavation in the immediate area which may damage the Discovered Items and the potential historic site to cease; (ii) cause the site to be stabilized and secured to temporarily protect the Discovered Items against damage, theft, or both; (iii) cause the Discovered Items to be left untouched so that their archaeological or historical context may be accurately documented; and (iv) cause the discovery to be reported immediately to Company and to Governmental Authorities as required by applicable Laws. If the artifacts or historical items are found without human remains, and leaving the artifacts or historical items in their stabilized and secured site poses a substantial risk of loss or damage to all or part of them, and their removal is therefore necessary, Seller shall cause such removal and shall cause any tampering with the artifacts, the historical items, and the site to be minimized as much as possible.

(b) Human Remains. In the case of the discovery of human remains, Seller shall, at Seller's sole expense and in addition to the duties set forth in this section, cause to be prepared and executed a mitigation plan acceptable to Company and to Governmental Authorities possessing jurisdiction over such matters. Seller shall also be responsible to obtain written verification that the mitigation plan has been successfully implemented.

(c) Company's Reservation. If any Discovered Items are discovered, then Company shall have the right at all reasonable times to enter the Company-Owned Site upon reasonable notice for the purposes of searching for, exploring for, and removing any of the Discovered Items for preservation as permitted by applicable Laws. All objects, antiquities and specimens of Hawaiian or other ancient art or handicraft or of prehistoric, historic or archaeological interest found on the Company-

Owned Site belong to and at all times shall remain the property of Company.

(d) No Studies by Seller. No archaeological studies or historic preservation studies may be sought to be conducted in or on the Company-Owned Site by Seller or anyone acting by or through Seller. If Seller wishes to conduct such studies, or if Seller is required by applicable Laws to permit such studies (Seller to provide bases for conclusion that such Laws mandate any such requested studies), Seller shall obtain Company's prior written consent and shall permit Company, at its option, to commission such studies as required, or Company may permit Seller to commission such studies provided that Seller shall provide Company with prior notice of the commencement of such studies. If Seller commissions such studies, Seller shall upon completion of such studies cause a complete copy of the results of such studies to be provided to Company at the earliest opportunity but no later than 15 days after its issuance.

9. Transfers.

(a) Company's Right to Convey. Company may transfer title to the Company-Owned Site from time to time at any time without prior notice to, or consent from, Seller, provided that any such transfer is subject to Seller's right to utilize the Company-Owned Site under this Agreement. Company will promptly notify Seller of such a transfer.

(b) Seller's Limited Right. Seller may only transfer the rights to utilize the Company-Owned Site under this **Attachment X** (Company-Owned Site) to a permitted assignee of all of the rights and obligations of the Seller under this Agreement. Any attempt by Seller to separately transfer the rights to utilize the Company-Owned Site under this **Attachment X** (Company-Owned Site) shall be void. Any permitted assignee of Seller shall assume all obligations and liabilities of Seller under this **Attachment X** (Company-Owned Site). No transfer shall affect any obligations of Seller or rights of Company under this **Attachment X** (Company-Owned Site).

10. End of Term.

(a) Improvements. Upon the termination of this Agreement, or in the event this Agreement is declared null and void under either **Section 2.3** (Interconnection Requirements Study), **Section 3.4** (Prior to Effective Date), **Section 24.3** (Time Period for PUC Submittal Date), or **Section 24.4** (Time Period for PUC Approval) of this Agreement ("**Agreement Termination**"), at Company's option: (i) all improvements on the Company-Owned Site shall become Company's property; or (ii) Seller shall, at its sole cost and expense, remove all Seller-constructed improvements, including the Facility, the Company-Owned Interconnection Facilities and the Seller-Owned Interconnection Facilities ("**Improvements**") from the Company-Owned Site, and, in conjunction with such removal, shall develop and implement a program to recycle, to the fullest extent possible, or to otherwise properly dispose of, all such removed infrastructure.

(b) Seller's Removal of Improvements. If Seller is required to remove the Improvements upon Agreement Termination, Seller shall have reasonable access to the Company-Owned Site for a period of up to 90 Days after termination of this Agreement

to dismantle, pack and remove the Improvements from the Company-Owned Site (the “**Removal Period**”). Seller shall work promptly and diligently to remove the Improvements. The Removal Period shall end upon Seller’s completion of removal of the Improvements from the Company-Owned Site. The terms and provisions of this Agreement shall apply during the Removal Period, including Seller’s obligations to provide insurance and to indemnify Company.

(c) Company’s Removal of Improvements. If Company determines that Seller is not making diligent efforts to remove the Improvements, or if Company has operational concerns over the removal of the Improvements, Company shall notify Seller of Company’s intention to remove the Improvements at Seller’s cost. Company shall notify Seller of Company’s election to have Seller remove the Improvements not later than 90 Days before the end of the Term.

(d) Restoration of the Company-Owned Site. After Agreement Termination and removal of Seller’s Improvements by Seller or by Company, as the case may be, Seller shall, at its sole cost and expense, restore the Company-Owned Site to its condition prior to Seller’s Construction. Restoration pursuant to this Section shall be completed within 90 Days of Agreement Termination, or as otherwise agreed to by both Parties in writing.

(e) Assignment of Rights. If Company exercise its option under **Section 10(a)** (Improvements) of this **Attachment X** (Company-Owned Site) to take title to the Improvements, Seller shall assign to Company, without recourse, and give Company copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Facility.

(f) Orderly Transition. The parties shall cooperate to achieve an orderly transition of operations from Seller to Company without interruption, including delivery of such books and records (or copies thereof) as Company reasonably requires.

11. Miscellaneous.

(a) Modification. The parties reserve the right to modify this **Attachment X** (Company-Owned Site) by mutual agreement set forth in writing. Such modifications shall not be considered amendments to this Agreement requiring PUC approval.

(b) Security. Seller acknowledges and agrees that Seller’s performance under this **Attachment X** (Company-Owned Site) is secured by both the Development Period Security and the Operating Period Security. Any costs and expenses due to Company, or reimbursable to Company, may at Company’s option, be paid or reimbursed to Company from the applicable Development Period Security or Operating Period Security.

(c) Confidential Information. Without limitation of the obligations set forth elsewhere in this Agreement, each party (including its officers, directors, employees, representatives, brokers, attorneys and advisers) shall, except as otherwise provided by applicable Laws, or in connection with proceedings before the State of Hawaii Public Utilities Commission or other Governmental Authority with jurisdiction over the

Company-Owned Site or this Agreement, or in connection with the evaluation for financing, or as part of disclosure to its affiliates, attorneys, consultants, and advisers in order to conduct its business or proceedings to enforce this **Attachment X** (Company-Owned Site) or this Agreement, keep the contents of this **Attachment X** (Company-Owned Site) and any information related to the Company-Owned Site, Seller and the Seller's utilization of the Company-Owned Site pursuant to this **Attachment X** (Company-Owned Site) confidential, whether or not marked as "confidential" (collectively, the "**Confidential Information**"). The Confidential Information shall not include any information publicly known, or which becomes publicly known, other than through the acts of a party to the Agreement, or any of their respective officers, directors, employees, representatives, brokers, attorneys or advisers. Seller may retain possession of all or any part of the Confidential Information to the extent such Confidential Information relates solely to the Facility and Seller's operation of the Facility.

(d) No Real Property Interest Conveyed. Notwithstanding anything to the contrary contained herein, this Agreement shall not result in the conveyance or transfer to Seller, directly or indirectly, expressly or impliedly, or give rise to, any real property right, title, or interest.

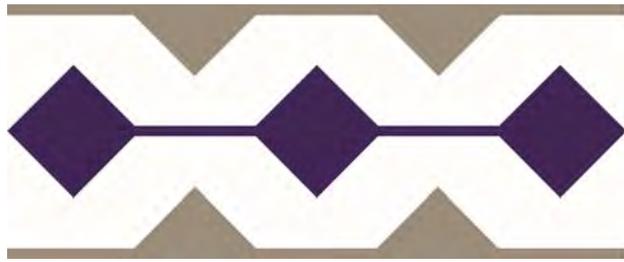
DRAFTING NOTES:

- 1. ATTACHMENT X MAY BE REVISED TO ACCOUNT FOR MATTERS SUCH AS THE SPECIFICS OF THE SITE IN QUESTION, SELLER'S FACILITY AND ANY NECESSARY ACCESS ARRANGEMENTS THROUGH COMPANY'S FACILITIES.**
- 2. PROVISIONS OF THE AGREEMENT CONCERNING MATTERS SUCH AS LAND RIGHTS, SCOPE OF INDEMNIFICATION AND DRAWS UPON DEVELOPMENT PERIOD SECURITY OR OPERATING PERIOD SECURITY WILL BE REVISED TO ACCOUNT FOR ATTACHMENT X.**

EXHIBIT X.1

SITE PLAN

[TO BE DETERMINED]



**Hawaiian
Electric**

Model
Power Purchase Agreement
For
Renewable Dispatchable Generation
(Wind + BESS)

August 22, 2019 Version

This document indicates, for information purposes only, the terms and conditions that may be negotiated in a contract for the sale of renewable dispatchable generation to be executed by Hawaiian Electric Company, Inc. The terms and conditions that may be offered by Hawaiian Electric Company, Inc. in a renewable dispatchable generation power purchase agreement may be modified to reflect factors such as different renewable technologies, project specifics, changes in applicable rules, guidance from the Public Utilities Commission in proceedings concerning the approval or negotiation of such power purchase agreements, results of an interconnection requirements study and other negotiated terms and conditions. This document also assumes that the proposed generation facility will be paired with a battery energy storage system ("BESS"), and therefore, contains terms and conditions with respect to the BESS. If a generation only proposal is selected for the RFP's final award group, the BESS specific provisions will be removed for the power purchase agreement for such project proposal.

[NOTE: TEXT WITHIN THIS DOCUMENT THAT APPEARS IN BOLD AND/OR BRACKETS INDICATES A PROVISION THAT MAY REQUIRE REVISION TO CONFORM TO A SPECIFIC PROJECT.]

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POWER PURCHASE AGREEMENT FOR RENEWABLE DISPATCHABLE GENERATION

THIS POWER PURCHASE AGREEMENT FOR RENEWABLE DISPATCHABLE GENERATION ("Agreement") is made this ____ day of _____, 20__ (the "Execution Date"), by and between Hawaiian Electric Company, Inc., a Hawai'i corporation (hereinafter called the "Company") and _____ (hereinafter called the "Seller").

WHEREAS, Company is an operating electric public utility on the Island of O'ahu, subject to the Hawai'i Public Utilities Law (Hawai'i Revised Statutes, Chapter 269) and the rules and regulations of the Hawai'i Public Utilities Commission (hereinafter called the "PUC"); and

WHEREAS, the Company System is operated as an independent power grid and must both maximize system reliability for its customers by ensuring that sufficient generation is available and meet the requirements for voltage stability, frequency stability, and reliability standards; and

WHEREAS, Company desires to minimize fluctuations in its purchased energy costs by acquiring renewable dispatchable generation at a fixed Unit Price; and

WHEREAS, Seller desires to build, own, and operate a renewable energy facility that is classified as an eligible resource under Hawai'i's Renewable Portfolio Standards Statute (codified as Hawai'i Revised Statutes ("HRS") 269-91 through 269-95); and

WHEREAS, Seller understands the need to use all commercially reasonable efforts to maximize the overall reliability of the Company System; and

WHEREAS, Facility will be located at _____, State of Hawai'i and is more fully described in Attachment A (Description of Generation, Conversion and Storage Facility) and Attachment B (Facility Owned by Seller) attached hereto and made a part hereof; and

WHEREAS, Seller desires to sell to Company, and Company agrees to purchase upon the terms and conditions set forth herein, (i) the Actual Output produced by the Facility and delivered to the Point of Interconnection; (ii) the availability of the BESS; and (iii) the availability of the Facility's Net Energy Potential for Company Dispatch in accordance with this Agreement.

NOW, THEREFORE, in consideration of the premises and the respective promises herein, Company and Seller hereby agree as follows:

DEFINITIONS

When the capitalized terms set forth in the Schedule of Defined Terms are used in this Agreement, such terms shall have the meanings set forth in such Schedule.

ARTICLE 1
PARALLEL OPERATION

Company agrees to allow Seller to interconnect and operate the Facility to provide renewable dispatchable generation and energy in parallel with the Company System; provided, however, that such interconnection and operation shall not: (i) adversely affect Company's property or the operations of its customers and customers' property; (ii) present safety hazards to the Company System, Company's property or employees or Company's customers or the customers' property or employees; or (iii) otherwise fail to comply with this Agreement. Such parallel operation shall be contingent upon the satisfactory completion, as determined solely by Company, of the Acceptance Test and, to the extent applicable, the Control System Acceptance Test, in accordance with Good Engineering and Operating Practices.

ARTICLE 2
PURCHASE AND SALE OF ENERGY AND DISPATCHABILITY;
RATE FOR PURCHASE AND SALE; BILLING AND PAYMENT

DRAFTING NOTE: For any projects which intend to meet the capacity need for Oahu and which propose a GCOD after March 2022 (but, in no event later than June 1, 2022), such projects shall be required to meet the availability and performance metrics of this Article 2 immediately as of GCOD (i.e., no seasoning period), and liquidated damages would be assessable for failure to satisfy such metrics without taking into account a seasoning period. Conforming revisions to be made based on a project's proposed GCOD and whether such project intends to meet the capacity need for Oahu.

- 2.1 Purchase and Sale of Electric Energy, Dispatchability of Facility and Availability of the BESS. Subject to the other provisions of this Agreement, Company shall, by a Lump Sum Payment, pay for: (i) the Actual Output produced by the Facility and delivered to the Point of Interconnection in response to Company Dispatch of the Facility; (ii) the availability of the Facility's Net Energy Potential for Company Dispatch in accordance with this Agreement; and (iii) the availability of the BESS. Included in such purchase and sale are all of the Environmental Credits associated with the electric energy. Company will not reimburse Seller for any taxes or fees imposed on Seller including, but not limited to, State of Hawai'i general excise tax. **[Drafting Note: For PPA with energy payment, use the following in lieu of the above:** Subject to the other provisions of this Agreement: (i) Company shall, by an Energy Payment, pay for the Actual Output produced by the Facility and delivered to the Point of Interconnection in response to Company Dispatch of the Facility; and (ii) Company shall, by a Lump Sum Payment, pay for the availability of the Facility's Net Energy Potential and the availability of the BESS to respond to Company Dispatch in accordance with this Agreement. Included in such purchase and sale of electric energy and such purchase and sale of dispatchability are all of the Environmental Credits associated with the electric energy. Company will not reimburse Seller for any taxes or fees imposed on Seller including, but not limited to, State of Hawai'i general excise tax.]
- 2.2 [Drafting Note: If there is no Energy Payment, replace this paragraph with [RESERVED]]Payment for Electric Energy.

Commencing on the Commercial Operations Date, in exchange for the electric energy delivered to the Point of Interconnection in response to Company Dispatch, Seller will be paid an Energy Payment on a monthly basis as provided in Section 1 (Price for Purchase of Electric Energy) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement.

2.3 Lump Sum Payment. Commencing on the Commercial Operations Date, Company shall pay to Seller a monthly Lump Sum Payment as provided in Section 2 (Lump Sum Payment for Purchase of Dispatchability) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement. As more fully set forth in Section 3 (Calculation of Lump Sum Payment) of said Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS), the monthly Lump Sum Payment shall be calculated and adjusted to reflect changes in the estimate of the Facility's Net Energy Potential as such estimate is revised from time to time as more fully set forth in Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement. For purposes of calculating the monthly Lump Sum Payment, the monthly Lump Sum Payment shall be adjusted downward to account for the time the Facility WTG(s) are not available for Company Dispatch because of a Force Majeure condition (i) at the Facility or (ii) that otherwise delays or prevents the Seller from making the Facility WTG(s) in question available for Company Dispatch, as more fully set forth in Section 3.iv of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement.

2.4 Assurance of Capability of Facility to Deliver Net Energy Potential and Availability of BESS.

(a) Design, Operation and Maintenance to Achieve Required Performance Metrics; Charging of BESS. In order to provide Company with reasonable assurance that, subject to the Renewable Resource Variability, the Facility's Net Energy Potential will be available for Company Dispatch: (i) the Modified Pooled OMC Equipment Availability Factor Performance Metric shall be used to evaluate the availability of the WTGs for dispatch by Company; (ii) the Guaranteed Performance Index ("GPI") Performance Metric shall be used to evaluate the efficiency of the WTGs; (iii) the BOP Efficiency Ratio Performance Metric shall be used to evaluate the efficiency of the BOP; (iv) the BESS Capacity

Performance Metric shall be used to confirm the capability of the BESS to discharge continuously for four (4) hours at Maximum Rated Output or to discharge continuously for a total energy (MWh) equal to the BESS Contract Capacity if the test is conducted at less than Maximum Rated Output; (v) the BESS EAF Performance Metric shall be used to determine whether the BESS is meeting its expected availability; and (v) the BESS EFOF Performance Metric shall be used to evaluate whether the BESS is experiencing excessive unplanned outages. Whenever the WTGs potential output is in excess of the Company Dispatch, the excess energy from the WTGs shall be used to maximize the BESS State of Charge so long as this does not conflict with the operating parameters of the BESS set forth in Section 9(d) (Battery Energy Storage System) of Attachment B (Facility Owned by Seller) to this Agreement. Seller shall design, operate and maintain the Facility in a manner consistent with the standard of care reasonably expected of an experienced owner/operator with the desire and financial resources necessary to design, operate and maintain the Facility to achieve the Performance Metrics. The foregoing is without limitation to Seller's other obligations under this Agreement, including the obligation to operate the Facility in accordance with Good Engineering and Operating Practices. The Performance Metrics set forth in Section 2.5 (Modified Pooled OMC Equipment Availability Factor; Liquidated Damages; Termination Rights) through Section 2.10 (BESS Annual Equivalent Forced Outage Factor; Liquidated Damages) of this Agreement shall be interpreted consistent with the North American Electric Reliability Corporation Generating Availability Data System ("NERC GADS") Data Reporting Instructions.

(b) [Reserved]

2.5 Modified Pooled OMC Equipment Availability Factor; Liquidated Damages; Termination Rights.

(a) Calculation of the Modified Pooled OMC Equipment Availability Factor. Following the end of each LD Period, the Modified Pooled OMC Equipment Availability Factor shall be calculated for such LD Period as set forth in Section 1 (Modified Pooled OMC Equipment Availability Factor ("MPXEEAF")) of Attachment Q (Calculation of Certain Metrics).

(b) Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages. For each LD Period, a Modified Pooled OMC Equipment Availability Factor shall be calculated as provided in accordance with Section 1 (Modified Pooled OMC Equipment Availability Factor ("MPXEEAF")) of Attachment Q (Calculation of Certain Metrics) to this Agreement. In the event the Modified Pooled OMC Equipment Availability Factor is less than **97%** (the "Modified Pooled OMC Equipment Availability Factor Performance Metric") for any LD Period, Seller shall be subject to liquidated damages as set forth in this Section 2.5(b) (Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages). For avoidance of doubt, because the Modified Pooled OMC Equipment Availability Factor is calculated over an LD Period of 12 calendar months, the first month for which liquidated damages would be calculated under this Section 2.5(b) (Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages) would be the last calendar month of the initial Contract Year. If the Modified Pooled OMC Equipment Availability Factor for a LD Period is less than the Modified Pooled OMC Equipment Availability Factor Performance Metric, Seller shall pay, and Company shall accept, as liquidated damages for Seller's failure to achieve the Modified Pooled OMC Equipment Availability Factor Performance Metric for such LD Period, an amount calculated in accordance with the following formula:

<u>Modified Pooled OMC Equipment Availability Factor</u>	<u>Amount of Liquidated Damages Per Calendar Month</u>
--	--

96.9% and below	For each one-tenth of one percent (0.001) by which the Modified Pooled OMC Equipment Availability Factor for such LD Period falls below the Modified Pooled OMC Equipment Availability Factor Performance Metric, an amount equal to 0.001 of the Applicable Period Lump Sum Payment for the last calendar month of such LD Period.
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For purposes of determining liquidated damages under the preceding formula, the amount by which the Modified Pooled OMC Equipment Availability Factor for the LD Period in question falls below the applicable threshold shall be rounded to the nearest one-tenth of one percent (0.001). Each Party agrees and acknowledges that (i) the damages that Company would incur if the Seller fails to achieve the Modified Pooled OMC Equipment Availability Factor Performance Metric for a LD Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

- (c) Modified Pooled OMC Equipment Availability Factor Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.5(b) (Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages) is to compensate Company for the damages that Company would incur if the Seller fails to achieve the Modified Pooled OMC Equipment Availability Factor Performance Metric for a LD Period, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the Facility is likely to continue to substantially underperform the Modified Pooled OMC Equipment Availability Factor Performance Metric. Accordingly, and without limitation to Company's rights under said Section 2.5(b) (Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages) for those LD Periods during which the Seller failed to achieve the Modified Pooled OMC Equipment Availability Factor Performance Metric, the failure of the Facility to achieve a Modified Pooled OMC Equipment Availability Factor of not less than **84%** for each of three consecutive Contract Years shall constitute an Event of Default under Section 15.1(b) of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in Article 15 (Events of Default) and Article 16 (Damages in the Event of Termination by Company).

2.6 Performance Index; Liquidated Damages; Termination Rights.

(a) Calculation of Performance Index.

- (i) The Performance Index represents the efficiency of the WTG's conversion of the wind resource to electricity by comparing the calculated Expected Generation at the WTGs to the measured Actual Generation at the WTGs during Contact Hours excluding periods where the operational state is categorized as ERSDTH, oEFDTH, oEMPTH, oEPDTH or Environmental Derate.
- (ii) Following the end of each PI Assessment Period, the Performance Index shall be calculated for such PI Assessment Period (using the previous 12 months of data) as set forth in Section 2 (Performance Index) of Attachment Q (Calculation of Certain Performance Metrics) to this Agreement.
- (iii) PI Test. In the event that the set of operational data points under Attachment Q (Calculation of Certain Performance Metrics) that is available for any month to calculate the PI cannot be validated to Company's reasonable satisfaction or in the event there were not at least 16 such data points during such month that could be used to calculate the PI, the Company shall have the right to perform a test ("PI Test") to collect the data points for such month to be used to calculate the PI in lieu of the use of operational data for such month. The Company shall retain sole discretion as to when to conduct the PI Test, and the PI Test may be conducted at any point during the month following the month for which Company was either unable to validate the set of operational data points for such month or there were not at least 24 data points available during such month. The PI Test shall have a minimum duration of four (4) hours and shall run until at least 16 data points are collected that meet the criteria set forth in Attachment Q (Calculation of Certain Performance Metrics). During an PI Test, the PI shall be calculated from the data points collected during said PI Test using the formula set forth in Attachment Q. To the extent possible, the Company shall schedule the PI Test for a period where all WTGs are available and weather conditions are expected to be optimum allowing the WTG System to generate at near full

capacity for the duration of the PI Test (if possible). The result of the calculation based on the PI Test shall be the PI for the PI Assessment Period in question.

(iv) For each PI Assessment Period that includes one or more months for which a PI Test was performed, the data points collected during said PI Test for such month(s) shall be used together with the data points for months for which a PI Test was not conducted to calculate the PI for the PI Assessment Period in question using the formula set forth in Section 2.6(a)(iii) above. The result of the calculation based on the PI Test shall be the PI for the PI Assessment period in question.

(b) GPI Metric and Liquidated Damages. For each PI Assessment Period, a Performance Index shall be calculated as provided in Section 2 (Performance Index) of Attachment Q (Calculation of Certain Metrics) to this Agreement. In the event the PI is less than 97% (the "GPI Metric"), Seller shall pay, and Company shall accept, as liquidated damages for Seller's failure to achieve the GPI Metric for such PI Assessment Period, an amount calculated in accordance with the following formula:

<u>Tier</u>	<u>Facility PI</u>	<u>Amount of Liquidated Damages Per Calendar Month</u>
Tier 1	97.0% > PI > or equal to 90.0%	For each one-tenth of one percent (0.001) by which the Performance Index for such PI Assessment Period falls below 97% and is above 89.9%, an amount equal to one-tenth of one percent (0.001) of the PI Assessment Period Lump Sum Payment; plus
Tier 2	90.0% > PI > or equal to 80.0%	For each one-tenth of one percent (0.001) by which the Performance Index for such PI Assessment Period falls below 90.0% and is above 79.9%, an amount equal to two-tenths of one percent (0.002) of the PI Assessment Period Lump Sum Payment; plus

Tier 3	Below 80.0%	For each one-tenth of one percent (0.001) by which the Performance Index for such PI Assessment Period falls below 80.0%, an amount equal to four-tenths of one percent (0.004) of the PI Assessment Period Lump Sum Payment.
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(c) PI Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.6(b) (GPI Metric and Liquidated Damages) is to compensate Company for the damages that Company would incur if the Seller fails to achieve the GPI Metric for a PI Assessment Period, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the Facility is likely to continue to substantially underperform the GPI Metric. Accordingly, and without limitation to Company's rights under said Section 2.6(b) (GPI Metric and Liquidated Damages) for those PI Assessment Periods during which the Seller failed to achieve the GPI Metric, the failure of the Facility to achieve, for each of three consecutive Contract Years, a Performance Index of not less than the Tier 2 Bandwidth for such Contract Year shall constitute an Event of Default under Section 15.1(c) of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in Article 15 (Events of Default) and Article 16 (Damages in the Event of Termination by Company).

2.7 BOP Efficiency Ratio; Liquidated Damages; Termination Rights.
[DRAFTING NOTE: THE SECTION ON BOP EFFICIENCY RATIO WILL BE REVISED FOR PROJECTS THAT INCLUDE A BESS.]

(a) Calculation of Annual BOP Efficiency Ratio. The BOP Efficiency Ratio represents the efficiency of the BOP by comparing the measured Actual Generation at the WTGs to the Actual Output at the Point of Interconnection. Following the end of each Contract Year, Company shall calculate the BOP Efficiency Ratio for such Contract Year as follows:

$$\text{BOP} = \frac{\text{Actual Output (at POI) for such Contract Year}}{\text{Actual Output (at POI) for such Contract Year}}$$

Efficiency
Ratio

Actual Generation at WTGs
for such Contract Year

(b) Determination of BOP Benchmark.

- (i) First Two Contract Years. If a copy of the IE Energy Assessment Report is not provided to Company, the BOP Benchmark for the first two Contract Years shall be **97%**. If a copy of the IE Energy Assessment Report is provided to Company, the BOP Benchmark shall be derived from the IE Energy Assessment Report on the basis of the estimated electrical losses for the BOP used in the IE Energy Assessment Report in arriving at the NEP IE Estimate. Within 30 Days of Company's receipt of the IE Energy Assessment Report, Company shall provide written notice to Seller of either (aa) the BOP Benchmark derived from the IE Energy Assessment Report or (bb) Company's inability to reasonably derive a BOP Benchmark from the IE Energy Assessment, in which case the BOP Benchmark shall be **97%**.
- (ii) Commencing With Third Contract Year. For the third Contract Year through the end of the Contract Year preceding the Contract Year during which the first Subsequent OEPR is issued, the BOP Benchmark shall be derived from the Initial OEPR on the basis of the estimated electrical losses for the BOP used in the Initial OEPR in arriving at the Initial OEPR's NEP OEPR Estimate. Within 30 Days of Company's receipt of the Initial OEPR, Company shall either (i) provide written notice to Seller of the BOP Benchmark derived from the Initial OEPR or (ii) if Company is unable to reasonably derive a BOP Benchmark from the Initial OEPR, deliver a written request to the OEPR Evaluator (with a copy to Seller) that such OEPR Evaluator issue, within 30 Days, a written clarification of the Initial OEPR specifying the BOP Benchmark. If such request for clarification is made to the OEPR Evaluator, within 10 Business Days following the expiration of the 30-Day period provided for receipt of such OEPR Evaluator's reply, Company shall provide written notice to Seller of either (i) the BOP Benchmark derived from such written clarification by the OEPR

Evaluator or (ii) the designation of **97%** as the BOP Benchmark due to either the failure of the OEPR Evaluator to issue a written clarification or, if a written clarification was issued, the inability of Company to reasonably derive a BOP Benchmark on the basis of such written clarification.

- (iii) Commencing With the First Subsequent OEPR and Thereafter. For any Contract Year during which a Subsequent OEPR is issued through the end of the Contract Year preceding the Contract Year during which the next Subsequent OEPR is issued, the BOP Benchmark shall be derived from the first of the two Subsequent OEPRs referenced in this sentence on the basis of the estimated electrical losses for the BOP used in such Subsequent OEPR in arriving at such Subsequent OEPR's NEP Estimate. Within 30 Days of Company's receipt of such Subsequent OEPR, Company shall either (i) provide written notice to Seller of the BOP Benchmark derived from such Subsequent OEPR or (ii) if Company is unable to reasonably derive a BOP Benchmark from such Subsequent OEPR, deliver a written request to the OEPR Evaluator (with a copy to Seller) that such OEPR Evaluator issue, within 30 Days, a written clarification of such Subsequent OEPR specifying the BOP Benchmark. If such request for clarification is made to the OEPR Evaluator, within 10 Business Days following the expiration of the 30-Day period provided for the receipt of such OEPR Evaluator reply, Company shall provide written notice to Seller of either (i) the BOP Benchmark derived from such written clarification by the OEPR Evaluator or (ii) the designation of **97%** as the BOP Benchmark due to either the failure of the OEPR Evaluator to issue a written clarification or, if a written clarification was issued, the inability of Company to reasonably derive a BOP Benchmark on the basis of such written clarification.

- (iv) Disagreement Over Determination of BOP Benchmark. Any disagreement over the determination of the BOP Benchmark shall be resolved as set forth in Section 2(b) (Notice of Disagreement with BOP Benchmark Determination) of Attachment T (Monthly

Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

- (c) BOP Benchmark and Liquidated Damages. For each Contract Year, Seller shall achieve a BOP Efficiency Ratio, as calculated as provided in Section 2.7(a) (Calculation of Annual BOP Efficiency Ratio) of this Agreement, of not less than the BOP Benchmark. If the BOP Efficiency Ratio for a Contract Year is less than the BOP Benchmark, Seller shall pay, and Company shall accept, as liquidated damages for Seller's failure to achieve the BOP Benchmark for such Contract Year, an amount calculated in accordance with the following formula:

Amount of Liquidated Damages Per Contract Year

For each one-tenth of one percent (0.001) by which the BOP Efficiency Ratio for such Contract Year falls below the BOP Benchmark up to and including a BOP Efficiency Ratio of three percentage points below the BOP Benchmark ("BOP Benchmark Minus 3"), one-tenth of one percent (0.001) of the Applicable Period Lump Sum Payment for such Contract Year; plus

For each one-tenth of one percent (0.001) by which the BOP Efficiency Ratio for such Contract Year falls below BOP Benchmark Minus 3 up to an including a BOP Efficiency Ratio of six percentage points below the BOP Benchmark ("BOP Benchmark Minus 6", two-tenths of one percent (0.002) of the Applicable Period Lump Sum Payment for such Contract Year; plus

For each one-tenth of one percent (0.001) by which the BOP Efficiency Ratio for such Contract Year falls below BOP Benchmark Minus 6, four-tenths of one percent (0.004) of the Applicable Period Lump Sum Payment for such Contract Year.

For purposes of determining liquidated damages under the preceding formula, the amount by which the BOP Efficiency Ratio for the Contract Year in question falls below the applicable threshold shall be rounded to the nearest one-tenth of one percent (0.001). Each Party agrees and acknowledges that (i) the damages that Company would incur if the Seller fails to achieve the BOP Benchmark for a Contract Year would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

- (d) BOP Efficiency Ratio Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.7(c) (BOP Benchmark and Liquidated Damages) is to compensate Company for the damages that Company would incur if Seller fails to achieve the BOP Benchmark for a Contract Year, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the Facility is likely to continue to substantially underperform the BOP Benchmark. Accordingly, and without limitation to Company's rights under said Section 2.7(c) (BOP Benchmark and Liquidated Damages) for those Contract Years during which the Seller failed to achieve the BOP Benchmark, the failure of the Facility to achieve a BOP Efficiency Ratio of not less than BOP Benchmark Minus 6 for each of three consecutive Contract Years shall constitute an Event of Default under Section 15.1(c) of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in Article 15 (Events of Default) and Article 16 (Damages in the Event of Termination by Company).

2.8 BESS Capacity Test; Liquidated Damages; Termination Rights.

- (a) BESS Capacity Test and Liquidated Damages. For each BESS Measurement Period following the Commercial Operations Date, the BESS shall be required to complete a BESS Capacity Test, as more fully set forth in Attachment W (BESS Tests) to this Agreement. For each BESS Measurement Period for which the BESS fails to demonstrate that it satisfies the BESS Capacity Performance Metric, Seller shall pay, and Company shall

accept, as liquidated damages for such shortfall, the amount set forth in the following table (on a progressive basis) upon proper demand at the end the BESS Measurement Period in question:

BESS Capacity Ratio	Liquidated Damage Amount
Tier 1 95.0% - 99.9%	For each one-tenth of one percent (0.001) that the BESS Capacity Ratio is below 100% and is above 94.9%, an amount equal to one-tenth of one percent (0.001) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus
Tier 2 85.0% - 94.9%	For each one-tenth of one percent (0.001) that the BESS Capacity Ratio is below 95% and is above 84.9%, an amount equal to one and a half-tenths of one percent (0.0015) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus
Tier 3 75.0% - 84.9%	For each one-tenth of one percent (0.001) that the BESS Capacity Ratio is below 85% and is above 74.9%, an amount equal to two-tenths of one percent (0.002) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus
Tier 4 60.0% - 74.9%	For each one-tenth of one percent (0.001) that the BESS Capacity Ratio is

	below 75% and is above 59.9%, an amount equal to two and a half-tenths of one percent (0.0025) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus
Tier 5 50.0% - 59.9%	For each one-tenth of one percent (0.001) that the BESS Capacity Ratio is below 60% and is above 49.9%, an amount equal to three-tenths of one percent (0.003) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus
Tier 6 49.9% and below ("Lowest BESS Capacity Bandwidth")	For each one-tenth of one percent (0.001) that the BESS Capacity Ratio is below 50%, an amount equal to three and a half-tenths of one percent (0.0035) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question.

For purposes of determining liquidated damages under this Section 2.8(a) (BESS Capacity Test and Liquidated Damages), the starting and end points for the duration of the period that the BESS discharges shall be rounded to the nearest MWh. Each Party agrees and acknowledges that (i) the damages that Company would incur if the Seller fails to achieve the BESS Capacity Performance Metric for a BESS Measurement Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

EXAMPLE: The following is an example calculation of liquidated damages for the BESS Capacity Performance

Metric and is included for illustrative purposes only.
Assume the following:

The Maximum Rated Output for the BESS is 25 MW.

A BESS Capacity Test was conducted and the BESS was measured to have discharged 65 MWh

BESS Contract Capacity = 25 MW x 4 hours = 100 MWh
BESS Capacity Ratio = MWh Discharged/BESS Contract Capacity = 65 MWh/100 MWh = 0.65

$LD = [((1 - 0.950) \times 1) + ((0.950 - 0.850) \times 1.5) + ((0.850 - 0.750) \times 2 + ((0.750 - 0.65) \times 2.5)] \times \text{BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question}$
= 0.65 x BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question

- (b) BESS Capacity Test Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.8(a) (BESS Capacity Test and Liquidated Damages) is to compensate Company for the damages that Company would incur if the BESS fails to demonstrate satisfaction of the BESS Capacity Performance Metric during a BESS Measurement Period, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the BESS is likely to continue to substantially underperform the Company's expectations. Accordingly, and without limitation to Company's rights under said Section 2.8(a) (BESS Capacity Test and Liquidated Damages) for those BESS Measurement Periods during which the BESS fails to demonstrate satisfaction of the BESS Capacity Performance Metric, substantial underperformance shall give rise to a termination right as set forth in this Section 2.8(b) (BESS Capacity Test Termination Rights). If the BESS is in the Lowest BESS Capacity Bandwidth for any two BESS Measurement Periods during a 12-month period, an **18-month** cure period (the "BESS Capacity Cure Period") will commence on the Day following the close of the second such BESS Measurement Period. For each BESS Measurement Period during such BESS Capacity Cure Period, BESS Capacity Tests shall continue to be conducted as set forth in Attachment W (BESS Tests) and liquidated damages paid and accepted as

set forth in Section 2.8(a) (BESS Capacity Test and Liquidated Damages); provided, however, that if the Seller fails to demonstrate satisfaction of the BESS Capacity Performance Metric prior to the expiration of the BESS Capacity Cure Period, such failure shall constitute an Event of Default under Section 15.1(e) of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in Article 15 (Events of Default) and Article 16 (Damages in the Event of Termination by Company).

2.9 BESS Annual Equivalent Availability Factor; Liquidated Damages; Termination Rights.

(a) BESS Annual Equivalent Availability Factor and Liquidated Damages. For each BESS Measurement Period following the Commercial Operations Date, a BESS Annual Equivalent Availability Factor shall be calculated as set forth in Attachment X (BESS Annual Equivalent Availability Factor). If the BESS Annual Equivalent Availability Factor for such BESS Measurement Period is less than **97%** (the "BESS EAF Performance Metric"), Seller shall pay, and Company shall accept, as liquidated damages for such shortfall, the amount set forth in the following table (on a progressive basis) upon proper demand at the end the current BESS Measurement Period:

BESS Annual Equivalent Availability Factor	Liquidated Damage Amount
<p style="text-align: center;">Tier 1</p> <p style="text-align: center;">85.0% - 96.9%</p>	<p>For each one-tenth of one percent (0.001) by which the BESS Annual Equivalent Availability Factor falls below 97% but equal to or above 85%, an amount equal to one-tenth of one percent (0.001) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus</p>
<p style="text-align: center;">Tier 2</p> <p style="text-align: center;">80.0% - 84.9%</p>	<p>For each one-tenth of one percent (0.001) by which the BESS Annual Equivalent Availability Factor falls</p>

	below 85% but equal to or above 80%, an amount equal to two-tenths of one percent (0.002) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus
Tier 3 75.0% - 79.9%	For each one-tenth of one percent (0.001) by which the BESS Annual Equivalent Availability Factor falls below 80% but equal to or above 75%, an amount equal to three-tenths of one percent (0.003) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus
Tier 4 Below 75.0%	For each one-tenth of one percent (0.001) by which the BESS Annual Equivalent Availability Factor falls below 75%, an amount equal to four-tenths of one percent (0.004) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question.

Such liquidated damages shall be due within thirty (30) Days after the first to occur of the end of such BESS Measurement Period or the end of Term. In the event Seller fails to pay Company amounts of liquidated damages due under this Section 2.9(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages) within thirty (30) Days of receipt of Company's written demand, Company may, without limitation to any other remedy Company may have, set-off such amounts due against payments it is otherwise obligated to make under this Agreement.

For purposes of determining liquidated damages under this Section 2.9(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages), the BESS Annual

Equivalent Availability Factor for the BESS Measurement Period in question shall be rounded to the nearest one-tenth of one percent (0.001). Each Party agrees and acknowledges that (i) the damages that Company would incur if the Seller fails to achieve the BESS EAF Performance Metric for a BESS Measurement Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

- (b) BESS Annual Equivalent Availability Factor Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.9(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages) is to compensate Company for the damages that Company would incur if the Seller fails to achieve the BESS EAF Performance Metric for a BESS Measurement Period, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the BESS is likely to continue to substantially underperform the BESS EAF Performance Metric. Accordingly, and without limitation to Company's rights under said Section 2.9(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages) for those BESS Measurement Periods during which the Seller failed to achieve the BESS EAF Performance Metric, the failure of the Seller to achieve, for each of four consecutive BESS Measurement Periods, a BESS Annual Equivalent Availability Factor of not less than **75%** shall constitute an Event of Default under Section 15.1(f) of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in Article 15 (Events of Default) and Article 16 (Damages in the Event of Termination by Company); provided, however, that if a BESS Measurement Period for which the aforementioned 75% threshold is not achieved falls within a BESS Capacity Cure Period, such BESS Measurement Period shall be excluded from the calculation of the aforementioned "four consecutive BESS Measurement Periods" if the failure to achieve the aforementioned 75% threshold was the result of unavailability caused by the process of carrying out the repairs to or replacements of the BESS necessary to remedy the failure of the BESS to achieve the BESS Capacity Performance Metric.

2.10 BESS Annual Equivalent Forced Outage Factor; Liquidated Damages.

For each BESS Measurement Period following the Commercial Operations Date, the BESS shall maintain a BESS Annual Equivalent Forced Outage Factor of not more than 4% (the "BESS EFOF Performance Metric") as calculated as set forth in Attachment Y (BESS Annual Equivalent Forced Outage Factor). If the BESS Annual Equivalent Forced Outage Factor for such BESS Measurement Period exceeds the BESS EFOF Performance Metric, Seller shall pay, and Company shall accept, as liquidated damages for exceeding the BESS EFOF Performance Metric, the amount set forth in the following table (on a progressive basis) upon proper demand by the Company at the end of the BESS Measurement Period in question:

BESS Annual Equivalent Forced Outage Factor	Liquidated Damage Amount
0.0% - 4.0%	-0-
4.1% - 6.9%	For each one-tenth of one percent (0.001) that the BESS Annual Equivalent Forced Outage Factor is above 4.0% but less than 7.0%, an amount equal to two-tenths of one percent (0.002) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus
7.0% and above	For each one-tenth of one percent (0.001) that the BESS Annual Equivalent Forced Outage Factor is above 6.9%, an amount equal to four-tenths of one percent (0.004) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question

Such liquidated damages shall be due within thirty (30) Days after the first to occur of the end of such BESS Measurement Period or the end of Term. In the event Seller fails to pay Company amounts of liquidated damages due under this Section 2.10 (BESS Annual Equivalent Forced Outage Factor; Liquidated Damages) within thirty (30) Days of receipt of Company's written demand, Company may set-off such amounts due against payments it is otherwise obligated to make under this Agreement.

For purposes of determining liquidated damages under this Section 2.10 (BESS Annual Equivalent Forced Outage Factor; Liquidated Damages), the BESS Annual Equivalent Forced Outage Factor for the BESS Measurement Period in question shall be rounded to the nearest one-tenth of one percent (0.001). Each Party agrees and acknowledges that (i) the damages that Company would incur if the Seller fails to achieve the BESS EFOF Performance Metric for a BESS Measurement Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

For example, if the BESS Equivalent Annual Forced Outage Factor was 4.1% as calculated in the example in Attachment Y (BESS Annual Equivalent Forced Outage Factor) attached hereto and the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question is \$1,000,000, the liquidated damages would be \$2,000, calculated as follows:

$$\begin{aligned} 4.1\% - 4.0\% &= 0.1\% \\ 0.1\%/0.1 &= 1 \\ \$1,000,000 \times .002 &= \$2,000 \\ \$2,000 \times 1 &= \$2,000 \end{aligned}$$

2.11 BESS Round Trip Efficiency Test; Liquidated Damages; Termination Rights.

- (a) RTE Test and Liquidated Damages. For each BESS Measurement Period following the Commercial Operations Date, the BESS shall be required to complete a RTE Test or otherwise demonstrate satisfaction of the RTE Performance Metric, as more fully set forth in Attachment W (BESS Tests) to this Agreement. For each BESS Measurement Period for which the BESS fails to demonstrate that it satisfies the RTE Performance Metric, Seller shall pay, and Company shall accept, as liquidated damages for such shortfall, in the amount to

be calculated as provided in this Section 2.11(a) (RTE Test and Liquidated Damages), upon proper demand at the end the BESS Measurement Period in question.

The RTE Performance Metric is % as measured at the Point of Interconnection. **[DRAFTING NOTE: PERCENTAGE TO BE TAKEN FROM RESPONSE TO RFP.]**

The liquidated damages threshold ("LDT") is equal to the RTE Performance Metric minus 2 percentage points.

The Selected RTE Test is the RTE Test that came closest to satisfying the RTE Performance Metric during the BESS Measurement Period in question.

Seller shall be liable for liquidated damages if:

$$(PM - RTE Ratio) * 100 > 2\%$$

Where:

PM = RTE Performance Metric stated as percentage

RTE Ratio = RTE Ratio from Selected RTE Test stated as percentage

For each percentage point by which the RTE Ratio is below the LDT, Seller shall pay, and Company shall accept, liquidated damages in an amount equal to two-tenths of one percent (0.002) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question.

Each Party agrees and acknowledges that (i) the damages that Company would incur if the Seller fails to achieve the RTE Performance Metric for a BESS Measurement Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

- (b) RTE Test Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.11(a) (RTE Test and Liquidated Damages) is to compensate Company for the damages that Company would incur if the BESS fails to demonstrate satisfaction of the RTE Performance Metric during a BESS Measurement Period, such liquidated damages are not

intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the BESS is likely to continue to substantially underperform the Company's expectations. Accordingly, and without limitation to Company's rights under said Section 2.11(a) (RTE Test and Liquidated Damages) for those BESS Measurement Periods during which the BESS fails to demonstrate satisfaction of the RTE Performance Metric, substantial underperformance shall give rise to a termination right as set forth in this Section 2.11(b) (RTE Test Termination Rights). If the RTE Ratio for the Selected RTE Test for the BESS Measurement Period in question is more than 15 percentage points below the RTE Performance Metric for any two BESS Measurement Periods during a 12-month period, an **18-month** cure period (the "RTE Cure Period") will commence on the Day following the close of the second such BESS Measurement Period. For each BESS Measurement Period during such RTE Cure Period, RTE Tests shall continue to be conducted as set forth in Attachment W (BESS Tests) and liquidated damages paid and accepted as set forth in Section 2.11(a) (RTE Test and Liquidated Damages); provided, however, that if the Seller fails to demonstrate satisfaction of the RTE Performance Metric prior to the expiration of the RTE Cure Period, such failure shall constitute an Event of Default under Section 15.1(g) of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in Article 15 (Events of Default) and Article 16 (Damages in the Event of Termination by Company).

2.12 Fast Frequency Response Performance Metric. **[DRAFTING NOTE: SECTION 2.12 APPLIES ONLY TO PROJECTS THAT INCLUDE CONTINGENCY STORAGE IN THEIR PROPOSALS. IT WILL BE REMOVED FROM PROJECTS THAT DO NOT INCLUDE CONTINGENCY STORAGE.]**

- (a) Fast Frequency Response Criteria and Liquidated Damages. Following the Commercial Operations Date, the Facility shall respond appropriately to frequency disturbances in the Company System by operating in a manner consistent with standards and parameters established for Fast Frequency Response. With respect to such frequency disturbances in the Company System, the Facility shall be required to meet all of the following minimum frequency performance criteria

(collectively, the "Fast Frequency Response Performance Metric"):

- (i) Perform per design approved by Company [**DRAFTING NOTE: TO BE ELABORATED UPON BASED ON FACILITY DESIGN.**];
- (ii) When control is activated, achieve 95% to 105% of control commanded full response at the POI within 200 msec of the initiation of the disturbance; and
- (iii) Meet all other requirements listed in Section 3(p) (Fast Frequency Response) of Attachment B (Facility Owned by Seller).

Company will review historical operational data to determine the Facility's fast frequency response following disturbances and satisfaction of the Fast Frequency Response Performance Metric. To the extent the historical operational data is insufficient or otherwise lacking for purposes of determining the Facility's satisfaction of the Fast Frequency Response Performance Metric, Company shall review Facility's performance under structured test conditions no less than once per Contract Year.

After the first Contract Year:

- (1) for each instance of the Facility failing to satisfy the Fast Frequency Response Performance Metric, Seller shall pay, and Company shall accept, as liquidated damages for such failure, an amount equal to 25% of the FFR Allocated Portion of the Lump Sum Payment upon proper demand by Company; and
- (2) in the event poor Facility fast frequency response performance requires disabling the fast frequency response controls, as determined by Company in its sole discretion (e.g., in the event a Facility response to Company System frequency outside of the FFR deadband contributes to frequency error or worsens the disturbance), Seller shall pay, and Company shall accept, as liquidated damages for such underperformance, an amount equal to 100% of the FFR Allocated Portion of the Lump Sum Payment upon proper demand by Company, and Seller shall

not be entitled to receive further payments of the FFR Allocated Portion of the Lump Sum Payment while the Facility fast frequency response controls remain disabled to allow Seller to implement corrective actions on the Facility to Company's reasonable satisfaction.

Such liquidated damages shall be due within thirty (30) Days of Company's written demand.

Company agrees that, when evaluating performance under this Section 2.12 (Fast Frequency Response Performance Metric), the available State of Charge shall be taken into consideration and Seller shall not be held to the criteria set forth in this Section 2.12 (Fast Frequency Response Performance Metric) if there is insufficient charged capacity available for the appropriate response.

- (b) Performance Deficiencies; Fast Frequency Response Performance Factor Termination Rights. With respect to any Facility response under this Section 2.12 (Fast Frequency Response Performance Metric), Company will notify Seller of any discrepancies in the Facility response, and Seller shall respond to and cure all such performance deficiencies in accordance with Section 1(j) (Demonstration of Facility) of Attachment B (Facility Owned by Seller). The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.12(a) (Fast Frequency Response Criteria and Liquidated Damages) is to compensate Company for the damages that Company would incur if the Facility fails to respond appropriately to Company System frequency, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the Facility is likely to continue to substantially underperform. Accordingly, and without limitation to Company's rights under said Section 2.12(a) (Fast Frequency Response Criteria and Liquidated Damages), in the event Seller fails to comply with the terms of Section 1(j) (Demonstration of Facility) of Attachment B (Facility Owned by Seller), such event shall constitute an Event of Default under Section 15.2(f) of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in Article 15 (Events of Default) and Article 16 (Damages in the Event of Termination).

2.13 Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damage.

- (a) Payment of Liquidated Damages. With respect to the liquidated damages payable under Section 2.5(b) (Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages), Section 2.6(b) (GPI Metric and Liquidated Damages), Section 2.7(c) (BOP Benchmark and Liquidated Damages), Section 2.8(a) (BESS Capacity Test and Liquidated Damages), Section 2.9(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages), Section 2.10 (BESS Annual Equivalent Forced Outage Factor; Liquidated Damages), Section 2.11 (BESS Round Trip Efficiency Test; Liquidated Damages; Termination Rights) and Section 2.12 (Fast Frequency Response Performance Metric) [**SUBJECT TO REMOVAL PER SECTION 2.12 DRAFTING NOTE**] (collectively, the "Performance Metrics LDs"), Company shall have the right, at any time on or after the LD Assessment Date for the liquidated damages in question, at Company's option, to set-off such liquidated damages from the amounts to be paid to Seller under Section 2.3 (Lump Sum Payment) of this Agreement or, to draw such liquidated damages from the Operating Period Security, as follows:
- (i) if the BESS fails to achieve the BESS Capacity Performance Metric for a BESS Measurement Period, the Company shall have the right to set-off or draw the amount owed for such failure as calculated as provided in Section 2.8(a) (BESS Capacity Test and Liquidated Damages); and
- (ii) if the Monthly Report for the calendar month, PI Assessment Period, or BESS Measurement Period in question, as applicable, shows a failure to achieve one or more of the Performance Metrics required for the LD Period in question, the PI Measurement Period in question, the BOP Measurement Period in question, or the BESS Measurement Period in question, as applicable, and Company does not submit a Notice of Disagreement with respect to such Monthly Report, the Company shall have the right to set-off or draw the amount of liquidated damages owed for such failure as calculated as provided in Section 2.5(b) (Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages), Section 2.6(b) (GPI Metric

and Liquidated Damages), Section 2.7(c) (BOP Benchmark and Liquidated Damages), Section 2.9(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages), Section 2.10 (BESS Annual Equivalent Forced Outage Factor; Liquidated Damages), Section 2.11 (BESS Round Trip Efficiency Test; Liquidated Damages; Termination Rights) and Section 2.12 (Fast Frequency Response Performance Metric, as applicable;

- (iii) in all cases in which Company submits a Notice of Disagreement for a given Monthly Report, Company shall have the right to set-off or draw all or any portion of the amount of liquidated damages for the calendar month in question, PI Assessment Period in question, the BOP Measurement Period in question, or BESS Measurement Period in question, as applicable, as calculated on the basis of the shortfall(s) in the achievement of the Performance Metric(s) in question, as shown in such Notice of Disagreement; and
- (iv) in the event of any disagreement as to the liquidated damages owed under clause (i) and (iii) above:
 - (aa) if the amount set-off or drawn by the Company exceeds the amount of liquidated damages for such calendar month, BESS Measurement Period or PI Assessment Period that are eventually found to be payable for the LD Period in question as determined under Section 2 (Monthly Report Disagreements) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement, Company shall promptly (and in no event more than forty-five (45) Business Days from the date of such determination) repay such excess to Seller together with, unless the Parties otherwise agree in writing, interest from the date of Company's set-off or draw until the date that such excess is repaid to Seller at the average Prime Rate for such period; and
 - (bb) if Company does not exercise its rights to set-off or draw liquidated damages for such calendar month, the BOP Measurement Period in

question, BESS Measurement Period or PI Assessment Period, or does not set-off or draw the full amount of the liquidated damages for such calendar month, the BOP Measurement Period in question, BESS Measurement Period or PI Assessment Period that are eventually found to be payable for the LD Period, the BOP Measurement Period in question, BESS Measurement Period or PI Assessment Period in question as determined under Section 2 (Monthly Report Disagreements) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement, Seller shall promptly, upon such determination as aforesaid, pay to Company the amount of liquidated damages that are found to be owing together with, unless otherwise agreed by the Parties in writing, interest on the amount of such liquidated damages that went unpaid from the applicable LD Assessment Date for such liquidated damages until the date such liquidated damages are paid to Company in full at the average Prime Rate for such period, and Company shall have the right, at its option, to set-off such interest for the amounts to be paid to Seller under Section 2.3 (Lump Sum Payment) of this Agreement or to draw from the Operating Period Security.

Any delay by Company in exercising its rights to set-off liquidated damages and/or interest from the amounts to be paid to Seller under Section 2.3 (Lump Sum Payment) of this Agreement or to draw such liquidated damages and/or interest from the Operating Period Security shall not constitute a waiver by Company of its right to do so.

- (b) Limitation on Liquidated Damages. Notwithstanding any other provision of this Agreement to the contrary, the aggregate liquidated damages paid by Seller during each Contract Year for the Performance Metrics LDs, such payments by Seller to include but not be limited to any set-offs or draws made by Company during such Contract Year pursuant to Section 2.13(a) (Payment of Liquidated Damages), shall not exceed the total of the twelve (12) monthly Lump Sum Payments payable during such Contract Year pursuant to Section 2.3 (Lump Sum Payment) and Section 2.18 (Payment Procedures). For avoidance of

doubt: A monthly Lump Sum Payment that is invoiced by Seller to Company pursuant to Section 2.17 (Seller's Preparation of the Monthly Invoice) for, e.g., the twelfth (12th) calendar month of Contract Year N but is paid during Contract Year N+1 as provided in Section 2.18 (Payment Procedures) shall, for purposes of determining the limitation on Performance Metrics LDs under this Section 2.13(b) (Limitation on Liquidated Damages), be included in the total of the twelve (12) monthly Lump Sum Payments payable during Contract Year N+1. As a result of the foregoing, the total of the monthly Lump Sum Payments used to establish the limitation on Performance Metrics LDs for the initial Contract Year under this Section 2.13(b) (Limitation on Liquidated Damages) will be less than twelve (12). The Parties acknowledge that, because the monthly Lump Sum Payment is subject to adjustment (including downward adjustment) as provided in Section 2.3 (Lump Sum Payment), it is possible that a downward adjustment in some or all of the monthly Lump Sum Payments payable during a Contract Year might cause the Performance Metrics LDs paid by Seller during the course of such Contract Year to exceed the limitation on the Performance Metrics LDs for such Contract Year established at the close of such Contract Year pursuant to the first sentence of this Section 2.13(b) (Limitation on Liquidated Damages). In such case, Company shall promptly upon the determination that the Performance Metrics LDs paid during the course of such Contract Year exceeded the limitation on Performance Metrics LDs for such Contract Year (and in no event more than forty-five (45) Business Days from the end of such Contract Year) repay such excess amount to Seller without interest.

- 2.14 No Payments Prior to Commercial Operations Date. Prior to the Commercial Operations Date, Company may accept test energy delivered by Seller in accordance with Section 4 (Test Energy) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS). Company shall not be obligated to pay for any test energy accepted prior to the Commercial Operations Date.
- 2.15 Sales of Electric Energy by Company to Seller. Sales of electric energy by Company to Seller shall be governed by an applicable rate schedule filed with the PUC and not by this Agreement, except with respect to the reactive amount

adjustment (if any) referred to in Attachment B (Facility Owned by Seller).

- 2.16 [Reserved] **[Drafting Note: Use following if PPA has energy payment: Company's Obligation to Provide Certain Data. By the fifth (5th) Business Day of each calendar month, Company shall provide Seller or its designated agent with the appropriate data for Seller to compute the amount to be paid for the electric energy purchased by Company in the preceding calendar month as determined in accordance with this Agreement.]**
- 2.17 Seller's Preparation of the Monthly Invoice. By the tenth (10th) Business Day of each calendar month, Seller shall submit to Company an invoice that separately states the following for the preceding month: (i) the Actual Output during this period; (ii) the monthly Lump Sum Payment for this period; and (iii) the monthly metering charge as set forth in Article 7 (Seller Payments) of this Agreement. **[Drafting Note: Add the following subclause if PPA has energy payment: "(iv) the charge for electric energy purchased by Company, as set forth in Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) of this Agreement"]**
- 2.18 Payment Procedures. By the twentieth (20th) Business Day of each calendar month following the month during which the invoice was submitted (i.e., by the twentieth (20th) Business Day of the second calendar month following the calendar month covered by the invoice in question), (but, except as otherwise provided in the following sentence, no later than the last Business Day of that month if there are less than twenty (20) Business Days in that month), Company shall, subject to Company's right to set-off liquidated damages as provided in Section 2.13 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages) of this Agreement, make payment on such invoice, or provide to Seller an itemized statement of its objections to all or any portion of such invoice and pay any undisputed amount. Notwithstanding the foregoing, the Day by which the Company shall make payment to Seller hereunder shall be increased by one (1) Day for each Day that Seller is delinquent in providing to the Company either: (i) the Monthly Report for the calendar month in question pursuant to Section 1 (Monthly Report) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement; or (ii) the information

required under Section 2.17 (Seller's Preparation of the Monthly Invoice) of this Agreement. **[Drafting Note: If PPA has an energy payment, replace language starting from subclause "(ii)" with the following: "(ii) the information required under Section 2.17 (Seller's Preparation of the Monthly Invoice) of this Agreement. However, if Company is not timely in providing data required in Section 2.16 (Company's Obligation to Provide Certain Data) and this directly causes Seller to be unable to deliver its invoice in accordance with the time frame set forth in Section 2.17 (Seller's Preparation of the Monthly Invoice), then Company shall still meet the payment date of the twentieth (20th) Business Day of the month following the month during which the invoice was submitted. If Seller is unable to provide a complete invoice for the reasons set forth in the preceding sentence, an estimated payment, subject to reconciliation with the complete invoice, may be made by Company as an interim provision until a complete invoice can be prepared by Seller and received by Company."]**

- 2.19 Late Payments. Notwithstanding all or any portion of such invoice in dispute, and subject to the provisions of Section 2.13(a)(iii) of this Agreement (to the extent applicable), interest shall accrue on any invoiced amount that remains unpaid following the twentieth (20th) Business Day of each calendar month (or the last Business Day of that month if there are less than twenty Business Days in that month), or following the due date for such payment if extended pursuant to Section 2.18 (Payment Procedures), at the average daily Prime Rate for the period commencing on the Day following the Day such payment is due until the invoiced amounts (or amounts due to Seller if determined to be less than the invoiced amounts) are paid in full. Partial payments shall be applied first to outstanding interest and then to outstanding invoice amounts.
- 2.20 Adjustments to Invoices After Payment. In the event adjustments are required to correct inaccuracies in an invoice after payment, the Party requesting adjustment shall recompute and include in the Party's request the principal amounts due during the period of the inaccuracy together with the amount of interest from the date that such invoice was payable until the date that such recomputed amount is paid at the average daily Prime Rate for the period. The difference between the amount paid and that recomputed for the invoice, along with the allowable amount of interest, shall either be (i) paid to Seller or set-off by Company, as

appropriate, in the next invoice payment to Seller, or (ii) objected to by the Party responsible for such payment within thirty (30) Days following its receipt of such request. If the Party responsible for such payment objects to the request, then the Parties shall work together in good faith to resolve the objection. If the Parties are unable to resolve the objection, the matter shall, except to the extent otherwise provided in Section 28.3 (Exclusions), be resolved pursuant to Article 28 (Dispute Resolution). All claims for adjustments shall be waived for any amounts that were paid or should have been payable more than thirty-six (36) months preceding the date of receipt of any such request.

- 2.21 Company's Billing Records. Seller, after giving reasonable advance written notice to Company, shall have the right to review all billing, metering and related records necessary to verify the accuracy of payments relating to the Facility during Company's normal working hours on Business Days. Company shall maintain such records for a period of not less than thirty-six (36) months. **[Drafting Note: If PPA has an energy payment, replace this section with the following:** Company's Billing Records. Seller, after giving reasonable advance written notice to Company, shall have the right to review all billing, metering and related records necessary to verify the accuracy of the data provided by Company pursuant to Section 2.16 (Company's Obligation to Provide Certain Data) and payments relating to the Facility during Company's normal working hours on Business Days. Company shall maintain such records for a period of not less than thirty-six (36) months.]

ARTICLE 3
FACILITY OWNED AND/OR OPERATED BY SELLER

- 3.1 The Facility. Seller agrees to furnish, install, operate, and maintain the Facility in accordance with the provisions of this Agreement, including, without limitation, the operating procedures and performance standards as more fully described in Attachment B (Facility Owned by Seller) and Attachment C (Methods and Formulas for Measuring Performance Standards). After the Commercial Operations Date, Seller agrees that no changes or additions to the Facility shall be made without prior written approval by Company and amendment to the Agreement unless such changes or additions to the Facility could not reasonably be expected to have a material effect on the assumptions used in performing the IRS.
- 3.2 Allowed Capacity. The net instantaneous MW output from the Facility may not exceed the Allowed Capacity. Seller shall take all necessary affirmative action to limit Actual Output to no more than the Allowed Capacity. Company may take appropriate action to limit the Actual Output pursuant to, but not limited to, Article 8 (Company Dispatch), Article 9 (Personnel and System Safety), Article 25 (Good Engineering and Operating Practices), and Attachment B (Facility Owned by Seller). Company shall not be required to pay for any Actual Output of the Facility which exceeds the Allowed Capacity.
- 3.3 Point of Interconnection. The Point of Interconnection is shown on Attachment E (Single-Line Drawing and Interface Block Diagram), as provided in Section 1(a)(i) (Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip Scheme) of Attachment B (Facility Owned by Seller). The Point of Interconnection will be at the voltage level of the Company System. If it is necessary to step up the voltage at which Seller's electric energy is delivered to Company System, the Point of Interconnection will be on the high voltage side of the step-up transformer.
- 3.4 Renewable Portfolio Standards.
- (a) Renewable Portfolio Standards. If, as a result of any RPS Amendment, the electric energy delivered from the Facility should no longer qualify as "renewable electrical energy," Seller shall, at the request of Company, develop and recommend to Company within a reasonable period of time following Company's request, but in no event more than 90 Days after Seller's receipt

of such request (or such other period of time as Company and Seller may agree in writing) reasonable measures to cause the electric energy delivered from the Facility to come within such revised definition of "renewable electrical energy" ("Seller's RPS Modifications Proposal").

- (b) Seller's RPS Modifications Proposal. Upon receipt of Seller's RPS Modifications Proposal, Company will evaluate Seller's RPS Modifications Proposal. Seller shall assist Company in performing such evaluation as and to the extent reasonably requested by Company (including, but not limited to, providing such additional information as Company may reasonably request and participating in meetings with Company as Company may reasonably request).
- (c) RPS Modifications Document. If, following Company's evaluation of Seller's RPS Modifications Proposal, Company desires to consider the implementation by Seller of the changes recommended in Seller's RPS Modifications Proposal, Company shall provide Seller with written notice to that effect, such notice to be issued to Seller within 180 Days of receipt of Seller's RPS Modifications Proposal, and Company and Seller shall proceed to negotiate in good faith a document setting forth the specific changes to the Agreement that are necessary to implement such RPS Modifications Proposal (the "RPS Modifications Document"). A decision by Company to initiate negotiations with Seller as aforesaid shall not constitute an acceptance by Company of any of the details set forth in Seller's RPS Modifications Proposal, including but not limited to the RPS Modifications and the RPS Pricing Impact. Any adjustment to the Contract Pricing pursuant to such RPS Modifications Document shall be limited to the RPS Pricing Impact. The time periods set forth in such RPS Modifications Document as to the effective date for the RPS Modifications shall be measured from the date the PUC order with respect to such RPS Modifications becomes non-appealable as provided in Section 3.4(e) (PUC RPS Order).
- (d) Failure to Reach Agreement. If Company and Seller are unable to agree upon and execute a RPS Modifications Document within 180 Days of Company's written notice to Seller pursuant to Section 3.4(c) (RPS Modifications

Document), Company shall have the option of declaring the failure to reach agreement on and execute such Document to be a dispute and submit such dispute to an Independent Evaluator for the conduct of a determination pursuant to Section 3.4(h) (Dispute) of this Agreement. Any decision of the Independent Evaluator, rendered as a result of such dispute shall include a form of a RPS Modifications Document as described in Section 3.4(c) (RPS Modifications Document).

- (e) PUC RPS Order. No RPS Modifications Document shall constitute an amendment to the Agreement unless and until a PUC order issued with respect to such document has become non-appealable ("PUC RPS Order"). Once the condition of the preceding sentence has been satisfied, such RPS Modifications Document shall constitute an amendment to this Agreement. To be "non-appealable" under this Section 3.4(e) (PUC RPS Order), such PUC RPS Order shall be either (i) not subject to appeal to any Circuit Court of the State of Hawai'i or the Supreme Court of the State of Hawai'i, because the thirty (30) Day period (accounting for weekends and holidays as appropriate) permitted for such an appeal has passed without the filing of notice of such an appeal, or (ii) affirmed on appeal to any Circuit Court of the State of Hawai'i or the Supreme Court, or the Intermediate Appellate Court upon assignment by the Supreme Court, of the State of Hawai'i, or affirmed upon further appeal or appellate process, and is not subject to further appeal, because the jurisdictional time permitted for such an appeal (and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari) has passed without the filing of notice of such an appeal (or the filing for further appellate process).
- (f) Company's Rights. The rights granted to Company under Section 3.4(c) (RPS Modifications Document) and Section 3.4(d) (Failure to Reach Agreement) above are exclusive to Company. Seller shall not have a right to initiate negotiations of a RPS Modifications Document or to initiate dispute resolution under Section 3.4(h) (Dispute), as a result of a failure to agree upon and execute any RPS Modifications Document.
- (g) Limited Purpose. This Section 3.4 (Renewable Portfolio Standards) is intended to specifically address the

implementation of reasonable measures to cause the electric energy delivered from the Facility to come within the revised definition of "renewable electrical energy" under any RPS Amendment and is not intended for either Party to provide a means for renegotiating any other terms of this Agreement. Revisions to this Agreement in accordance with the provisions of this Section 3.4 (Renewable Portfolio Standards) are not intended to increase Seller's risk of non-performance or default.

- (h) Dispute. If Company decides to declare a dispute as a result of the failure to reach agreement and execute a RPS Modifications Document pursuant to Section 3.4(d) (Failure to Reach Agreement), it shall provide written notice to that effect to Seller. Within 20 Days of delivery of such notice Seller and Company shall agree upon an Independent Evaluator to resolve the dispute regarding a RPS Modifications Document. The Independent Evaluator shall be reasonably qualified and expert in renewable energy power generation, matters relating to the Performance Standards, financing, and power purchase agreements. If the Parties are unable to agree upon an Independent Evaluator within such 20-Day period, Company shall apply to the PUC for the appointment of an Independent Evaluator. If an Independent Observer retained under the Competitive Bidding Framework is qualified and willing and available to serve as Independent Evaluator, the PUC shall appoint one of the persons or entities qualified to serve as an Independent Observer to be the Independent Evaluator; if not, the PUC shall appoint another qualified person or entity to serve as Independent Evaluator. In its application, Company shall ask the PUC to appoint an Independent Evaluator within 30 Days of the application.
- (1) Promptly upon appointment, the Independent Evaluator shall request the Parties to address the following matters within the next 15 Days:
- (a) The reasonable measures required to be taken by Seller to cause the electric energy delivered from the Facility to come within such revised definition of "renewable electrical energy" under the RPS Amendment in question;

- (b) How Seller would implement such measures;
 - (c) Reasonably expected net costs and/or lost revenues associated with such measures so the energy delivered by the Facility complies with such revised definition of "renewable electrical energy" under the RPS Amendment in question;
 - (d) The appropriate level, if any, of RPS Pricing Impact in light of the foregoing; and
 - (e) Contractual consequences for non-performance that are commercially reasonable under the circumstances.
- (2) Within 90 Days of appointment, the Independent Evaluator shall render a decision unless the Independent Evaluator determines it needs to have additional time, not to exceed 45 Days, to render a decision.
- (3) The Parties shall assist the Independent Evaluator throughout the process of preparing its review, including making key personnel and records available to the Independent Evaluator, but neither Party shall be entitled to participate in any meetings with personnel of the other Party or review of the other Party's records. However, the Independent Evaluator will have the right to conduct meetings, hearings or oral arguments in which both Parties are represented. The Parties may meet with each other during the review process to explore means of resolving the matter on mutually acceptable terms.
- (4) The following standards shall be applied by the Independent Evaluator in rendering his or her decision: (i) if it is not technically or operationally feasible for Seller to implement reasonable measures required to cause the electric energy delivered from the Facility to come within such revised definition of "renewable electrical energy" under the RPS Amendment in question, the Independent Evaluator shall determine that the Agreement shall not be amended to comply with such changes in RPS (unless the Parties agree

otherwise); (ii) if it is technically or operationally feasible for Seller to implement reasonable measures required to cause the electric energy delivered from the Facility to come within such revised definition of "renewable electrical energy" under RPS, the Independent Evaluator shall incorporate such required changes into a RPS Modifications Document including (aa) Seller's RPS Modifications, (bb) pricing terms that incorporate the RPS Pricing Impact, and (cc) contract terms and conditions that are commercially reasonable under the circumstances, especially with respect to the consequences of non-performance by Seller as to the RPS Modifications. In addition to the RPS Modifications Document, the Independent Evaluator shall render a decision which sets forth the positions of the Parties and Independent Evaluator's rationale for his or her decisions on disputed issues.

- (5) The fees and costs of the Independent Evaluator shall be paid by Company up to the first \$30,000 of such fees and costs; above those amounts, the Party that is not the prevailing Party shall be responsible for any such fees and costs; provided, if neither Party is the prevailing Party, then the fees and costs of the Independent Evaluator above \$30,000, shall be borne equally by the Parties. The Independent Evaluator in rendering his or her decision shall also state which Party prevailed over the other Party, or that neither Party prevailed over the other.

ARTICLE 4
COMPANY-OWNED INTERCONNECTION FACILITIES

The terms and conditions related to the Company-Owned Interconnection Facilities are set forth in Attachment G (Company-Owned Interconnection Facilities) of this Agreement. In accordance with Section 8 (Transfer of Ownership/Title) of Attachment G (Company-Owned Interconnection Facilities), on the Transfer Date, Seller shall convey title to the Company-Owned Interconnection Facilities that were designed and constructed by or on behalf of Seller by executing a Bill of Sale and Assignment document substantially in the form set forth in Attachment H (Form of Bill of Sale and Assignment). In addition, in accordance with Section 8 (Transfer of Ownership/Title) of Attachment G (Company-Owned Interconnection Facilities) on the Transfer Date, Seller shall deliver to Company any and all executed documents required to assign all Land Rights necessary to operate and maintain the Company-Owned Interconnection Facilities on and after the Transfer Date to Company, which documents shall be substantially in the form set forth in Attachment I (Form of Assignment of Lease and Assumption).

ARTICLE 5
MAINTENANCE RECORDS AND SCHEDULING

5.1 Operating Records.

- (a) Seller's Logs. Seller shall maintain, at least daily, a log in which it shall record all pertinent data that will indicate whether the Facility is being operated in accordance with Good Engineering and Operating Practices. These data logs shall include, but not be limited to, all maintenance and inspection work performed at the Facility, circuit breaker trip operations, relay operations including target indications, megavar and megawatt recording charts (and/or equivalent computer records), all unusual conditions experienced or observed and any reduced capability and the reasons therefor and duration thereof. For each WTG, the data reported shall include planned derated hours, unplanned derated hours, average derated kW during the derated hours, scheduled maintenance hours, average derated kW during scheduled maintenance hours, the number of turbine starts, hours on-control and hours on-line. Company shall have the right, upon reasonable notice and during regular Business Day hours to review and copy such data logs; provided, that if such logs reveal any inconsistency with Company's records, Company may request and review Seller's supporting records, correspondence, memoranda and other documents or electronically recorded data associated with such logs related to the operation and maintenance of the Facility in order to resolve such inconsistency.
- (b) Company Access to Seller's Logs. Seller shall provide Company access to Seller's records which identify the priority, as internally assigned by Seller, of specific preventive or corrective maintenance activities. These records shall include items for which Seller has deferred the inspection or corrective action to a future scheduled plant outage. In addition, Seller shall provide copies of applicable correspondence between Seller and its insurer(s) for the Facility equipment pertaining to Seller's maintenance practices and Seller's procedures and scheduling (including deferral) of maintenance at the Facility.

- (c) Time Period for Maintaining Records. Any and all records, correspondence, memoranda and other documents or electronically recorded data related to the operation and maintenance of the Facility shall be maintained by Seller for a period of not less than six (6) years.

5.2 Maintenance Records.

- (a) Seller's Summary of Maintenance and Inspection Performed. Prior to February 1 of each calendar year, Seller shall submit to Company for inspection at the Site, a summary in a format similar to the example provided in Attachment V (Summary of Maintenance and Inspection Performed in Prior Calendar Year) of all maintenance and inspection work performed in the prior calendar year, and of all conditions experienced or observed during such calendar year that may have a material adverse effect on or may materially impair the short-term or long-term operation of the Facility at the operational levels contemplated by this Agreement. The summary shall present the requested data in a meaningful and informative manner consistent with the cooperative exchange of information between the Parties. If available and practicable, such summary shall be provided in electronic format with sufficient software so that Company can group activities for specific process areas of the Facility and be able to view the maintenance history of a specific equipment item. Such summary shall also include Seller's proposals for correcting or preventing recurrences of identified equipment problems and for performing such other maintenance and inspection work as is required by Good Engineering and Operating Practices.
- (b) Company's Written Recommendations. Within sixty (60) Days of receiving such summary, and after any reasonable inspection desired by Company of the Facility and consultation with Seller, in the event there are issues identified that may have a material adverse effect on or may materially impair the short-term or long-term operation of the Facility at the operational levels contemplated by this Agreement, for purposes of addressing such issues, Company may provide written recommendations for specific operation or maintenance actions or for changes in the operation or maintenance program of the Facility. Company's making or failing to make such recommendations shall not be construed as

endorsing the operation and maintenance thereof or as any warranty of the safety, durability or reliability of the Facility nor as a waiver of any Company right. If Seller agrees with Company, Seller shall, within a reasonable time after Company makes such recommendations, not to exceed ninety (90) Days (or such longer period as reasonably agreed to by the Parties), implement Company's recommendations. If Seller disagrees with Company, it shall within ten (10) Days inform Company of alternatives it will take to accomplish the same intent, or provide Company with a reasonable explanation as to why no action is required by Good Engineering and Operating Practices. If Company disagrees with Seller's position, and if, for each of the three preceding Contract Years, the Modified Pooled OMC Equipment Availability Factor was less than **94%** and/or the Performance Index was less than the Tier 1 Bandwidth for such Contract Year, then the parties shall commission a study by a Qualified Independent Consultant selected from among the entities listed in Section 4(j) (Acceptable Person and Entities) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement and the Qualified Independent Consultant will make a recommendation to remedy the situation. Seller shall abide by the Qualified Independent Consultant's recommendation contained in such study. Both Parties shall equally share in the cost for the Qualified Independent Consultant. However, Seller shall pay all costs associated with implementing the recommendation contained in the Independent Consultant's report. Notwithstanding the foregoing, Seller shall not be required to comply with any recommendations that, in Seller's reasonable judgment, will violate or void any warranties of equipment that is a part of, or used in connection with, the Facility or violate any long-term service agreement, or conflict with any written requirements, specifications or operating parameters of the manufacturer, with respect to such equipment, in which case Seller shall promptly notify Company thereof, and Seller and Company shall endeavor to reach a mutually satisfactory resolution of the matter in question.

- 5.3 Seller's Quarterly Maintenance Schedule. By each March 1st, June 1st, September 1st and December 1st (as applicable, subsequent to the Commercial Operations Date), Seller shall provide to Company in writing a projection of maintenance

outages and reductions in capacity for the next calendar quarter, including the estimated MW that is anticipated to be off-line for each projected maintenance event. Seller shall provide Company with prompt written notice of any deviation from its quarterly maintenance schedule but in any case Seller shall provide such written notice not less than one (1) week prior to commencing any such rescheduled maintenance event. During any scheduled or rescheduled maintenance event, Seller shall provide updates to Company's operating personnel in the event there are any delays or changes to the proposed schedule, and shall promptly respond to any requests from Company for updates regarding the status of such maintenance event.

- 5.4 Seller's Annual Maintenance Schedule. In addition, Seller shall submit to Company a written schedule of maintenance outages which will reduce the capacity of the Facility by **[Drafting Note: the lower of five (5) MW or 25% of the Allowed Capacity]** or more for the next two-year period, beginning with January of the following year, in writing to Company each year by June 30. The schedule shall state the proposed dates and durations of scheduled maintenance, including the scope of work for the maintenance requiring shutdown or reduction in output of the Facility and the estimated MW that is anticipated to be off-line for each projected maintenance event. Company shall review the maintenance schedule for the two-year period and inform Seller in writing no later than December 1 of the same year of Company's concurrence or requested revisions; provided, however, that Seller shall not be required to agree to any proposed revisions that, in Seller's judgment, will void or violate any warranties of equipment that is part of, or used in connection with, the Facility or violate any long-term service agreement with respect to such equipment, in which case Seller shall promptly notify Company thereof, and Seller and Company shall endeavor to reach a mutually satisfactory resolution of the matter in question. With respect to such agreed upon revisions, Seller shall revise its schedule for timing and duration of scheduled shutdowns and scheduled reductions of output of the Facility to accommodate Company's revisions, unless such revisions would not be consistent with Good Engineering and Operating Practices, and make all commercially reasonable efforts, consistent with Good Engineering and Operating Practices, to accommodate any subsequent changes in such schedule reasonably requested by Company.

- 5.5 Seller's Notification Obligations. When Seller learns that any of its equipment will be removed from or returned to service, and any such removal or return may affect the ability of the Facility to deliver electric energy to Company, Seller shall notify Company as soon as practicable. This requirement to notify shall include, but not be limited to, notice to Company of Seller's intention to shut down any WTG such as a high wind-speed shut-down. Any WTG shut-down shall be coordinated with Company in advance to the extent practicable to allow a reasonable amount of time for Company to make generation adjustments required by the loss of availability from a WTG shut-down.
- 5.6 Operating and Maintenance Manuals. Not later than the Commercial Operation Date, Seller shall provide Company with (i) any and all manufacturer's equipment manuals and recommendations for maintenance and with any updates or supplements thereto within three (3) Business Days after Seller's receipt of same and (ii) a copy of the operating and maintenance manual and shall thereafter provide Company with any amendments thereto within three (3) Business Days after such amendment is adopted.

ARTICLE 6
FORECASTING

- 6.1 Data for Company Forecasts and Monitoring. Seller shall provide to Company the meteorological and production data and the Site description information required by Company in order for Company to (i) provide situational awareness to Company System Operator, (ii) monitor equipment availability and performance, (iii) produce a real-time forecast for operations as well as a Day-ahead forecast and hourly forecasts for all variable generation facilities on the Company System and (iv) monitor Seller's compliance with the Performance Standards set forth in Section 3 (Performance Standards) of the Attachment B (Facility Owned by Seller).
- 6.2 Monitoring and Communication Equipment. Seller shall install and maintain appropriate equipment (the "Monitoring and Communication Equipment") for the purposes of (i) measuring the meteorological and production data required under Section 6.1 (Data for Company Forecasts and Monitoring) with an accuracy of not less than that specified for each such data parameter in Section 8 (Data and Forecasting) of Attachment B (Facility Owned by Seller) and, if the monitoring equipment is part of the Company-Owned Interconnection Facilities, as set forth in Attachment G (Company-Owned Interconnection Facilities), and (ii) recording and transferring such data to Company in real time. Seller shall maintain at the Site sufficient replacement parts to avoid or otherwise minimize any shutdown of the Facility pursuant to Section 6.4 (Shutdown For Lack of Reliable Real Time Data) of this Agreement while any of the Monitoring and Communication Equipment is being repaired, replaced or re-calibrated. Unless the Parties agree otherwise in writing, the Monitoring and Communication Equipment to be installed and maintained by Seller shall include field device components described in Attachment B (Facility Owned By Seller):
- (i) measure at each WTG the Actual WTG Generation (gross);
 - (ii) measure wind speed and direction at the top of the nacelle of each WTG;
 - (iii) measure other meteorological conditions (i.e., air density, ambient air temperature, ambient air pressure and such other meteorological conditions that Company shall from time to time reasonably

require,) by devices placed at approximately "hub height" of the WTG(s) and located at one or more MMTs;

- (iv) record and transfer such data to Company in real-time; and
- (v) record and transfer to Company the turbine state: online, offline, or out of service.

The foregoing is in addition to the data on the Facility's Actual Output as measured by the revenue meter.

6.3 Calibrations, Maintenance and Repairs.

- (a) Documentation Requirement. Seller shall provide to Company (i) the manufacturer's recommended schedule for the calibration and maintenance of each component of the Monitoring and Communication Equipment and (ii) subject to the limitation set forth in Section 1(a)(ii) (As-Builts) of Attachment B (Facility Owned by Seller) of this Agreement, documentation of the performance of all such calibration and maintenance per manufacturer specifications. Although Company is to receive from Seller the aforesaid recommended schedules for calibration and maintenance, as well documentation of the performance of all such calibration and maintenance, Company shall have no responsibility to monitor Seller's compliance with such calibration and maintenance schedules. Accordingly, any failure by Company to bring Seller's attention any apparent failure by Seller to perform such recommended calibration and maintenance shall neither relieve Seller of its obligations under this Agreement to perform such calibration and maintenance nor constitute a waiver of Company's rights under this Agreement with respect to such failure in performance by Seller.
- (b) Corrective Measures. In the event of a pattern of material inconsistencies in the data stream provided by the Monitoring and Communication Equipment, Seller shall perform, at Seller's expense, such corrective measures as Company may reasonably require, such as the recalibration of all field measurement device components of the Monitoring and Communication Equipment.

(c) Repairs. In the event of any failure in the Monitoring and Communication Equipment, Seller shall repair or replace such equipment within fifteen (15) Days of such failure, or within such longer period as may be reasonably agreed to by the Parties.

6.4 Shutdown For Lack of Reliable Real Time Data. Because the availability to the Company System Operator of reliable meteorological and production information in real time via SCADA is necessary in order for Company to effectively optimize the benefit of its right of Company Dispatch, Company shall have the right to direct Seller to shutdown the Facility due to the unavailability of such reliable real time meteorological and/or production data. In addition, in the event of the performance of corrective measures (including recalibration) and/or repairs to any Monitoring and Communication Equipment pursuant to Section 6.3(b) (Corrective Measures) or Section 6.3(c) (Repairs), Company shall have the right to direct Seller to shutdown the Facility and the Facility shall remain shutdown until such corrective action is completed. In the event the cause for any shutdown in this Section 6.4 (Shutdown For Lack of Reliable Real Time Data) falls within the definition of Seller-Attributable Non-Generation, such period of time shall be allocated as such for purposes of calculating the Modified Pooled OMC Equipment Availability Factor as set forth in Section 1 (Modified Pooled OMC Equipment Availability Factor ("MPXEEAF")) of Attachment Q (Calculation of Certain Metrics) to this Agreement until such time as the successful completion of such corrective measures and/or repairs has been communicated by Seller to Company. If, after such communication, Company attempts to dispatch the Facility and determines that such corrective measures and/or repairs were not successfully completed, all time from the notice of successful completion to actual successful completion shall be revised as continuance of the deration or outage. Notwithstanding the foregoing, if Seller requests in writing for confirmation that the Facility's data is available to Company, then Company shall use reasonable efforts to respond to such request within three (3) Business Days in writing (with email being acceptable) confirming that either (1) the Facility's data is available to Company (at which point no additional time after such request shall count as Seller-Attributable Non-Generation), or (2) the Facility's data is not available so that Seller can take further appropriate corrective actions.

6.5 Seller Day-Ahead Forecasts of Actual Output.

- (a) Forecasts. Each Day during the Term commencing on the Commercial Operations Date, Seller shall submit to Company Seller's Day-ahead hourly forecasts of the Facility's Actual Output produced by a commercially available forecasting service or by the Seller's documented methodology (i.e., climatology, persistence forecasting) for providing a forecast for the Facility's Actual Output for the next 24 hour period. Hourly Day-ahead forecasts shall be submitted to Company by 1200 Hawai'i Standard Time on each Day immediately preceding a Day on which electric energy from the Facility is to be delivered. Seller shall provide Company with an hourly forecast of Actual Output for each hour of the next Day. Seller shall update such forecast and provide unit availability updates any time information becomes available indicating a change in the forecast of Actual Output from the Facility. The forecasts called for by this Agreement shall be substantially in the form reasonably requested by Company.
- (b) Accuracy of Forecasts. Company acknowledges that the Seller's Day-ahead forecasts are based on forecast estimates and not guarantees. Such limitation notwithstanding, Seller shall exercise commercially reasonable efforts to ensure the accuracy of the Day-ahead forecasts required hereunder for validation purposes and to support Company's forecasts. This includes a detailed description of the methodology used by Seller for forecasting. For example, Seller shall prepare such forecasts and updates by utilizing a solar power forecast or other service that is (i) commercially available or proprietary to Seller, (ii) comparable in accuracy to models or services commonly used in the solar energy industry and that reflect equipment availability, and (iii) is satisfactory to Company in the exercise of its reasonable discretion.
- (c) Company's Forecasting System. Company currently subscribes to a forecasting service. Seller, may, if it chooses, subscribe to the same forecasting service that Company does, at Seller's cost. If Seller so chooses to subscribe to such forecasting service and elects to use such service in lieu of creating its own forecast, Seller shall not be required to provide Day-ahead

forecasts pursuant to this Section 6.5 (Seller Day-Ahead Forecasts of Actual Output). If Company changes its forecasting service and Seller elects not to subscribe to the same forecasting service, then the provisions of Section 6.5(a) (Forecasts) and Section 6.5(b) (Accuracy of Forecasts) shall apply.

- 6.6 Reports, Studies and Assessment. Prior to the Execution Date, Seller has provided Company with Seller's explanation of the methodology and underlying information used to derive the NEP RFP Projection, including the preliminary design of the Facility and the typical meteorological year file used to estimate the Renewable Resource Baseline. The independent consultant was selected from among the entities listed in Section 4(j) (Acceptable Person and Entities) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement. Throughout the Term, Seller shall, for purposes of facilitating Company's forecasting, deliver to Company, promptly upon Seller's receipt of same, any reports, studies or assessments prepared for the benefit of the Seller by an independent engineer of (i) the electric energy producing potential of the Site or (ii) the Facility.

ARTICLE 7
SELLER PAYMENTS

Seller shall pay to Company (i) all amounts pursuant to Attachment G (Company-Owned Interconnection Facilities), (ii) all amounts pursuant to Section 10.1 (Meters) and Section 10.2 (Meter Testing), (iii) a monthly metering charge of \$25.00 per month, which is in addition to any charges due Company pursuant to the applicable rate schedule pursuant to Section 2.15 (Sales of Electric Energy By Company to Seller) of this Agreement and (iv) such other costs to be incurred by Company and reimbursed by Seller as set forth in this Agreement.

ARTICLE 8
COMPANY DISPATCH

- 8.1 General. Company shall have the right to dispatch all available real and reactive power delivered from the Facility to the Company System and to start up and shut down Seller's generating units, as it deems appropriate in its reasonable discretion, subject only to and consistent with Good Engineering and Operating Practices, the requirements set forth in Section 3 (Performance Standards) of Attachment B (Facility Owned by Seller) of this Agreement and Seller's maintenance schedule determined in accordance with Article 5 (Maintenance Records and Scheduling). Company shall not pay for reactive power.
- 8.2 Company Dispatch. Dispatch will either be by Seller's manual control under the direction of the Company System Operator or by remote computerized control by the EMS provided in Section 1(g) (Active Power Control Interface) of Attachment B (Facility Owned by Seller), in each case at Company's reasonable discretion. Notwithstanding anything to the contrary, the power produced by the Facility and/or stored in the BESS shall always be subject to dispatch by Company.
- 8.3 Company Rights of Dispatch. Company may require deration or outage in response to the Facility's failure to comply with Company Dispatch or to any conditions of Seller-Attributable Non-Generation. A deration or outage required by Company pursuant to the preceding sentence shall be considered "unplanned" and, until the conditions that led to the deration or outage are resolved by Seller and Seller notifies Company of the same, any such deration shall "count against" Seller for purposes of calculating the Performance Index and any such outage shall "count against" Seller for the purpose of calculating the Modified Pooled OMC Equipment Availability Factor. If, after such notification, Company attempts to dispatch the Facility and determines that such conditions that led to the deration or outage are not resolved, all time from the notice of resolution to actual resolution shall be revised as continuance of the deration or outage until the conditions that led to such outage or deration are resolved by Seller to Company's reasonable satisfaction. If Seller requests confirmation from Company that Seller's actions to resolve such conditions that led to the deration or outage were successfully completed, then Company shall use reasonable efforts to respond to such request within three (3) Business Days in writing (with

email being acceptable) to allow Seller the opportunity to take further appropriate corrective actions if needed. Nothing in this Section 8.3 (Company Rights of Dispatch) shall relieve Seller of its obligation under the terms of this Agreement to make available the full capability of the Facility for Company Dispatch.

- 8.4 Monthly Report. Commencing with the month during which the Commercial Operations Date is achieved, and for each calendar month thereafter during the Term, Seller shall prepare and provide to Company a Monthly Report by the tenth (10th) Business Day of the following month in accordance with Section 1 (Monthly Report) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) of this Agreement. Beginning with the Monthly Report for the last calendar month of the initial Contract Year, Seller shall include calculations of, as applicable, (a) the Modified Pooled OMC Equipment Availability Factor for the LD Period, (b) the Performance Index for the PI Assessment Period, (c) any of the BESS Capacity Ratio, the BESS Annual Equivalent Availability Factor or the BESS Equivalent Forced Outage Factor for the BESS Measurement Period (if any), as well as (d) any liquidated damages to be assessed, as set forth in the form of Monthly Report set forth in Section 1 (Monthly Report) of said Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator). The rights and obligations of the Parties with respect to each Monthly Report and any disagreements arising out of any Monthly Report are set forth in Section 1 (Monthly Report) and Section 2 (Monthly Report Disagreements) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

ARTICLE 9
PERSONNEL AND SYSTEM SAFETY

Notwithstanding any other provisions of this Agreement, if at any time Company reasonably determines that the Facility may endanger Company's personnel, and/or the continued operation of the Facility may endanger the integrity of the Company System or have an adverse effect on Company's other customers' electric service, Company shall have the right to disconnect the Facility from the Company System, as determined in the sole discretion of the Company System Operator. The Facility shall immediately comply with the dispatch instruction, which may be initiated through remote control, and shall remain disconnected (and in Seller-Attributable Non-Generation status if so determined), until such time as Company is satisfied that the condition(s) referred to above have been corrected. If Company disconnects the Facility from the Company System for personnel or system safety reasons, it shall as soon as practicable notify Seller by telephone, and thereafter make reasonable efforts to confirm, in writing (with email being acceptable), within three (3) Days of the disconnection, the reasons for the disconnection. If the reason for the disconnection constitutes Seller-Attributable Non-Generation, Company will notify Seller (1) whether the conditions resulting in such disconnection have been resolved (in which case no additional time after such confirmation shall count as Seller-Attributable Non-Generation); or (2) that conditions resulting in such disconnection have not been resolved so that Seller can take such appropriate corrective actions. Seller shall notify Company in writing when such corrective action has been completed; provided, however, that Seller shall remain in Seller-Attributable Non-Generation until Company is satisfied that the condition resulting in the disconnection has been corrected. Company shall use reasonable efforts to inspect such corrective measures (if necessary) and confirm the resolution of such condition within three (3) Business Days after Seller's notification.

ARTICLE 10
METERING

- 10.1 Meters. Company shall purchase, own, install and maintain the Revenue Metering Package suitable for measuring the export of electric energy from the Facility sold to Company in kilowatts and kilowatt-hours on a time-of-day basis and of reactive power flow in kilovars and true root mean square kilovar-hours. The metering point shall be as close as possible to the Point of Interconnection as allowed by Company. Seller shall make available a mutually agreeable location for the Revenue Metering Package. Seller shall install, own and maintain the infrastructure and other related equipment associated with the Revenue Metering Package, including but not limited to all enclosures (meter cabinets, meter pedestals, meter sockets, pull boxes, and junction boxes, along with their grounding/bonding connections), CT/PT mounting structures, conduits and ductlines, enclosure support structures, ground buses, pads, test switches, terminal blocks, isolation relays, telephone surge suppressors, and analog phone lines (one per meter), subject to Company's review and approval, as further described in Section 1(e) (Other Equipment) of Attachment B (Facility Owned by Seller). The Seller shall install this infrastructure such that it meets the requirements set forth in Chapter Six (IPP Metering) of the latest edition of the Company's Electric Service Installation Manual (ESIM). Company shall test such revenue meter prior to installation and shall test such revenue meter every fifth (5th) year. Seller shall reimburse Company for all reasonably incurred costs for the procurement, installation, maintenance (including maintenance replacements) and testing work associated with the Revenue Metering Package.
- 10.2 Meter Testing. Company shall provide at least twenty-four (24) hours' notice to Seller prior to any test it may perform on the revenue meters or metering equipment. Seller shall have the right to have a representative present during each such test. Seller may request, and Company shall perform, if requested, tests in addition to the every fifth-year test and Seller shall pay the cost of such tests. Company may, in its sole discretion, perform tests in addition to the fifth year test and Company shall pay the cost of such tests. If any of the revenue meters or metering equipment is found to be inaccurate at any time, as determined by testing in accordance with this Section 10.2 (Meter Testing), Company shall promptly cause such equipment

to be made accurate, and the period of inaccuracy, as well as an estimate for correct meter readings, shall be determined in accordance with Section 10.3 (Corrections).

- 10.3 Corrections. If any test of revenue meters or metering equipment conducted by Company indicates that the revenue meter readings are in error by one percent (1%) or more, the revenue meters or meter readings shall be corrected as follows: (i) determine the error by testing the revenue meter at approximately ten percent (10%) of the rated current (test amperes) specified for such revenue meter; (ii) determine the error by testing the revenue meter at approximately one hundred percent (100%) of the rated current (test amperes) specified for the revenue meter; (iii) the average meter error shall then be computed as the sum of (aa) one-fifth (1/5) of the error determined in the foregoing clause "(i)" and (bb) four-fifths (4/5) of the error determined in the foregoing clause "(ii)". The average meter error shall be used to adjust the invoices in accordance with Section 2.20 (Adjustment to Invoices After Payment) for the amount of electric energy supplied to Company for the previous six (6) months from Facility, unless records of Company conclusively establish that such error existed for a greater or lesser period, in which case the correction shall cover such actual period of error.

ARTICLE 11

GOVERNMENTAL APPROVALS, LAND RIGHTS AND COMPLIANCE WITH LAWS

- 11.1 Governmental Approvals for Facility. Seller shall obtain, at its expense, any and all Governmental Approvals required for the construction, ownership, operation and maintenance of the Facility and the interconnection of the Facility to the Company System. Under no circumstance shall Seller commence any construction, operation or maintenance of the Facility or interconnection of the Facility to the Company System, without first obtaining the required, applicable Governmental Approvals.
- 11.2 Land Rights for Facility. Seller shall obtain, at its expense, any and all Land Rights required for the construction, ownership, operation and maintenance of the Facility on the Site and the interconnection of the Facility to the Company System. Seller shall provide to Company:
- (a) No later than the Execution Date, copies of the documents, recorded, if required by Company (including but not limited to any agreements with landowners) evidencing Seller's Land Rights establishing the right of Seller to construct, own, operate and maintain the Facility on the Site, whether by fee simple ownership of the Site, leasehold interest of the Site for a term at least as long as the Term of this Agreement or, in the alternative for actual fee simple or leasehold interest in the Site, a binding, executed letter of intent establishing the right of Seller to enter into a lease for the Site subject only to reasonable conditions related to PUC approval of this Agreement and such conditions that shall not affect the ability of the Seller to execute such lease.
 - (b) Within six (6) months of the Execution Date, Seller shall provide to Company a current survey (dated no earlier than the Execution Date) for the Site and any other property identified by Seller as requiring Land Rights. Within four (4) months of the Execution Date, Seller shall provide to Company (i) a preliminary title report (dated no earlier than the Execution Date) for the Site and any other property identified by Seller as requiring Land Rights, (ii) copies of all Land Rights already obtained, and (iii) a current list identifying all Land Rights required for the construction,

ownership, operation and maintenance of the Facility and the interconnection of the Facility to the Company System, including Seller's status as to whether such Land Rights have been obtained, have been negotiated or not yet pursued and if so, an estimated date when such Land Rights would be pursued;

- (c) Within three (3) months of Seller's identification of such additional necessary Land Rights, copies of such completed Land Rights, if any;

provided, however, that under no circumstance shall Seller commence any construction, operation or maintenance of the Facility or interconnection of the Facility to the Company System, or require or permit Company to commence any such construction, without Seller first obtaining the required, applicable Land Rights.

Seller shall bear complete responsibility for all delays in construction, operation and maintenance of the Facility or the interconnection of the Facility to the Company System resulting from Seller's failure to identify and/or timely obtain necessary Land Rights. In each case, such Land Rights documents may be redacted but only to the extent required to prevent disclosure of confidential or proprietary information of Seller or the counterparty to such agreement. Under no circumstances shall such redactions conceal information that is necessary for the Company to determine whether such documents establish the Land Rights of Seller to construct, own, operate and maintain the Facility on the Site and the interconnection of the Facility to the Company System in accordance with the terms of this Agreement.

- 11.3 Company-Owned Interconnection Facilities. If the Company-Owned Interconnection Facilities are to be constructed by Company, Seller shall, prior to commencement of construction thereof, provide the necessary Governmental Approvals and Land Rights for the construction, ownership, operation and maintenance of Company-Owned Interconnection Facilities. If the Company-Owned Interconnection Facilities are to be constructed by Seller, then Seller shall provide the necessary Governmental Approvals and Land Rights required for the commencement of construction and, prior to the start of each subsequent phase of construction, Seller shall provide the necessary and appropriate Governmental Approvals and Land Rights necessary for such related construction activity. Regardless of whether Company or Seller constructs the Company-Owned Interconnection Facilities,

Seller shall provide Company with an accounting of all necessary Governmental Approvals (in a list or spreadsheet) at the commencement of construction including relevant information regarding status and estimated completion. Seller shall update Company on the status of all necessary Governmental Approvals, including the addition of any new Governmental Approvals that may be discovered and required, in Seller's Monthly Progress Report submitted to Company. Notwithstanding the above, to the extent not already provided to Company, all required Governmental Approvals for the Company-Owned Interconnection Facilities shall be provided to Company on the Transfer Date in accordance Section 9 (Governmental Approvals for Company-Owned Interconnection Facilities) of Attachment G (Company-Owned Interconnection Facilities). Land Rights for Company-Owned Interconnection Facilities, whether provided at the commencement of construction if to be constructed by Company, or thereafter, if to be constructed by Seller, shall be obtained and its status updated by Seller to Company in accordance with Section 10 (Land Rights) of Attachment G (Company-Owned Interconnection Facilities). Notwithstanding the above, under no circumstance shall Seller commence any construction, operation or maintenance of the Company-Owned Interconnection Facilities, or require or permit Company to commence any such construction, without first obtaining the required, applicable Governmental Approvals and Land Rights. Seller shall bear complete responsibility for all delays in construction, operation and maintenance of the Company-Owned Interconnection Facilities resulting from Seller's failure to identify and/or timely obtain necessary Governmental Approvals and Land Rights for such Company-Owned Interconnection Facilities.

- 11.4 Compliance With Laws. Seller shall at all times comply with all applicable Laws and shall be responsible for all costs and expenses associated therewith.

ARTICLE 12
TERM OF AGREEMENT AND COMPANY'S
OPTION TO PURCHASE AT END OF TERM

- 12.1 Term. Subject to Section 12.2 (Effectiveness of Obligations) of this Agreement, the initial term of this Agreement shall commence upon the Execution Date of this Agreement and, unless terminated sooner as provided in this Agreement, shall remain in effect for [twenty (20) Contract Years] following the Commercial Operations Date (the "Initial Term"). This Agreement shall automatically terminate upon expiration of the Initial Term. If the Parties desire, the Parties may negotiate terms and conditions of an extension term ("Extended Term"), including reduced Contract Pricing in recognition that Seller will have recovered its capital and financing costs, which terms and conditions (i) shall be submitted to the PUC by Company for approval no later than one (1) year prior to the expiration of the Initial Term and (ii) shall have no effect without PUC approval.
- 12.2 Effectiveness of Obligations. Only Article 3 (Facility Owned and/or Operated by Seller), Article 12 (Term of Agreement and Company's Option to Purchase at End of Term), Article 14 (Credit Assurance and Security) as it relates to Development Period Security, Article 17 (Indemnification), Article 19 (Transfers, Assignments, and Facility Debt), Article 22 (Warranties and Representations), Article 24 (Financial Compliance), Article 28 (Dispute Resolution), Article 29 (Miscellaneous), Section 3 (Seller Payment To Company for Company-Owned Interconnection Facilities and Review Of Facility) of Attachment G (Company-Owned Interconnection Facilities) and the Defined Terms of this Agreement shall become effective on the Execution Date. Except where obligations of the Parties are explicitly stated as being effective before the Effective Date, all other portions of this Agreement shall become effective on the Effective Date.
- 12.3 PUC Approval.
- (a) This Agreement is subject to approval by the PUC in the form of a satisfactory PUC Approval Order and the Parties' respective obligations hereunder are conditioned upon receipt of such approval, except as specifically provided otherwise herein. Upon the Execution Date of this Agreement, the Parties shall use

good faith efforts to obtain, as soon as practicable, a PUC Approval Order that satisfies the requirements of Section 29.20(a) (PUC Approval Order). Company shall submit to the PUC an application for a satisfactory PUC Approval Order but does not extend any assurances that a PUC Approval will ultimately be obtained. Seller will provide reasonable cooperation to expedite obtaining a PUC Approval Order including timely providing information requested by Company to support its application, including information for Company and its consultant to conduct a greenhouse gas emissions analysis for the PUC application, as well information requested by the PUC and parties to the PUC proceeding in which approval is being sought. Seller understands that lack of cooperation may result in Company's inability to file an application with the PUC and/or a failure to receive a PUC Approval Order. For the avoidance of doubt, Company has no obligation to seek reconsideration, appeal, or other administrative or judicial review of any Unfavorable PUC Order. The Parties agree that neither Party has control over whether or not a PUC Approval Order will be issued and each Party hereby assumes any and all risks arising from, or relating in any way to, the inability to obtain a satisfactory PUC Approval Order and hereby releases the other Party from any and all claims relating thereto.

- (b) Seller shall seek participation without intervention in the PUC docket for approval of this Agreement pursuant to applicable rules and orders of the PUC. The scope of Seller's participation shall be determined by the PUC. However, Seller expressly agrees to seek participation for the limited purpose and only to the extent necessary to assist the PUC in making an informed decision regarding the approval of this Agreement. If the Seller chooses not to seek participation in the docket, then Seller expressly agrees and knowingly waives any right to claim, before the PUC, in any court, arbitration or other proceeding, that the information submitted and the arguments offered by Company in support of the application requesting the PUC Approval Order are insufficient to meet Company's burden of justifying that the terms of this Agreement are just and reasonable and in the public interest, or otherwise deficient in any manner for purposes of supporting the PUC's approval of this Agreement. Seller shall not seek

in the docket and Company shall not disclose any confidential information to Seller that would provide Seller with an unfair business advantage or would otherwise harm the position of others with respect to their ability to compete on equal and fair terms.

- 12.4 Interconnection Requirements Study. If this Agreement is executed prior to completion of the Interconnection Requirements Study, then following the completion of the IRS:
- (a) The Parties shall, no later than the PPA Amendment Deadline, execute a formal amendment to this Agreement substituting new versions of Attachment B (Facility Owned by Seller), Attachment E (Single-Line Drawing and Interface Block Diagram), Attachment F (Relay List and Trip Scheme), Attachment G (Company-Owned Interconnection Facilities), Attachment K (Guaranteed Project Milestones), Attachment K-1 (Seller's Conditions Precedent and Company Milestones) and Attachment L (Reporting Milestones) (the "Interconnection Requirements Amendment") to reflect the results of the IRS. If the Interconnection Requirements Amendment is not executed by the PPA Amendment Deadline, either Party may, by written notice delivered to the other Party, declare the Agreement null and void; or
 - (b) If Seller is dissatisfied with the results of the IRS, Seller shall have the option, by written notice delivered to Company no later than the Termination Deadline, to declare this Agreement null and void. Failure of Seller to declare this Agreement null and void pursuant to the preceding sentence shall not obligate Seller to execute the Interconnection Requirements Amendment.
- 12.5 Prior to Effective Date. Company may, by written notice delivered prior to the Effective Date, declare the Agreement null and void if any one or more of the following conditions applies:
- (a) Seller implements a material change to the Facility without following the requirements of Section 5(f) of Attachment A (Description of Generation, Conversion and Storage Facility).

- (b) Seller is in material breach of any of its representations, warranties and covenants under the Agreement, including, but not limited to, (i) the provisions of Section 22.2(c) and Section 22.2(d) requiring Seller to have all Land Rights and Governmental Approvals as provided therein; and (ii) the provisions of Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities) requiring the payment by Seller to Company of the amounts specified within the time periods provided therein.
- (c) Seller, subsequent to making the payment to Company required under Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities), or subsequent to making the payment to Company to pay for the IRS, requests in writing that Company stop or otherwise delay the performance of the work for which Company received such payment.
- (d) Any of the IRS Letter Agreements are terminated pursuant to the terms thereof prior to the completion of the Interconnection Requirements Study.

12.6 Time Periods for PUC Submittal Date and PUC Approval.

- (a) Time Period for PUC Submittal Date. If the PUC Submittal Date has not occurred within 120 Days of the Execution Date, or such longer period as Company and Seller may agree to by a subsequent written agreement, Company may, by written notice delivered within thirty (30) Days of the expiration of such period, declare the Agreement null and void if the reason the application has not been filed is (i) any one or more of the conditions set forth in Section 12.5 (Prior to Effective Date) or (ii) Seller's failure to provide in a timely manner information reasonably requested by Company to support such application.
- (b) Time Period for PUC Approval. If the Commission issues an Unfavorable PUC Order or if a PUC Approval Order is not issued within twelve (12) months of the PUC Submittal Date, or within such longer period as Company and Seller may agree to by a written agreement ("PUC Approval Time Period"), then Company or Seller may, by written notice delivered within one hundred and eighty

(180) Days of (i) in the case that an Unfavorable PUC Order has been issued, the date the Unfavorable PUC Order becomes non-appealable or (ii) in the case that a PUC Approval Order is not issued within twelve (12) months of the PUC Submittal Date, or the expiration of the PUC Approval Time Period, as applicable, declare this Agreement null and void. If a PUC Approval Order or an Unfavorable PUC Order is issued within the PUC Approval Time Period but that order is appealed, and a Non-appealable PUC Approval Order is not obtained within twenty-four (24) months of the PUC Submittal Date, or within such longer period as Company and Seller may agree to by a subsequent written agreement (the "PUC Order Appeal Period"), then Company or Seller may, by written notice delivered within ninety (90) Days after the expiration of the PUC Order Appeal Period, declare this Agreement null and void.

12.7 Agreement Null and Void. If the Agreement is declared null and void pursuant to Section 12.4 (Interconnection Requirements Study), Section 12.5 (Prior to Effective Date), Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), or Section 1(d) (NEP IE Estimate, Liquidated Damages and Seller's Null and Void Right) of said Attachment U (Calculation and Adjustment of Net Energy Potential), the Parties hereto shall thereafter be free of all obligations hereunder except as set forth in this Section 12.7 (Agreement Null and Void) and Section 14.3 (Return of Development Period Security), and shall pursue no further remedies against one another; provided, however, that if in response to Seller's request and Seller's offer of adequate assurance of reimbursement, Company agrees in writing to incur costs associated with Company-Owned Interconnection Facilities prior to the Non-appealable PUC Approval Order Date or completion of the IRS, Seller shall pay Company the actual costs and cost obligations incurred by Company as of the date the Agreement is declared null and void for Company-Owned Interconnection Facilities and any reasonable costs incurred thereafter and Company shall refund to Seller any amounts advanced by Seller in excess of such costs. A declaration that this Agreement is null and void pursuant to Section 12.4 (Interconnection Requirements Study), Section 12.5 (Prior to Effective Date), Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), or Section 1(d) (NEP IE Estimate, Liquidated Damages and Seller's Null and Void Right) of said Attachment U (Calculation and Adjustment of Net Energy Potential), shall not affect the following

provisions, which shall remain in full force and effect: Section 12.2 (Effectiveness of Obligations), this Section 12.7 (Agreement Null and Void), Section 24.2 (Confidentiality), Article 28 (Dispute Resolution), Section 29.3 (Notices), Section 29.8 (Governing Law, Jurisdiction and Venue), Section 29.14 (Settlement of Disputes), Section 29.19 (Computation of Time), Section 29.23 (No Third Party Beneficiaries), Section 29.24 (Hawai'i General Excise Tax), and Section 7 (Land Restoration) of Attachment G (Company-Owned Interconnection Facilities).

- 12.8 Termination Rights. Notwithstanding any of the foregoing, the right of Company or Seller to terminate the Agreement at any time upon the occurrence of any Event of Default described in Article 15 (Events of Default) shall remain in full force and effect.
- 12.9 Option to Purchase Facility and Right of First Negotiation. Company shall have the right of first negotiation prior to the end of the Term and option to purchase the Facility at the end of the Term, as provided in Attachment P (Sale of Facility by Seller) to this Agreement.

ARTICLE 13
GUARANTEED PROJECT MILESTONES
INCLUDING COMMERCIAL OPERATIONS

[COMPANY TO DECIDE, FOLLOWING COMPLETION OF IRS, IF ANY GUARANTEED PROJECT MILESTONES ARE NECESSARY IN ADDITION TO THOSE LISTED IN ATTACHMENT K AND, IF SO, WHAT ARE THE CONSEQUENCES OF MISSING SUCH OTHER GUARANTEED PROJECT MILESTONES.]

- 13.1 Time is of the Essence. Time is of the essence of this Agreement, and Seller's ability to achieve the Construction Milestones is critically important.
- 13.2 Failure to Meet Reporting Milestones. If Seller does not meet a Reporting Milestone, in each case as set forth in Attachment L (Reporting Milestones), Seller shall submit to Company, within ten (10) Business Days of any such missed Reporting Milestone, a remedial action plan which shall provide a detailed description of Seller's course of action and plan to achieve (i) the missed Reporting Milestone date within ninety (90) Days of the missed Reporting Milestone and (ii) all subsequent Construction Milestones, provided that delivery of any remedial action plan shall not relieve Seller of its obligation to meet any subsequent Construction Milestones.
- 13.3 Guaranteed Project and Reporting Milestone Dates. Seller shall achieve each Guaranteed Project Milestone Date or Reporting Milestone Date, subject (to the extent applicable) to the following extensions:
- (a) if the PUC Approval Order Date occurs more than one hundred eighty (180) Days after the Execution Date, Seller and Company shall be entitled to an extension of the Guaranteed Project Milestone Dates, Reporting Milestone Dates equal to the number of Days that elapse between the end of the aforesaid 180-Day period and the PUC Approval Order Date; provided, that in no event will the Guaranteed Commercial Operations Date be extended beyond **[Note - outside date to be inserted based on type of proposal.]**; or
 - (b) if the failure to achieve a Construction Milestone by the applicable Guaranteed Project Milestone Date or Reporting Milestone Date is the result of Force Majeure (which, for purposes of this Section 13.3(b) excludes any delay in obtaining the PUC Approval Order because

that contingency is addressed in Section 13.3(a) above), and if and so long as the conditions set forth in Section 21.4 (Satisfaction of Certain Conditions) are satisfied, such Guaranteed Project Milestone Date or Reporting Milestone Date shall be extended by a period equal to the lesser of three hundred sixty-five (365) Days or the duration of the delay caused by the Force Majeure; or

- (c) if the failure to achieve a Guaranteed Project Milestone by the applicable Guaranteed Project Milestone Date is the result of any failure by Company in the timely performance of its obligations under this Agreement, including achievement of its Company Milestones by the Company Milestone Dates as set forth on Attachment K-1 (Seller's Conditions Precedent and Company Milestones), as such dates may be extended in accordance with Section 13.3 (Guaranteed Project and Reporting Milestone Dates) and Section 13.8 (Company Milestones), Seller shall, provided Seller has satisfied the Seller's Conditions Precedent set forth in Attachment K-1 (Seller's Conditions Precedent and Company Milestones) by the respective Seller's Conditions Precedent Date set forth in said Attachment K-1, be entitled to an extension of such Guaranteed Project Milestone Date equal to the duration of the period of delay directly caused by such failure in Company's timely performance. Such extension on the terms described above shall be Seller's sole remedy for any such failure by Company. For purposes of this Section 13.3(c), Company's performance will be deemed to be "timely" if it is accomplished within the time period specified in this Agreement with respect to such performance or, if no time period is specified, within a reasonable period of time. If the performance in question is Company's review of plans, the determination of what is a "reasonable period of time" will take into account Company's past practices in reviewing and commenting on plans for similar facilities.

13.4 Damages and Termination.

(a) Daily Delay Damages.

- (1) If a Guaranteed Project Milestone (other than Commercial Operations) has not been achieved by the applicable Guaranteed Project Milestone Date as

extended as provided in Section 13.3 (Guaranteed Project and Reporting Milestone Dates), Company shall collect and Seller shall pay liquidated damages in the amount of [REDACTED] for each Day ("Daily Delay Damages") following the applicable Guaranteed Project Milestone Date, as extended in accordance with Section 13.3 (Guaranteed Project and Reporting Milestone Dates); provided, however, that the number of Days for which Company shall collect and Seller shall pay Daily Delay Damages for a failure to achieve a Guaranteed Project Milestone by the Guaranteed Project Milestone Date shall not exceed sixty (60) Days for each such missed Guaranteed Project Milestone Date (the "Construction Delay LD Period"). **[Note: Contract Capacity x \$50/kW ÷ 180 Days = Daily Delay Damages.]**

- (2) If the Commercial Operations Date has not been achieved by the Guaranteed Commercial Operations Date as extended as provided in Section 13.3 (Guaranteed Project and Reporting Milestone Dates), in addition to any Daily Delay Damages collected pursuant to Section 13.4(a)(1), Company shall collect and Seller shall pay Daily Delay Damages following the Guaranteed Commercial Operations Date, as such date may be extended in accordance with Section 13.3 (Guaranteed Project and Reporting Milestone Dates), provided that the number of Days for which Company shall collect and Seller shall pay Daily Delay Damages for failing to achieve the Guaranteed Commercial Operations Date shall not exceed one hundred eighty (180) Days (the "COD Delay LD Period").
- (b) Termination and Termination Damages for Failure to Achieve a Guaranteed Project Milestone Date. If, upon the expiration of the Construction Delay LD Period or the COD Delay LD Period, as applicable, Seller has not achieved the applicable Guaranteed Project Milestone, Company shall have the right, notwithstanding any other provision of this Agreement to the contrary, to terminate this Agreement with immediate effect by issuing a written termination notice to Seller designating the Day such termination is to be effective, provided that Company shall issue such notice no later than thirty (30) Days following the expiration of the

Construction Delay LD Period or the COD Delay LD Period, as applicable. The effective date of such termination shall be not later than the date that is thirty (30) Days after such notice is deemed to be received by Seller, and not earlier than the later to occur of the Day such notice is deemed to be received by Seller or the Day following the expiration of the Construction Delay LD Period or the COD Delay LD Period, as applicable. If the Agreement is terminated by Company pursuant to this Section 13.4 (Damages and Termination), Company shall have the right to collect Termination Damages, which shall be calculated in accordance with Article 16 (Damages in the Event of Termination by Company) of this Agreement.

- 13.5 Payment of Daily Delay Damages. Company shall draw upon the Development Period Security on a monthly basis for payment of the total Daily Delay Damages incurred by Seller during the preceding calendar month. If the Development Period Security is at any time insufficient to pay the amount of the draw to which Company is then entitled, Seller shall pay any such deficiency to Company promptly upon demand.
- 13.6 Liquidated Damages Appropriate. Seller's inability to achieve Commercial Operations by the Guaranteed Commercial Operations Date may cause Company to not meet applicable RPS requirements and require Company to devote substantial additional resources for administration and oversight activities. As such, Company may incur financial consequences for failure to meet such requirements. Consequently, each Party agrees and acknowledges that (i) the damages that Company would incur due to delay in achieving Commercial Operations by the Guaranteed Commercial Operations Date (subject to the extensions provided in Section 13.3 (Guaranteed Project and Reporting Milestone Dates)) would be difficult or impossible to calculate with certainty, (ii) the Daily Delay Damages set forth in Section 13.4 (Damages and Termination) are an appropriate approximation of such damages and (iii) the Daily Delay Damages are the sole and exclusive remedies for Seller's failure to achieve Commercial Operations by the Guaranteed Commercial Operations Date.
- 13.7 Monthly Progress Reports. Commencing upon the Execution Date of this Agreement, Seller shall submit to Company, on the tenth (10th) Business Day of each calendar month until the Commercial Operations Date is achieved, a progress

report for the prior month in a form set forth on Attachment S (Form of Monthly Progress Report) (the "Monthly Progress Report"). These progress reports shall notify Company of the current status of each Construction Milestone. Seller shall include in such report a list of all letters, notices, applications, filings and Governmental Approvals sent to or received from any Governmental Authority and shall provide any such documents as may be reasonably requested by Company. In addition, Seller shall advise Company as soon as reasonably practicable of any problems or issues of which it is aware which may materially impact its ability to meet the Construction Milestones. Seller shall provide Company with any requested documentation to support the achievement of Construction Milestones within ten (10) Business Days of receipt of such request from Company. Upon the occurrence of a Force Majeure, Seller shall also comply with the requirements of Section 21.4 (Satisfaction of Certain Conditions) to the extent such requirements provide for communications to Company beyond those required under this Section 13.7 (Monthly Progress Reports).

- 13.8 Company Milestones. Company's obligation to achieve the Company Milestones is contingent upon Seller completing the Seller's Conditions Precedent set forth in Attachment K-1 (Company Milestones and Seller's Conditions Precedent). Company shall achieve each of the Company Milestones by the date set forth for such Company Milestones in Attachment K-1 (Seller's Conditions Precedent and Company Milestones) of this Agreement (each such date, a "Company Milestone Date"), as such date may be extended in accordance with Section 13.3 (Guaranteed Project and Reporting Milestone Dates) and this Section 13.8 (Company Milestones); provided, however in the event Seller does not complete a Seller's Condition Precedent on or before the applicable date set forth in Attachment K-1 (Seller's Conditions Precedent and Company Milestones), subject to the extensions set forth in Section 13.3 (Guaranteed Project and Reporting Milestone Dates), Company shall be entitled to an extension as follows: (i) for the commencement of Acceptance Testing, the new Company Milestone Date shall be as set forth in clause "(gg)" of Section 2(f)(i) of Attachment G (Company-Owned Interconnection Facilities); and (ii) for any other Company Milestone Date, the extension shall be for the period of time reasonably necessary to meet any such Company Milestone Date adversely affected by Seller's failure but no shorter than a day-for-day extension.

ARTICLE 14
CREDIT ASSURANCE AND SECURITY

- 14.1 General. Seller is required to post and maintain Development Period Security and Operating Period Security based on the requirements of this Article 14 (Credit Assurance and Security).
- 14.2 Development Period Security. To guarantee undertaking the performance of Seller's obligations under the Agreement for the period prior to the Commercial Operations Date (including but not limited to Seller's obligation to meet the Guaranteed Commercial Operations Date), Seller shall provide 50% of the Development Period Security to Company within ten (10) Days of Execution Date of the Agreement and the remaining 50% of the Development Period Security within ten (10) Business Days of the execution of the Interconnection Requirements Amendment.
- 14.3 Return of Development Period Security. The Development Period Security shall be returned to Seller, subject to Company's right to draw from the Development Period Security as set forth in Section 14.7 (Company's Right to Draw from Security Funds), in the following circumstances: (i) this Agreement is declared null and void pursuant to any of Section 12.4 (Interconnection Requirements Study), Section 12.5 (Prior to Effective Date), Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval) or Section 1(d) (NEP IE Estimate, Liquidated Damages and Seller's Null and Void Right) of said Attachment U (Calculation and Adjustment of Net Energy Potential); (ii) the PUC issues an order denying approval for an application for a PUC Approval Order, which does not become subject to appeal; (iii) the PUC issues an Unfavorable PUC Order, which does not become subject to appeal; (iv) a Non-Appealable PUC Approval Order is not obtained within the time periods specified in Section 12.6(b) (Time Period for PUC Approval); or (v) following Company's receipt of Operating Period Security pursuant to Section 14.4 (Operating Period Security) of this Agreement.
- 14.4 Operating Period Security. To guarantee the performance of Seller's obligations under the Agreement for the period starting from the Commercial Operations Date to the expiration or termination of this Agreement, Seller shall provide satisfactory operating period security to Company in the amount of \$75/kW based on the Contract Capacity (the "Operating Period Security"). Seller shall provide such

Operating Period Security to Company within five (5) Business Days after the Commercial Operations Date, provided that, at all times, some form of Security Funds shall be in place and available to Company, whether Development Period Security or Operating Period Security.

- 14.5 Form of Security. Seller shall supply the Development Period and Operating Period Security required in the form of an irrevocable standby letter of credit with no documentation requirement substantially in the form attached to this Agreement as Attachment M (Form of Letter of Credit) from a bank chartered in the United States with a credit rating of "A-" or better. If the rating (as measured by Standard & Poor's) of the bank issuing the standby letter of credit falls below A-, Company may require Seller to replace, within thirty (30) Days' notice by Company, the standby letter of credit with a standby letter of credit from another bank chartered in the United States with a credit rating of "A-" or better. Such letter of credit shall be issued for a minimum term of one (1) year. Furthermore, at the end of each year the security shall be renewed for an additional one (1) year term so that at the time of such renewal, the remaining term of any such security shall not be less than one (1) year. The letter of credit shall include a provision for at least thirty (30) Days advance notice to Company and Seller of any expiration or earlier termination of the letter of credit so as to allow Company sufficient time to exercise its rights under said security if Seller fails to extend or replace the security. In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the letter of credit shall be borne by Seller. In the event Company receives notice from the issuing bank that a letter of credit for the Development Period Security or Operating Period Security will be cancelled or is set to expire and will not be extended, Company shall endeavor, but shall not be obligated, to provide Seller with notice of such cancellation or termination. Company shall not be responsible for any lack of notice to Seller of such letter of credit's cancellation or termination and the events resulting therefrom, provided, however, that if Company draws upon the then full amount remaining under the letter of credit, the provisions of Section 14.8 (Failure to Renew or Extend Letter of Credit) and Section 14.9 (L/C Proceeds Escrow) shall apply. In the event the letter of credit for Development Period Security or Operating Period Security

ever expires or is terminated without Company drawing on such full amount remaining under the letter of credit prior to its expiration, and Seller has not been afforded the opportunity to replace the letter of credit prior to its expiration or termination because of lack of notice, Seller shall be provided a grace period of five (5) Business Days from any notice of such expiration or termination of the letter of credit to obtain and provide to Company a substitute letter of credit meeting the requirements of this Article 14 (Credit Assurance and Security).

- 14.6 Security Funds. The Development Period Security and Operating Period Security, including L/C Proceeds therefrom (collectively referred to as the "Security Funds") established, funded, and maintained by Seller pursuant to the provisions of this Article 14 (Credit Assurance and Security) shall provide security for the performance of Seller's obligations under this Agreement and shall be available to be drawn on by Company as provided in Section 14.7 (Company's Right to Draw from Security Funds). Seller shall maintain the Security Funds at the contractually-required level throughout the Term of this Agreement. Seller shall replenish the Security Funds to such required level within fifteen (15) Business Days after any draw on the Security Funds by Company or any reduction in the value of Security Funds below the required level for any other reason. Notwithstanding the foregoing, Seller's obligation to replenish the Development Period Security shall not exceed in total three (3) times the original amount of the Development Period Security required under Section 14.2 (Development Period Security) of this Agreement.
- 14.7 Company's Right to Draw from Security Funds. In addition to any other remedy available to it, Company may, before or after termination of this Agreement, draw from the Security Funds such amounts as are necessary to recover amounts Company is owed pursuant to this Agreement or the IRS Letter Agreements, including, without limitation, any damages due Company, any interconnection costs owed pursuant to Attachment G (Company-Owned Interconnection Facilities) and any amounts for which Company is entitled to indemnification under this Agreement. Company may, in its sole discretion, draw all or any part of such amounts due Company from any of the Security Funds to the extent available pursuant to this Article 14 (Credit Assurance and Security), and from all such forms, and in any sequence Company may select. Any failure to draw upon the Security Funds or other security

for any damages or other amounts due Company shall not prejudice Company's rights to recover such damages or amounts in any other manner.

- 14.8 Failure to Renew or Extend Letter of Credit. If the letter of credit is not renewed or extended at least thirty (30) Days prior to its expiration or earlier termination, Company shall have the right to draw immediately upon the full amount of the letter of credit and to place the proceeds of such draw (the "L/C Proceeds"), at Seller's cost, in an escrow account in accordance with Section 14.9 (L/C Proceeds Escrow), until and unless Seller provides a substitute letter of credit meeting the requirements of this Article 14 (Credit Assurance and Security).
- 14.9 L/C Proceeds Escrow. If Company draws on the letter of credit pursuant to Section 14.8 (Failure to Renew or Extend Letter of Credit), and so long as a substitute letter of credit meeting the requirements of this Article 14 (Credit Assurance and Security) is not obtained and provided to Company, Company shall, in order to avoid comingling the L/C Proceeds, have the right but not the obligation to place the L/C Proceeds in an escrow account as provided in this Section 14.9 (L/C Proceeds Escrow) with a reputable escrow agent acceptable to Company ("Escrow Agent"). Without limitation to the generality of the foregoing, a federally-insured bank shall be deemed to be a "reputable escrow agent." Company shall have the right to apply the L/C Proceeds as necessary to recover amounts Company is owed pursuant to this Agreement or the IRS Letter Agreements, including, without limitation, any damages due Company, any interconnection costs owed pursuant to Attachment G (Company-Owned Interconnection Facilities) and any amounts for which Company is entitled to indemnification under this Agreement. To that end, the documentation governing such escrow account shall be in form and content satisfactory to Company and shall give Company the sole authority to draw from the account. Seller shall not be a party to such documentation and shall have no rights to the L/C Proceeds. Upon full satisfaction of Seller's obligations under this Agreement, including recovery by Company of amounts owed to it under this Agreement, Company shall instruct the Escrow Agent to remit to the bank that issued the letter of credit that was the source of the L/C Proceeds the remaining balance (if any) of the L/C Proceeds. If there is more than one escrow account with L/C Proceeds, Company may, in its sole discretion, draw on such accounts in any sequence

Company may select. Any failure to draw upon the L/C Proceeds for any damages or other amounts due Company shall not prejudice Company's rights to recover such damages or amounts in any other manner. If a substitute letter of credit satisfying the requirements of this Article 14 (Credit Assurance and Security) is obtained and provided to Company, the net L/C Proceeds remaining as of the date that such substitute letter of credit is provided, shall be returned to Seller, or as Seller directs in writing.

- 14.10 Release of Security Funds. Promptly following the end of the Term, and the complete performance of all of Seller's obligations under this Agreement, including but not limited to the obligation to pay any and all amounts owed by Seller to Company under this Agreement, Company shall release the Security Funds to Seller.

ARTICLE 15
EVENTS OF DEFAULT

15.1 Events of Default by Seller. The occurrence of any of the following shall constitute an Event of Default by Seller:

- (a) if at any time during the Term, Seller delivers or attempts to deliver to the Point of Interconnection for sale under this Agreement electric energy that was not generated by the Facility;
- (b) if at any time subsequent to the Commercial Operations Date, the Modified Pooled OMC Equipment Availability Factor is less than **84%** for each of three consecutive Contract Years;
- (c) if at any time subsequent to the Commercial Operations Date, the Measured Performance Ratio for each of three consecutive Contract Years falls below the Tier 2 Bandwidth for such Contract Year;
- (d) if at any time subsequent to the Commercial Operations Date, the BOP Efficiency Ratio is less than BOP Benchmark Minus 6 for each of three consecutive Contract Years;
- (e) if at any time subsequent to the Commercial Operations Date, the Seller fails to demonstrate satisfaction of the BESS Capacity Performance Metric prior to the expiration of the BESS Capacity Cure Period;
- (f) if at any time subsequent to the Commercial Operations Date, the Seller fails to achieve a BESS Annual Equivalent Availability Factor of not less than **75%** for each of six (6) consecutive BESS Measurement Periods as provided in Section 2.9(b) (BESS Guaranteed Availability Termination Date);
- (g) if at any time subsequent to the Commercial Operations Date, the Seller fails to demonstrate satisfaction of the RTE Performance Metric prior to the expiration of the RTE Cure Period;
- (h) if at any time subsequent to the Commercial Operations Date, the Facility is unavailable to provide electric energy in response to Company Dispatch for a period of three hundred sixty-five (365) or more consecutive Days;

- (i) if at any time during the Term, Seller fails to satisfy the requirements of Article 14 (Credit Assurance and Security) of this Agreement;
- (j) if at any time during the Term, Seller fails to comply with the requirements of Section 19.1 (Sale of Facility) and Attachment P (Sale of Facility by Seller); or
- (k) if at any time subsequent to the Commercial Operations Date, Seller fails to install, operate, maintain, or repair the Facility in accordance with Good Engineering and Operating Practices if such failure is not cured within thirty (30) Days after written notice of such failure from Company unless such failure cannot be cured within said thirty (30) Day period and Seller is making commercially reasonable efforts to cure such failure, in which case Seller shall have a cure period of three hundred sixty-five (365) Days after Company's written notice of such failure.

15.2 Events of Default by a Party. The occurrence of any of the following during the Term of the Agreement shall constitute an Event of Default by the Party responsible for the failure, action or breach in question:

- (a) The failure to make any payment required pursuant to this Agreement when due if such failure is not cured within ten (10) Business Days after written notice is received by the Party failing to make such payment;
- (b) Any representation or warranty made by such Party herein is false and misleading in any material respect when made;
- (c) Such Party becomes insolvent, or makes an assignment for the benefit of creditors (other than an assignment to a Facility Lender pursuant to the Financing Documents) or fails generally to pay its debts as they become due; or such Party shall have an order for relief in an involuntary case under the bankruptcy laws as now or hereafter constituted entered against it, or shall commence a voluntary case under the bankruptcy laws as now or hereafter constituted, or shall file any petition or answer seeking for itself any arrangement, composition, adjustment, liquidation, dissolution or similar relief to which it may be entitled under any present or future statute, law or regulation, or shall

file any answer admitting the material allegations of any petition filed against it in such proceeding; or such Party seeks or consents to or acquiesces in the appointment of or taking possession by, any custodian, trustee, receiver or liquidator of it or of all or a substantial part of its properties or assets; or such Party takes action looking to its dissolution or liquidation; or within ninety (90) Days after commencement of any proceedings against such Party seeking any arrangement, composition, adjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceedings shall not have been dismissed; or within ninety (90) Days after the appointment of, or taking possession by, any custodian, trustee, receiver or liquidator of any or of all or a substantial part of the properties or assets of such Party, without the consent or acquiescence of such Party, any such appointment or possession shall not have been vacated or terminated;

- (d) Such Party engages in or is the subject of a transaction requiring the prior written consent of the other Party under Section 19.2 (Assignment by Seller) or Section 19.7 (Assignment By Company) (as applicable) without having obtained such consent;
- (e) Such Party fails to comply with either (i) decision under Article 28 (Dispute Resolution), (ii) or an Independent Evaluator's decision under Article 23 (Process for Addressing Revisions to Performance Standards), in either case within thirty (30) Days after such decision becomes binding on the Parties in accordance with Article 28 (Dispute Resolution) or within thirty (30) Days of the issuance of such decision under Article 23 (Process for Addressing Revisions to Performance Standards), as applicable, or, if such decision cannot be complied with within thirty (30) Days, such Party fails to have commenced commercially reasonable efforts designed to achieve compliance within such thirty (30) Days and diligently continue such commercially reasonable efforts until compliance is attained; or
- (f) A Party, by act or omission, materially breaches or defaults on any material covenant, condition or other provision of this Agreement, other than the provisions specified in Section 15.1 (Events of Default by Seller)

and Section 15.2(a) through Section 15.2(e), if such breach or default is not cured within thirty (30) Days after written notice of such breach or default from the other Party; provided, however, that if it is objectively impossible to cure the breach or default in question within said thirty (30) Day period (i.e., if the breach or default in question is one that could not be cured within said thirty (30) Day period by an experienced independent power producer or electric utility, as applicable, willing and able to exert commercially reasonable efforts to achieve such cure within said thirty (30) Day period), then, for so long as the Non-performing Party is making the same effort to cure such breach or default as would be expected of an experienced independent power producer or electric utility, as applicable, willing and able to exert commercially reasonable efforts to achieve such cure, the Non-performing Party shall have a cure period equal to the shorter of (i) the duration of the period within which a cure could reasonably be expected to be achieved by an experienced independent power producer or electric utility, as applicable, willing and able to exert commercially reasonable efforts to achieve such cure or (ii) a period of three hundred sixty five (365) Days beginning on the date of written notice of such breach or default; provided, further, that if the material breach in question involves Seller's failure to meet the operational and performance standards set forth in Attachment B (Facility Owned by Seller), the provisions of Section 1(j) (Demonstration of Facility) of Attachment B (Facility Owned by Seller) for consultant's study and Seller implementation of such study's recommendation shall apply in lieu of the extended cure period provided under the preceding proviso.

15.3 Cure/Grace Periods. Before becoming an Event of Default, the occurrences set forth in Section 15.1 (Events of Default by Seller) and Section 15.2 (Events of Default by a Party) are subject to the following cure/grace periods:

- (a) If the occurrence is not the result of Force Majeure, the Non-performing Party shall be entitled to a cure period to the limited extent expressly set forth in the applicable provision of Section 15.1 (Events of Default by Seller) or Section 15.2 (Events of Default by a Party); or

- (b) If the occurrence is the result of Force Majeure, and if and so long as the conditions set forth in Section 21.4 (Satisfaction of Certain Conditions) are satisfied, the Non-performing Party shall be entitled to a grace period as provided in Section 21.6 (Termination for Force Majeure), which shall apply in lieu of any cure periods provided in Section 15.1 (Events of Default by Seller) and Section 15.2 (Events of Default by a Party).

15.4 Rights of the Non-defaulting Party; Forward Contract. If an Event of Default shall have occurred and be continuing, the Party who is not the Defaulting Party ("Non-defaulting Party") shall have the right (i) to terminate this Agreement by sending written notice to the Defaulting Party as provided in this Section 15.4 (Rights of the Non-defaulting Party; Forward Contract); (ii) to withhold any payments due to the Defaulting Party under this Agreement; (iii) suspend performance; and (iv) exercise any other right or remedy available at law or in equity to the extent permitted under this Agreement. A notice terminating this Agreement pursuant to this Section 15.4 (Rights of the Non-defaulting Party; Forward Contract) shall designate the Day such termination is to be effective which Day shall be no later than thirty (30) Days after such notice is deemed to be received by the Defaulting Party and not earlier than the first to occur of the Day such notice is deemed to be received by the Defaulting Party or the Day following the expiration of any period afforded the Defaulting Party under Section 15.1 (Events of Default by Seller) and Section 15.2 (Events of Default by a Party) to cure the default in question. If the Agreement is terminated by Company because of one or more of the Events of Default by Seller, Company shall have the right, in addition to the rights set forth above in this Section 15.4 (Rights of the Non-defaulting Party; Forward Contract), to collect Termination Damages, in accordance with Article 16 (Damages in the Event of Termination by Company). Without limitation to the generality of the foregoing provisions of this Section 15.4 (Rights of the Non-Defaulting Party; Forward Contract), the Parties agree that, under 11 U.S.C. §362(b)(6), this Agreement is a "forward contract" and the Company is a "forward contract merchant" such that upon the occurrence of an Event of Default by Seller under Section 15.1 (Events of Default by Seller) or Section 15.2 (Events of Default by a Party), this Agreement may be terminated by Company as provided in this Agreement notwithstanding any bankruptcy petition affecting Seller.

- 15.5 Force Majeure. To the extent a Non-performing Party is entitled to defer certain liabilities pursuant to Article 21 (Force Majeure) of the Agreement, the permitted period of deferral shall be governed by Section 21.6 (Termination for Force Majeure) in lieu of this Article 15 (Events of Default).
- 15.6 Guaranteed Project Milestones Including Guaranteed Commercial Operations Date. Notwithstanding any other provision of this Article 15 (Events of Default) to the contrary, any failure of Seller to achieve any of the Guaranteed Project Milestones by the applicable Guaranteed Project Milestone Date, including Commercial Operations by the Guaranteed Commercial Operations Date, shall be governed by Article 13 (Guaranteed Project Milestones Including Commercial Operations) in lieu of this Article 15 (Events of Default).
- 15.7 Equitable Remedies. Seller acknowledges that Company is a public utility and is relying upon Seller's performance of its obligations under this Agreement, and that Company and/or its customers may suffer irreparable injury as a result of the failure of Seller to perform any of such obligations, whether or not such failure constitutes an Event of Default or otherwise gives rise to one or more of the remedies set forth in Section 15.4 (Rights of the Non-defaulting Party; Forward Contract). Accordingly, the remedies set forth in Section 15.4 (Rights of the Non-defaulting Party; Forward Contract) shall not limit or otherwise affect Company's right to seek specific performance injunctions or other available equitable remedies for Seller's failure to perform any of its obligations under this Agreement, irrespective of whether such failure constitutes an Event of Default.

ARTICLE 16
DAMAGES IN THE EVENT OF TERMINATION BY COMPANY

- 16.1 Termination Due to Failure to Meet a Guaranteed Project Milestone Date. If the Agreement is terminated by Company pursuant to Section 13.4 (Damages and Termination), Company shall be entitled to Termination Damages calculated by multiplying the Contract Capacity by \$50/kW.
- 16.2 Termination Due to an Event of Default. If the Agreement is terminated by Company in accordance with this Agreement after the Commercial Operations Date due to an Event of Default where Seller is the Defaulting Party, Company shall be entitled to Termination Damages calculated by multiplying the Contract Capacity by \$75/kW.
- 16.3 Liquidated Damages Appropriate. Each Party agrees and acknowledges that (i) the damages that Company would incur due to early termination of the Agreement pursuant to either Section 13.4 (Damages and Termination) or Section 15.4 (Rights of the Non-defaulting Party; Forward Contract) would be difficult or impossible to calculate with certainty, (ii) the Termination Damages are an appropriate approximation of such damages, and (iii) payment of Termination Damages does not relieve Seller of liability for costs and balances incurred prior to the effective date of such termination. The Termination Damages are the sole and exclusive remedy for Company's losses arising out of the termination of this Agreement. The Termination Damages are not intended to limit Company's rights or remedies, or Seller's liabilities or duties, with respect to losses arising independent of the termination of this Agreement, including, without limitation, Company's right to recover under Section 17.1 (Indemnification of Company).
- 16.4 Consequential Damages. Neither Party shall be liable for damages incurred by the other Party for any loss of profit or revenues, loss of product, loss of use of products or services or associated equipment, interruption of business, cost of capital, downtime costs, increased operating costs, or for any special, consequential, incidental, indirect or punitive damages; provided, however, that nothing in this Section 16.4 (Consequential Damages) shall limit any of (i) the indemnification obligations of either Party under Article 17 (Indemnification) of this Agreement, (ii) the liability of either Party for liquidated damages as set forth in this Agreement, (iii) the liability of either Party

for direct damages for breach of this Agreement as and to the extent such damages have not been liquidated as set forth in this Agreement or (iv) the liability of either Party for gross negligence or intentional misconduct.

ARTICLE 17
INDEMNIFICATION

17.1 Indemnification of Company.

- (a) Indemnification Against Third Party Claims. Seller shall indemnify, defend, and hold harmless Company, its successors, permitted assigns, affiliates, controlling persons, directors, officers, employees, agents, contractors, subcontractors and the employees of any of them (collectively referred to as an "Indemnified Company Party"), from and against any Losses suffered, incurred or sustained by any Indemnified Company Party due to any Claim (whether or not well founded, meritorious or unmeritorious) by a third party not controlled by, or under common ownership and/or control with, Company relating to (i) Seller's development, permitting, construction, ownership, operation and/or maintenance of the Facility and Company-Owned Interconnection Facilities (excluding, (A) if Seller constructs the Company-Owned Interconnection Facilities, the ownership, operation and/or maintenance of the Company-Owned Interconnection Facilities following the Transfer Date, or (B) if Company constructs the Company-Owned Interconnection Facilities, the construction, ownership, operation and/or maintenance of the Company-Owned Interconnection Facilities); or (ii) any actual or alleged personal injury or death or damage to property, in any way arising out of, incident to, or resulting directly or indirectly from the acts or omissions of any Indemnified Seller Party, except as and to the extent that such Loss is attributable to the negligence or willful misconduct of an Indemnified Company Party.
- (b) Compliance with Laws. Any Losses incurred by an Indemnified Seller Party for noncompliance by Seller or an Indemnified Seller Party with applicable Laws shall not be reimbursed by Company but shall be the sole responsibility of Seller. Seller shall indemnify, defend and hold harmless each Indemnified Company Party from and against any and all Losses in any way arising out of, incident to, or resulting directly or indirectly from the failure of Seller to comply with any Laws.
- (c) Notice. If Seller shall obtain knowledge of any Claim subject to Section 17.1(a) (Indemnification Against Third Party Claims), Section 17.1(b) (Compliance with

Laws) or otherwise under this Agreement, Seller shall give prompt notice thereof to Company, and if Company shall obtain any such knowledge, Company shall give prompt notice thereof to Seller.

(d) Indemnification Procedures.

- (1) In case any Claim subject to Section 17.1(a) (Indemnification Against Third Party Claims) or Section 17.1(b) (Compliance with Laws) or otherwise under this Agreement, shall be brought against an Indemnified Company Party, Company shall notify Seller of the commencement thereof and, provided that Seller has acknowledged in writing to Company its obligation to an Indemnified Company Party under this Section 17.1 (Indemnification of Company), Seller shall be entitled, at its own expense, acting through counsel acceptable to Company, to participate in and, to the extent that Seller desires, to assume and control the defense thereof; provided, however, that Seller shall not compromise or settle a Claim against an Indemnified Company Party without the prior written consent of Company which consent shall not be unreasonably withheld or delayed.

- (2) Seller shall not be entitled to assume and control the defense of any such Claim subject to Section 17.1(a) (Indemnification Against Third Party Claims), Section 17.1(b) (Compliance with Laws) or otherwise under this Agreement, if and to the extent that, in the sole opinion of Company, such Claim involves the potential imposition of criminal liability on an Indemnified Company Party or a conflict of interest between an Indemnified Company Party and Seller, in which case Company shall be entitled, at its own expense, acting through counsel acceptable to Seller to participate in any Claim, the defense of which has been assumed by Seller. Company shall supply, or shall cause an Indemnified Company Party to supply, Seller with such information and documents requested by Seller as are necessary or advisable for Seller to possess in connection with its participation in any Claim to the extent permitted by this Section 17.1(d)(2). Company shall not enter, and shall restrict any Indemnified Company Party from entering, into any

settlement or other compromise with respect to any Claim without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed.

- (3) Upon payment of any Losses by Seller, pursuant to this Section 17.1 (Indemnification of Company) or other similar indemnity provisions contained herein, to or on behalf of Company, Seller, without any further action, shall be subrogated to any and all claims that an Indemnified Company Party may have relating thereto.
- (4) Company shall fully cooperate and cause all Company Indemnified Parties to fully cooperate, in the defense of or response to, any Claim subject to Section 17.1 (Indemnification of Company).

17.2 Indemnification of Seller.

- (a) Indemnification Against Third Party Claims. Company shall indemnify, defend, and hold harmless Seller, its successors, permitted assigns, affiliates, controlling persons, directors, officers, employees, servants and agents, contractors, subcontractors and the employees of any of them (collectively referred to as an "Indemnified Seller Party"), from and against any Losses suffered, incurred or sustained by any Indemnified Seller Party due to any Claim (whether or not well founded, meritorious or unmeritorious) by a third party not controlled by or under common ownership and/or control with Seller relating to (i) (a) if Seller constructs the Company-Owned Interconnection Facilities, the ownership, operation and/or maintenance of the Company-Owned Interconnection Facilities following the Transfer Date, or (b) if Company constructs the Company-Owned Interconnection Facilities, the construction, ownership, operation and/or maintenance of the Company-Owned Interconnection Facilities, and (ii) any actual or alleged personal injury or death or damage to property, in any way arising out of, incident to, or resulting directly or indirectly from the acts or omissions of any Indemnified Company Party, except to the extent that any such Loss is attributable to the negligence or willful misconduct of an Indemnified Seller Party.

- (b) Compliance with Laws. Any Losses incurred by an Indemnified Company Party for noncompliance by Company or an Indemnified Company Party with applicable Laws shall not be reimbursed by Seller but shall be the sole responsibility of Company. Company shall indemnify, defend and hold harmless each Indemnified Seller Party from and against any and all Losses in any way arising out of, incident to, or resulting directly or indirectly from the failure of Company to comply with any Laws.
- (c) Notice. If Company shall obtain knowledge of any Claim subject to Section 17.2(a) (Indemnification Against Third Party Claims), Section 17.2(b) (Compliance with Laws) or otherwise under this Agreement, Company shall give prompt notice thereof to Seller, and if Seller shall obtain any such knowledge, Seller shall give prompt notice thereof to Company.
- (d) Indemnification Procedures.
- (1) In case any Claim subject to Section 17.2(a) (Indemnification Against Third Party Claims), Section 17.2(b) (Compliance with Laws), or otherwise under this Agreement, shall be brought against an Indemnified Seller Party, Seller shall notify Company of the commencement thereof and, provided that Company has acknowledged in writing to Seller its obligation to an Indemnified Seller Party under this Section 17.2 (Indemnification of Seller), Company shall be entitled, at its own expense, acting through counsel acceptable to Seller, to participate in and, to the extent that Company desires, to assume and control the defense thereof; provided, however, that Company shall not compromise or settle a Claim against an Indemnified Seller Party without the prior written consent of Seller which consent shall not be unreasonably withheld or delayed.
- (2) Company shall not be entitled to assume and control the defense of any such Claim subject to Section 17.2(a) (Indemnification Against Third Party Claims), Section 17.2(b) (Compliance with Laws), or otherwise under this Agreement, if and to the extent that, in the opinion of Seller, such Claim involves the potential imposition of criminal liability on an Indemnified Seller Party or a

conflict of interest between an Indemnified Seller Party and Company, in which case Seller shall be entitled, at its own expense, acting through counsel acceptable to Company, to participate in any Claim the defense of which has been assumed by Company. Seller shall supply, or shall cause an Indemnified Seller Party to supply, Company with such information and documents requested by Company as are necessary or advisable for Company to possess in connection with its participation in any Claim, to the extent permitted by this Section 17.2(d)(2). Seller shall not enter, and shall restrict any Indemnified Seller Party from entering, into any settlement or other compromise with respect to any Claim without the prior written consent of Company, which consent shall not be unreasonably withheld or delayed.

- (3) Upon payment of any Losses by Company pursuant to this Section 17.2 (Indemnification of Seller) or other similar indemnity provisions contained herein to or on behalf of Seller, Company, without any further action, shall be subrogated to any and all claims that an Indemnified Seller Party may have relating thereto.
- (4) Seller shall fully cooperate and cause all Seller Indemnified Parties to fully cooperate, in the defense of, or response to, any Claim subject to Section 17.2 (Indemnification of Seller).

ARTICLE 18
INSURANCE

- 18.1 Required Coverage. Seller, and anyone acting under its direction or control or on its behalf, shall, at its own expense, acquire and maintain, or cause to be maintained in full effect, commencing with the start of construction of the Facility, as applicable, and continuing throughout the Term, as applicable, the minimum insurance coverage set forth in Attachment R (Required Insurance), or such higher amounts as the Seller and/or the Facility Lender reasonably determines to be necessary during construction and operation of the Facility. Seller's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
- 18.2 Waiver of Subrogation. Seller, and anyone acting under its direction or control or on its behalf, shall cause its insurers to waive all rights of subrogation which Seller or its insurers may have against Company, Company's agents, or Company's employees.
- 18.3 Additional Insureds. The insurance policies specified in Section 2 (General Liability Insurance) and Section 3 (Automobile Liability Insurance) of Attachment R (Required Insurance) shall name Company as an additional insured, as its interests may appear, with respect to any and all third party bodily injury and/or property damage claims, including completed operations, arising from Seller's performance of this Agreement, and Seller shall submit to Company a copy of such additional insured endorsement with evidence of insurance as required herein. Seller shall promptly, and in no event later than five (5) Days after such cancellation, modification or non-renewal, provide written notice to Company should any of the insurance policies required under this Agreement be cancelled, materially modified, or not renewed upon expiration. Company acknowledges that the Facility Lender shall be entitled to receive and distribute any and all loss proceeds as stipulated by any Financing Documents related to any policy described in this Article 18 (Insurance) and Attachment R (Required Insurance).
- 18.4 Evidence of Policies Provided to Company. Evidence of insurance for the coverage specified in this Article 18 (Insurance) shall be provided to Company within thirty (30) Days after the Effective Date or prior to the start of construction, whichever shall first occur. Within thirty

- (30) Days of any change of any policy and upon renewal of any policy, Seller shall provide certificates of insurance to Company. During the Term, Seller, upon Company's reasonable request, shall make available to Company for its inspection at Seller's designated location, certified copies of the insurance policies described in this Article 18 (Insurance) and Attachment R (Required Insurance). Receipt of any evidence of insurance showing less coverage than requested is not a waiver of Seller's obligations to fulfill the requirements.
- 18.5 Deductibles. Company acknowledges that any policy required herein may contain reasonable deductibles or self-insured retentions, the amounts of which will be reviewed for acceptance by Company. Acceptance will not be unreasonably withheld. Any deductible shall be the responsibility of Seller.
- 18.6 Application of Proceeds from All Risk Property/Comprehensive Boiler and Machinery Insurance. Seller shall use commercially reasonable efforts to obtain provisions in the Financing Documents, on reasonable terms, providing for the insurance proceeds from All Risk Property/Comprehensive Boiler and Machinery Insurance to be applied to repair of the Facility.
- 18.7 Annual Review by Company. The coverage limits shall be reviewed annually by Company and if, in Company's discretion, Company determines that the coverage limits should be increased, Company shall so notify Seller. The amount of any increase of the coverage limits, when considered as a percentage of the then existing coverage limits, shall not exceed the cumulative amount of increase in the Consumer Price Index occurring after the coverage limits herein were last set. Seller shall, within thirty (30) Days of notice from Company, increase the coverage as directed in such notice and the costs of such increased coverage limits shall be borne by Seller.
- 18.8 No Representation of Coverage Adequacy. By requiring insurance herein, Company does not represent that coverage and limits will necessarily be adequate to protect Seller, and such coverage and limits shall not be deemed as a limitation on Seller's liability under the indemnities granted to Company in this Agreement.

18.9 Subcontractors. Seller shall ensure that each of its subcontractors is either (a) named as an additional insured under the insurance policies procured by Seller; or (b) separately covered by insurance policies equivalent in type and monetary limits as those required of Seller. All such insurance shall be provided at the sole cost of Seller or subcontractor.

18.10 General Insurance Requirements.

- (a) Each policy shall be specifically endorsed by blanket or otherwise to provide that Seller's insurance is primary. Any other insurance carried by Company will be excess only and not contribute with this insurance.
- (b) Each policy is to be written by an insurer with a rating by A.M. Best Company, Inc. of "A-VII" or better.
- (c) If any policy required herein is written on a claims-made basis, the Seller warrants that any retroactive date applicable to coverage under the policy precedes the Execution Date; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the end of Term.
- (d) If the limits of available liability coverage required herein become substantially reduced as a result of claim payments, Seller shall promptly, and in no event later than thirty (30) Days after such substantial reduction, at its own expense, purchase additional liability insurance (if such coverage is available at commercially reasonable rates) to increase the amount of available coverage to the limits of liability coverage required herein.

ARTICLE 19
TRANSFERS, ASSIGNMENTS, AND FACILITY DEBT

- 19.1 Sale of the Facility. Seller shall comply with the requirements of Attachment P (Sale of Facility by Seller) before Seller's right, title or interest in the Facility, in whole or in part, including a Change in Control, may be disposed of (other than the disposition of equipment in the ordinary course of operating and maintaining the Facility). Any attempt by Seller to make any such disposition or Change in Control without fulfilling the requirements of Attachment P (Sale of Facility by Seller) shall be deemed null and void and shall constitute an Event of Default pursuant to Article 15 (Events of Default).
- 19.2 Assignment by Seller. This Agreement may not be assigned by Seller without the prior written consent of Company (such consent not to be unreasonably withheld, conditioned or delayed), provided that Seller shall have the right, without the consent of Company, to assign its interest in this Agreement (i) to a wholly-owned subsidiary or to an affiliated company under common control with _____
[Note - insert appropriate parent entity], provided that such assignment does not impair the ability of Seller to perform its obligations under this Agreement; and (ii) as collateral security for purposes of arranging or rearranging debt and/or equity financing for the Facility, or for sale-leaseback financing, to assign all or any part of its rights or benefits, but not its obligations, to any lender providing debt financing for the Facility. Seller shall promptly provide written notice to Company of any assignment of all or part of this Agreement and Seller shall provide to Company information about the assignee and the assignee's operational experience reasonably requested by Company. Company shall not be required to incur any duty or obligation as a result of, or in connection with, such assignment made without its consent beyond those duties and obligations set forth in this Agreement, unless otherwise agreed to by Company in writing.
- 19.3 Company's Acknowledgment. In connection with any assignment relating to the Facility Debt pursuant to Section 19.2 (Assignment by Seller), Company shall, if requested by Seller and if its costs (including reasonable attorneys' fees of outside counsel) in responding to such request are paid by Seller: (i) execute and/or provide such Hawaii-law governed documents as may be reasonably requested by the

Facility Lender and reasonably acceptable to Company, including, (aa) to acknowledge (1) such assignment and/or pledge/mortgage, (2) the right of the Facility Lender to receive copies of notices of Events of Default where the Seller is the Defaulting Party and (3) the Facility Lender's reasonable opportunity to cure such Events of Default and to exercise remedies to assume Seller's obligations under this Agreement, and (bb) estoppel certificates as to Seller's and Company's compliance with the terms and conditions of this Agreement; and (ii) provide a legal opinion as to the due authorization of such Company acknowledgment and estoppels.

19.4 Financing Document Requirements. Seller shall include in the terms of the Financing Documents as provisions for Company's benefit that provide that as a condition to the Facility Lender, or any purchaser, successor, assignee and/or designee of the Facility Lender ("Subsequent Owner"), succeeding to ownership or possession of the Facility as a result of the exercise of remedies under the Financing Documents, and thereafter operating the Facility to generate electric energy, such Facility Lender or Subsequent Owner shall, prior to operating the Facility for such purpose, have provided to Company, evidence reasonably acceptable to Company that such Subsequent Owner has (a) the qualifications, or has contracted with an entity having the qualifications, to operate the Facility in a manner consistent with the terms and conditions of this Agreement; and (b) assumed all of Seller's rights and obligations under this Agreement.

19.5 [Reserved]

19.6 Reimbursement of Company Costs. Seller shall reimburse Company for costs and expenses incurred by Company (including reasonable attorneys' fees of outside counsel) in responding to Facility Lender's requests or as a result of any event of default by Seller under the Financing Documents, including but not limited to any assumption of Seller's obligations under Section 19.4 (Financing Document Requirements).

19.7 Assignment By Company. This Agreement shall not be assigned by Company without the prior written consent of Seller (which consent shall not be unreasonably withheld, conditioned or delayed); provided, however, that Company shall have the right, without the consent of Seller, to assign its interest in this Agreement to any affiliated

company owned in whole or in part by Hawaiian Electric Industries, Inc. ("HEI") so long as such assignee (a) shall have assumed all obligations of Company under this Agreement; and (b) is a utility regulated by the PUC.

- 19.8 Consequences for Failure to Comply. Any attempt to make any pledge, mortgage, grant of a security interest or collateral assignment for which consent is required under Section 19.2 (Assignment by Seller) or Section 19.7 (Assignment By Company)(as applicable), without fulfilling the requirements of this Article 19 (Transfers, Assignments, and Facility Debt) shall be null and void and shall constitute an Event of Default pursuant to Article 15 (Events of Default).

ARTICLE 20
SALE OF ENERGY TO THIRD PARTIES

Seller shall not sell energy from the Facility to any Third Party.

ARTICLE 21
FORCE MAJEURE

- 21.1 Definition of Force Majeure. The term "Force Majeure", as used in this Agreement, means any occurrence that:
- (a) In whole or in part delays or prevents a Party's performance under this Agreement;
 - (b) Is not the direct or indirect result of the fault or negligence of that Party;
 - (c) Is not within the control of that Party notwithstanding such Party having taken all reasonable precautions and measures in order to prevent or avoid such event; and
 - (d) The Party has been unable to overcome by the exercise of due diligence.
- 21.2 Events That Could Qualify as Force Majeure. Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to, the following:
- (a) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;
 - (b) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation; or
 - (c) except as set forth in Section 21.3(j), strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable).
- 21.3 Exclusions From Force Majeure. Force Majeure does not include:
- (a) any acts or omissions of any Third Party, including, without limitation, any vendor, materialman, customer, or supplier of Seller, unless such acts or omissions are themselves excused by reason of Force Majeure;
 - (b) any full or partial reduction in the electric output of Facility that is caused by or arises from (i) a

mechanical or equipment breakdown or (ii) other mishap or events or conditions attributable to normal wear and tear or defects, unless such mishap is caused by Force Majeure;

- (c) changes in market conditions that affect the cost of Seller's supplies, or that affect demand or price for any of Seller's products, or that otherwise render this Agreement uneconomic or unprofitable for Seller;
- (d) Seller's inability to obtain Governmental Approvals or Land Rights for the construction, ownership, operation and maintenance of Facility and the Company-Owned Interconnection Facilities, or Seller's loss of any such Governmental Approvals or Land Rights once obtained;
- (e) the lack of wind, sun or any other resource of an inherently intermittent nature;
- (f) Seller's inability to obtain sufficient fuel, power or materials to operate its Facility, except if Seller's inability to obtain sufficient fuel, power or materials is caused solely by an event of Force Majeure;
- (g) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Company pursuant to this Agreement;
- (h) a forced outage except where such forced outage is caused by an event of Force Majeure;
- (i) litigation or administrative or judicial action pertaining to the Agreement, the Site, the Facility, the Land Rights, the acquisition, maintenance or renewal of financing or any Governmental Approvals, or the design, construction, ownership, operation or maintenance of the Facility, the Company-Owned Interconnection Facilities or the Company System;
- (j) a strike, work stoppage or labor dispute limited only to any one or more of the Indemnified Seller Parties or any other third party employed by Seller to work on the Project; or
- (k) any full or partial reduction in the availability of the Facility to produce and deliver to the Point of Interconnection electric energy in response to Company

Dispatch which is caused by any Third Party including, without limitation, any vendor or supplier of Seller or Company, except to the extent due to Force Majeure.

21.4 Satisfaction of Certain Conditions. Section 21.5 (Guaranteed Project Milestones Including Commercial Operations), Section 21.6 (Termination for Force Majeure) and Section 21.7 (Effect of Force Majeure) defer or limit certain liabilities of a Party for delay and/or failure in performance to the extent such delay or failure is the result of conditions or events of Force Majeure; provided, however, that a Non-performing Party is only entitled to such limitations or deferrals of liabilities as and to the extent the following conditions are satisfied:

- (a) the Non-performing Party gives the other Party, within five (5) Days after the Non-performing Party becomes aware or should have become aware of the Force Majeure condition or event, but in any event no later than thirty (30) Days after the Force Majeure condition or event begins, written notice (the "Force Majeure Notice") stating that the Non-performing Party considers such condition or event to constitute Force Majeure and describing the particulars of such Force Majeure condition or event, including the date the Force Majeure commenced;
- (b) the Non-performing Party gives the other Party, within fourteen (14) Days Force Majeure Notice was or should have been provided, a written explanation of the Force Majeure condition or event and its effect on the Non-performing Party's performance, which explanation shall include evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure;
- (c) the suspension of performance is of no greater scope and of no longer duration than is required by the condition or event of Force Majeure;
- (d) the Non-performing Party exercises commercially reasonable efforts to remedy its inability to perform and provides written weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- (e) when the condition or event of Force Majeure ends and the Non-performing Party is able to resume performance

of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

- 21.5 Guaranteed Project Milestones Including Commercial Operations. The Parties shall have the rights and obligations set forth in Article 13 (Guaranteed Project Milestones Including Commercial Operations) in the event a condition or event of Force Majeure affects the achievement of a Guaranteed Project Milestone Date, including the Guaranteed Commercial Operations Date.
- 21.6 Termination for Force Majeure. If Force Majeure delays or prevents a Party's performance for more than three hundred sixty-five (365) Days from the occurrence or inception of the Force Majeure, as stated in the Force Majeure Notice, and such delay or failure of performance would have otherwise constituted an Event of Default under Article 15 (Event of Default), the other Party shall have the right to terminate this Agreement by written notice. Such notice shall designate the date such termination is to be effective, which date shall be no later than thirty (30) Days after such notice is deemed to be received by the Party whose performance has been delayed or prevented. In the event of termination pursuant to this Section 21.6 (Termination for Force Majeure), neither Party shall be liable for any damages or have any obligations to the other, except as provided in Section 29.25 (Survival of Obligations) other than as provided in Section 29.25(b).
- 21.7 Effect of Force Majeure. Other than as provided in Section 21.5 (Guaranteed Project Milestones Including Commercial Operations) and Section 21.6 (Termination for Force Majeure), neither Party shall be responsible or liable for any delays or failures in its performance under this Agreement as and to the extent (i) such delays or failures are substantially caused by conditions or events of Force Majeure, and (ii) the conditions of Section 21.4 (Satisfaction of Certain Conditions) are satisfied.
- 21.8 No Relief of Other Obligations. Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.

21.9 No Extension of the Term. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term.

ARTICLE 22
WARRANTIES AND REPRESENTATIONS

- 22.1 By the Parties. Both Company and Seller represent, warrant, and covenant, as of the Execution Date and for the extent of the Term, respectively, that:
- (a) Each respective Party has all necessary right, power and authority to execute, deliver and perform this Agreement.
 - (b) The execution, delivery and performance of this Agreement by each respective Party will not result in a violation of any Laws, or conflict with, or result in a breach of, or cause a default under, any agreement or instrument to which such Party is also a party or by which it is bound. No consent of any person or entity not a Party to this Agreement, including any Governmental Authority (other than agencies whose approval is necessary for the development, construction, operation and maintenance of the Facility and the Company-Owned Interconnection Facilities or the PUC), is required for such execution, delivery and performance by either Party.
- 22.2 By Seller. Seller represents, warrants, and covenants that:
- (a) As of the Execution Date and for the extent of the Term, it is an entity in good standing with the Hawai'i Department of Commerce and Consumer Affairs and shall provide Company with a certified copy of a certificate of good standing by the Execution Date.
 - (b) As of the Execution Date, Seller is a subsidiary of [_____], a company with extensive experience developing, constructing, owning and operating utility-scale renewable energy generation facilities.
 - (c) Seller has obtained or will obtain Land Rights within the time periods set forth in Section 11.2 (Land Rights for Facility) and Section 11.3 (Company-Owned Interconnection Facilities).
 - (d) At the time legally required, Seller shall have obtained (i) all Governmental Approvals for the construction, ownership, operation and maintenance of the Company-Owned Interconnection Facilities and (ii) all

Governmental Approvals necessary for the construction, ownership, operation and maintenance of the Facility.

- (e) As of the Commercial Operations Date, the Facility will be a qualified renewable resource under RPS in effect as of the Effective Date.

ARTICLE 23
PROCESS FOR ADDRESSING
REVISIONS TO PERFORMANCE STANDARDS

- 23.1 Revisions to Performance Standards. The Parties acknowledge that, during the Term, certain Performance Standards and Telemetry and Control interfaces may be revised or added to facilitate necessary improvements in integrating intermittent variable energy resources and/or energy storage resources into the Company System and operations. Such revisions or additions may be attributable to, without limitation, the following: changes in penetration levels of intermittent renewable resources on the Company System, changes in the Company System, changes in communications and control platforms, changes in system protection requirements, changes to the state of commercially available technology, changes to Company-owned generation resources, changes in customer electrical usage (such as changes in average hourly load profiles), and changes in Laws (e.g., new environmental constraints, which may limit Company's ability to start/stop its generators in response to integration of intermittent generation, or constraints impacting the power quality standards for the Company System, such as constraints imposed by HERA or by the PUC under the HERA Law). Changes in Facility characteristics achieved through control system configuration, settings, or other tunable parameters shall not be considered a revision to performance standards. These types of changes should be implemented by the Seller in response to Company request unless it can be shown that the changes negatively impact the Seller's ability to meet its obligations under this Agreement.
- 23.2 Performance Standards Information Request. If Company concludes that a Performance Standards Revision is necessary or important for the operation of the Company System and is capable of being complied with by Seller, Company shall have the right to issue to Seller a Performance Standards Information Request with respect to such Performance Standards Revision. Seller shall, within a reasonable period of time following Seller's receipt of such Performance Standards Information Request, but in no event more than 90 Days after Seller's receipt of such Request (or such other period of time as Company and Seller may agree in writing), submit to Company a Performance Standards Proposal responsive to the Performance Standards Revision proposed in such Performance Standards Information Request.

- 23.3 Performance Standards Proposal. Upon receipt of a Performance Standards Proposal submitted in response to a Performance Standards Information Request, Company will evaluate such Performance Standards Proposal and Seller shall assist Company in performing such evaluation as and to the extent reasonably requested by Company (including, but not limited to, providing such additional information as Company may reasonably request and participating in meetings with Company as Company may reasonably request). Company shall have no obligation to evaluate a Performance Standards Proposal submitted at Seller's own initiative.
- 23.4 Performance Standards Revision Document. If, following Company's evaluation of a Performance Standards Proposal, Company desires to consider implementing the Performance Standards Revision addressed in such Proposal, Company shall provide Seller with written notice to that effect, such notice to be issued to Seller within 180 Days of receipt of the Performance Standards Proposal, and Company and Seller shall proceed to negotiate in good faith a Performance Standards Revision Document setting forth the specific changes to the Agreement that are necessary to implement such Performance Standards Revision. A decision by Company to initiate negotiations with Seller as aforesaid shall not constitute an acceptance by Company of any of the details set forth in Seller's Performance Standards Proposal for the Performance Standards Revision in question, including but not limited to the Performance Standards Modifications and the Performance Standards Pricing Impact. Any adjustment to the Contract Pricing pursuant to such Performance Standards Revision Document shall be limited to the Performance Standards Pricing Impact (other than with respect to the financial consequences of non-performance as to a Performance Standards Revision). The time periods set forth in such Performance Standards Revision Document as to the effective date for the Performance Standards Revision shall be measured from the date the PUC Performance Standards Revision Order becomes non-appealable as provided in Section 23.6 (PUC Performance Standards Revision Order).
- 23.5 Failure to Reach Agreement. If Company and Seller are unable to agree upon and execute a Performance Standards Revision Document within 180 Days of Company's written notice to Seller pursuant to Section 23.4 (Performance Standards Revision Document), Company shall have the option of declaring the failure to reach agreement on and execute such Performance Standards Revision Document to be a dispute

and submit such dispute to an Independent Evaluator for the conduct of a determination pursuant to Section 23.10 (Dispute) of this Agreement. Any decision of the Independent Evaluator, rendered as a result of such dispute shall include a form of a Performance Standards Revision Document as described in Section 23.4 (Performance Standards Revision Document).

23.6 PUC Performance Standards Revision Order. No Performance Standards Revision Document shall constitute an amendment to the Agreement unless and until a PUC Performance Standards Revision Order issued with respect to such Document has become non-appealable. Once the condition of the preceding sentence has been satisfied, such Performance Standards Revision Document shall constitute an amendment to this Agreement. To be "non-appealable" under this Section 23.6 (PUC Performance Standards Revision Order), such PUC Performance Standards Revision Order shall be either (i) not subject to appeal to any Circuit Court of the State of Hawai'i or the Supreme Court of the State of Hawai'i, because the thirty (30) Day period (accounting for weekends and holidays as appropriate) permitted for such an appeal has passed without the filing of notice of such an appeal, or (ii) affirmed on appeal to any Circuit Court of the State of Hawai'i or the Supreme Court, or the Intermediate Appellate Court upon assignment by the Supreme Court, of the State of Hawai'i, or affirmed upon further appeal or appellate process, and is not subject to further appeal, because the jurisdictional time permitted for such an appeal (and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari) has passed without the filing of notice of such an appeal (or the filing for further appellate process).

23.7 Company's Rights. The rights granted to Company under Section 23.4 (Performance Standards Revision Document) and Section 23.5 (Failure to Reach Agreement) above are exclusive to Company. Seller shall not have a right to initiate negotiations of a Performance Standards Revision Document or to initiate dispute resolution under Section 23.10 (Dispute), as a result of a failure to agree upon and execute any Performance Standards Revision Document.

23.8 Seller's Obligation. Notwithstanding any provision of this Article 23 (Process for Addressing Revisions to Performance Standards) to the contrary, Seller shall have no obligation

to respond to more than one Performance Standards Information Request during any 12-month period.

- 23.9 Limited Purpose. This Article 23 (Process for Addressing Revisions to Performance Standards) is intended to specifically address necessary revisions to the Performance Standards and Telemetry and Control interfaces to enhance integration of intermittent resources and energy storage resources onto Company System, or to comply with future Laws which may be driven in part by higher integration of intermittent resources and/or energy storage resources, and is not intended for either Party to provide a means for renegotiating any other terms of this Agreement. Revisions to the Performance Standards in accordance with the provisions of this Article 23 (Process for Addressing Revisions to Performance Standards) are not intended to materially increase Seller's risk of non-performance or default.
- 23.10 Dispute. If Company decides to declare a dispute as a result of the failure to reach agreement and execute a Performance Standards Revision Document pursuant to Section 23.5 (Failure to Reach Agreement), it shall provide written notice to that effect to Seller. Within 20 Days of delivery of such notice Seller and Company shall agree upon an Independent Evaluator to resolve the dispute regarding a Performance Standards Revision Document. The Independent Evaluator shall be reasonably qualified and expert in renewable energy power generation, matters relating to the Performance Standards, financing, and power purchase agreements. If the Parties are unable to agree upon an Independent Evaluator within such 20-Day period, Company shall apply to the PUC for the appointment of an Independent Evaluator. If an Independent Observer retained under the Competitive Bidding Framework is qualified and willing and available to serve as Independent Evaluator, the PUC shall appoint one of the persons or entities qualified to serve as an Independent Observer to be the Independent Evaluator; if not, the PUC shall appoint another qualified person or entity to serve as Independent Evaluator. In its application, Company shall ask the PUC to appoint an Independent Evaluator within 30 Days of the application.
- (a) Promptly upon appointment, the Independent Evaluator shall request the Parties to address the following matters within the next 15 Days:

- (1) The Performance Standard Revision(s);
 - (2) The technical feasibility of complying with the Performance Standard Revision(s) and likelihood of compliance;
 - (3) How Seller would comply with the Performance Standard Revision(s);
 - (4) Reasonably expected net costs and/or lost revenues associated with the Performance Standards Revision(s);
 - (5) The appropriate level, if any, of Performance Standards Pricing Impact in light of the foregoing; and
 - (6) Contractual consequences for non-performance that are commercially reasonable under the circumstances.
- (b) Within 90 Days of appointment, the Independent Evaluator shall render a decision unless the Independent Evaluator determines it needs to have additional time, not to exceed 45 Days, to render a decision.
- (c) The Parties shall assist the Independent Evaluator throughout the process of preparing its review, including making key personnel and records available to the Independent Evaluator, but neither Party shall be entitled to participate in any meetings with personnel of the other Party or review of the other Party's records. However, the Independent Evaluator will have the right to conduct meetings, hearings or oral arguments in which both Parties are represented. The Parties may meet with each other during the review process to explore means of resolving the matter on mutually acceptable terms.
- (d) The following standards shall be applied by the Independent Evaluator in rendering his or her decision:
- (i) if it is not technically or operationally feasible for Seller to comply with a Performance Standard Revision, the Independent Evaluator shall determine that the Agreement shall not be amended to incorporate such Performance Standard Revision (unless the Parties agree otherwise);
 - (ii) if it is technically or operationally feasible for Seller to comply with a Performance

Standard Revision, the Independent Evaluator shall incorporate such Performance Standard Revision into a Performance Standards Revision Document including (aa) Seller's Performance Standards Modifications, (bb) pricing terms that incorporate the Performance Standards Pricing Impact, and (cc) contract terms and conditions that are commercially reasonable under the circumstances, especially with respect to the consequences of non-performance by Seller as to Performance Standards Revision(s). In addition to the Performance Standards Revision Document, the Independent Evaluator shall render a decision which sets forth the positions of the Parties and Independent Evaluator's rationale for his or her decisions on disputed issues.

- (e) The fees and costs of the Independent Evaluator shall be paid by Company up to the first \$30,000 of such fees and costs; above those amounts, the Party that is not the prevailing Party shall be responsible for any such fees and costs; provided, if neither Party is the prevailing Party, then the fees and costs of the Independent Evaluator above \$30,000, shall be borne equally by the Parties. The Independent Evaluator in rendering his or her decision shall also state which Party prevailed over the other Party, or that neither Party prevailed over the other.

23.11 HERA Law. The provisions of this Article 23 (Process for Addressing Revisions to Performance Standards) are without limitation to the obligations of the Parties under the HERA Law and the reliability standards and interconnection requirements developed and adopted by the PUC pursuant to the HERA Law.

ARTICLE 24
FINANCIAL COMPLIANCE

- 24.1 Financial Compliance. Seller shall provide or cause to be provided to Company on a timely basis, as reasonably determined by Company, all information, including but not limited to information that may be obtained in any audit referred to below (the "Financial Compliance Information"), reasonably requested by Company for purposes of permitting Company and its parent company, HEI, to comply with the requirements (initial and on-going) of (i) the accounting principles of Financial Accounting Standards Board ("FASB") Accounting Standards Codification 810, Consolidation ("FASB ASC 810"), (ii) Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX 404"), and (iii) all clarifications, interpretations and revisions of and regulations implementing FASB ASC 810 and SOX 404, issued by the FASB, Securities and Exchange Commission, the Public Company Accounting Oversight Board, Emerging Issues Task Force or other Governmental Authorities. In addition, if required by Company in order to meet its compliance obligations, Seller shall allow Company 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, however, that Company shall be responsible for all costs associated with the foregoing, including but not limited to Seller's reasonable internal costs. Company shall limit access to such Financial Compliance Information to persons involved with such compliance matters and restrict persons involved in Company's monitoring, dispatch or scheduling of Seller and/or Facility, or the administration of this Agreement, from having access to such Financial Compliance Information (unless approved in writing in advance by Seller).
- 24.2 Confidentiality. Company shall, and shall cause HEI to, maintain the confidentiality of the Financial Compliance Information as provided in this Article 24 (Financial Compliance). Company may share the Information on a confidential basis with HEI and the independent auditors and attorneys for HEI. (Company, HEI, and their respective independent auditors and attorneys are collectively referred to in this Article 24 (Financial Compliance) as "Recipient".) If either Company or HEI, in the exercise of their respective reasonable judgments, concludes that consolidation or financial reporting with respect to Seller and/or this Agreement is necessary, Company and HEI each

shall have the right to disclose such of the Financial Compliance Information as Company 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 Company or HEI disclose Financial Compliance Information pursuant to the preceding sentence, Company and HEI shall, without limitation to the generality of the preceding sentence, have the right to disclose Financial Compliance Information to the PUC and the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs of the State of Hawai'i ("Consumer Advocate") in connection with the PUC's rate making activities for Company and other HEI affiliated entities, provided that, if the scope or content of the Financial Compliance Information to be disclosed to the PUC exceeds or is more detailed than that disclosed pursuant to the preceding sentence, such Financial Compliance Information will not be disclosed until the PUC first issues a protective order to protect the confidentiality of such Financial Compliance Information. Neither Company nor HEI shall use the Financial Compliance Information for any purpose other than as permitted under this Article 24 (Financial Compliance).

24.3 Required Disclosure. In circumstances other than those addressed in Section 24.2 (Confidentiality), if any Recipient becomes legally compelled under applicable Laws 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 Financial Compliance 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 Article 24 (Financial Compliance). If such protective order or other remedy is not obtained, or if Seller waives compliance with the provisions at this Article 24 (Financial Compliance), Recipient shall furnish only that portion of the Financial Compliance Information which it is legally required to so furnish and to use reasonable efforts to obtain assurance that confidential treatment will be accorded to any disclosed material.

24.4 Exclusions from Confidentiality. The obligation of nondisclosure and restricted use imposed on each Recipient

under this Article 24 (Financial Compliance) shall not extend to any portion(s) of the Financial Compliance 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.

24.5 Consolidation. Company does not want to be subject to consolidation as set forth in FASB ASC 810, as issued and amended from time to time by FASB.

- (a) Consolidation. Company represents that, as of the Execution Date, it is not required to consolidate Seller into its financial statements in accordance with relevant accounting guidance under U.S. generally accepted accounting principles ("GAAP"). If, due to a change in applicable law or accounting guidance under U.S. GAAP, or as a result of a material amendment to the Agreement, in each case, after the Execution Date, Company determines, in its sole but good faith discretion, that it is required to consolidate Seller into its financial statements in accordance with relevant accounting guidance in accordance with U.S. GAAP, then Seller, upon Company's written request, shall, as soon as reasonably practicable (but in no event longer than fifteen (15) Days) provide audited financial statements (including footnotes) in accordance with U.S. GAAP (and as of the reporting periods Company is required to report thereafter) in order for Company to consolidate and file its financial statements within the reporting deadlines of the Securities and Exchange Commission; provided, however, that if Seller does not normally prepare audited financial statements for the periods requested, Company shall reimburse Seller fifty percent (50%) of the reasonable costs of having necessary audits performed and preparation of the audited financial statement; provided, further that the foregoing reimbursement shall only apply if Seller normally prepares financial statements on an annual basis. Notwithstanding the foregoing requirement that Seller provide audited financial statements to Company, the Parties will take all commercially reasonable steps, which may include modification of this Agreement to eliminate the consolidation treatment, while preserving the economic "benefit of the bargain" to both Parties. If the Parties are unable to eliminate the consolidation

treatment by other means, the Parties shall effectuate a sale of the Facility to Company at (i) if the sale occurs before the end of the thirteenth (13th) Contract Year, the greater of the Make Whole Amount determined pursuant to Section 6 (Make Whole Amount) of Attachment P (Sale of Facility of Seller) or the fair market value determined pursuant to Section 3 (Procedure to Determine Fair Market Value of the Facility) of Attachment P (Sale of Facility by Seller), or (ii) if the sale occurs on or after the beginning of the fourteenth (14th) Contract Year, the fair market value determined pursuant to Section 3 (Procedure to Determine Fair Market Value of the Facility) of Attachment P (Sale of Facility by Seller), but not less than the Financial Termination Costs determined pursuant to Section 6 (Make Whole Amount) of Attachment P (Sale of Facility by Seller), in either case under a Purchase and Sale Agreement to be negotiated based on the terms and conditions set forth in Section 4 (Purchase and Sale Agreement) of Attachment P (Sale of Facility by Seller).

(b) [Reserved]

(c) [Reserved]

ARTICLE 25
GOOD ENGINEERING AND OPERATING PRACTICES

- 25.1 General. Each Party agrees to install, operate and maintain its respective equipment and facility and to perform all obligations required to be performed by such Party under this Agreement in accordance with Good Engineering and Operating Practices and applicable Laws.
- 25.2 Specifications, Determinations and Approvals. Wherever in this Agreement Company has the right to give specifications, determinations or approvals, such specifications, determinations or approvals shall be given in accordance with Company's standard practices, policies and procedures and shall not be unreasonably withheld.
- 25.3 No Endorsement, Warranty or Waiver. Any such specifications, determinations, or approvals shall not be deemed to be an endorsement, warranty, or waiver of any right of Company.
- 25.4 Consultants List. Prior to the Commercial Operations Date, the Parties shall agree on a list of names of engineering firms to be attached as Attachment D (Consultants List) in accordance with Section 4 (Maintenance of Seller-Owned Interconnection Facilities) of Attachment B (Facility Owned by Seller).

ARTICLE 26
EQUAL EMPLOYMENT OPPORTUNITY

- 26.1 Equal Employment Opportunity. (Applicable to all contracts of \$10,000 or more in the whole or aggregate. 41 CFR 60-1.4 and 41 CFR 60-741.5.) Seller is aware of and is fully informed of Seller's responsibilities under Executive Order 11246 (reference to which include amendments and orders superseding in whole or in part) and shall be bound by and agrees to the applicable provisions as contained in Section 202 of said Executive Order and the Equal Opportunity Clause as set forth in 41 CFR 60-1.4 and 41 CFR 60-741.5(a), which clauses are hereby incorporated by reference.
- 26.2 Equal Opportunity For Disabled Veterans, Recently Separated Veterans, Other Protected Veterans and Armed Forces Service Medal Veterans. Applicable to (i) contracts of \$25,000 or more entered into before December 31, 2003 (41 CFR 60-250.4) or (ii) each federal government contract of \$100,000 or more, entered into or modified on or after December 31, 2003 (41 CFR 60-300.4) for the purchase, sale or use of personal property or nonpersonal services (including construction.) If applicable to Seller under this Agreement, Seller agrees that it is, and shall remain, in compliance with the rules and regulations promulgated under The Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended by the Jobs for Veterans Act of 2002, including the requirements of 41 CFC 60-250.5(a) (for orders/contracts entered into before December 31, 2003) and 41 CFR 60-300.5(a) (for orders/contracts entered into or modified on or after December 31, 2003) which are incorporated into this Agreement by reference.

ARTICLE 27
SET OFF

Company shall have the right to set off any payment due and owing by Seller, including but not limited to any payment under this Agreement and any payment due under any award made under Article 28 (Dispute Resolution), against Company's payments of subsequent monthly invoices as necessary.

ARTICLE 28
DISPUTE RESOLUTION

- 28.1 Good Faith Negotiations. Except as otherwise expressly set forth in this Agreement, before submitting any claims, controversies or disputes ("Dispute(s)") under this Agreement to the Dispute Resolution Procedures set forth in Section 28.2 (Dispute Resolution Procedures, Mediation), the presidents, vice presidents, or authorized delegates from both Seller and Company having full authority to settle the Dispute(s), shall personally meet in Hawai'i and attempt in good faith to resolve the Dispute(s) (the "Management Meeting").
- 28.2 Dispute Resolutions Procedures, Mediation. Except as otherwise expressly set forth in this Agreement and subject to Section 28.1 (Good Faith Negotiations), any and all Dispute(s) arising out of or relating to this Agreement, (i) which remain unresolved for a period of 20 Days after the Management Meeting takes place or (ii) for which the Parties fail to hold a Management Meeting within 60 Days of the date that a Management Meeting was requested by a Party, may upon the agreement of the Parties, first be submitted to confidential mediation in Honolulu, Hawai'i pursuant to the administration by, and in accordance with the Mediation Rules, Procedures and Protocols of, Dispute Prevention & Resolution, Inc. (or its successor) or, in their absence, the American Arbitration Association ("DPR") then in effect. If the Parties agree to submit the dispute to confidential mediation, the parties shall each pay 50% of the cost of the mediation (i.e., the fees and expenses charged by the mediator and DPR) and shall otherwise each bear their own mediation costs and attorneys' fees. If the Parties do not submit the Dispute(s) to mediation, or if they do submit the Dispute(s) to mediation but settlement of the Dispute(s) is not reached within 60 Days after commencement of the mediation, either Party may initiate legal proceedings in a court of competent jurisdiction in the State of Hawai'i.
- 28.3 Exclusions. The provisions of this Article 28 (Dispute Resolution) shall not apply to any disputes within the authority of any of (i) an Independent Evaluator under Article 23 (Process for Addressing Revisions to Performance Standards), (ii) an Independent AF Evaluator under Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) or (iii) an OEPR Evaluator under

Attachment U (Calculation and Adjustment of Net Energy Potential).

- 28.4 Document Retention. If either party initiates dispute resolution under this Article 28 (Dispute Resolution), then each Party must retain and preserve all records, including documents, which may be relevant to such Dispute, in accordance with applicable Laws until such Dispute is resolved.

ARTICLE 29
MISCELLANEOUS

29.1 Amendments. Any amendment or modification of this Agreement or any part hereof shall not be valid unless in writing and signed via manual signature by the Parties. Any waiver hereunder shall not be valid unless in writing and signed via manual signature by the Party against whom waiver is asserted. Notwithstanding the foregoing, administrative changes mutually agreed by Company and Seller in writing, such as changes to settings shown in Attachment E (Single-Line Drawing and Interface Block Diagram) and Attachment F (Relay List and Trip Scheme) and changes to numerical values of Performance Standards in Section 3 (Performance Standards) of Attachment B (Facility Owned by Seller) shall not be considered amendments to this Agreement requiring PUC approval.

29.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, legal representatives, and permitted assigns.

29.3 Notices.

- (a) All notices, consents and waivers under this Agreement shall be in writing and will be deemed to have been duly given when (i) delivered by hand, (ii) sent by electronic mail ("E-mail") (provided receipt thereof is confirmed via E-mail or in writing by recipient), (iii) sent by certified mail, return receipt requested, or (iv) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and E-mail Addresses set forth below (or to such other addresses and E-mail addresses as a Party may designate by notice to the other Party):

Company:

By Mail:

Delivered By Hand or Overnight Delivery:

By E-mail:

With a copy to:

By Mail:

Hawaiian Electric Company, Inc.
Legal Division
P.O. Box 2750
Honolulu, Hawai'i 96840

By E-mail:

Hawaiian Electric Company, Inc.
Legal Division
Email: legalnotices@hawaiianelectric.com

Seller: The contact information listed in Attachment A (Description of Generation, Conversion and Storage Facility) hereto.

- (b) Notice sent by mail shall be deemed to have been given on the date of actual delivery or at the expiration of the fifth Day after the date of mailing, whichever is earlier. Any Party hereto may change its address for written notice by giving written notice of such change to the other Party hereto.
- (c) Any notice delivered by E-mail shall request a receipt thereof confirmed by E-mail or in writing by the recipient and followed by personal or mail delivery of such correspondence any attachments as may be requested by the recipient, and the effective date of such notice shall be the date of receipt, provided such receipt has been confirmed by the recipient.

- (d) The Parties may agree in writing upon additional means of providing notices, consents and waivers under this Agreement in order to adapt to changing technology and commercial practices.
- 29.4 Effect of Section and Attachment Headings. The Table of Contents and paragraph headings of the various sections and attachments have been inserted in this Agreement as a matter of convenience for reference only and shall not modify, define or limit any of the terms or provisions hereof and shall not be used in the interpretation of any term or provision of this Agreement.
- 29.5 Non-Waiver. Except as otherwise provided in this Agreement, no delay or forbearance of Company or Seller in the exercise of any remedy or right will constitute a waiver thereof, and the exercise or partial exercise of a remedy or right shall not preclude further exercise of the same or any other remedy or right.
- 29.6 Relationship of the Parties. Nothing in this Agreement shall be deemed to constitute either Party hereto as partner, agent or representative of the other Party or to create any fiduciary relationship between the Parties. Seller does not hereby dedicate any part of Facility to serve Company, Company's customers or the public.
- 29.7 Entire Agreement. This Agreement and the IRS Letter Agreements (together with any confidentiality or non-disclosure agreements entered into by the Parties during the process of negotiating this Agreement and/or discussing the specifications of the Facility) constitutes the entire agreement between the Parties relating to the subject matter hereof, superseding all prior agreements, understandings or undertakings, oral or written. Each of the Parties confirms that in entering into this Agreement, it has not relied on any statement, warranty or other representations (other than those set out in this Agreement) made or information supplied by or on behalf of the other Party.
- 29.8 Governing Law, Jurisdiction and Venue. Interpretation and performance of this Agreement shall be in accordance with, and shall be controlled by, the laws of the State of Hawai'i, other than the laws thereof that would require reference to the laws of any other jurisdiction. By entering into this Agreement, Seller submits itself to the personal jurisdiction of the courts of the State of Hawai'i

and agrees that the proper venue for any civil action arising out of or relating to this Agreement shall be Honolulu, Hawai'i.

- 29.9 Limitations. Nothing in this Agreement shall limit Company's ability to exercise its rights as specified in Company's Tariff as filed with the PUC, or as specified in General Order No. 7 of the PUC's Standards for Electric Utility Service in the State of Hawai'i, as either may be amended from time to time.
- 29.10 Further Assurances. If either Party determines in its reasonable discretion that any further instruments, assurances or other things are necessary or desirable to carry out the terms of this Agreement, the other Party will execute and deliver all such instruments and assurances and do all things reasonably necessary or desirable to carry out the terms of this Agreement.
- 29.11 Electronic Signatures and Counterparts. The parties agree that this Agreement and any subsequent writings, including amendments, may be executed and delivered by exchange of executed copies via E-mail or other acceptable electronic means, and in electronic formats such as Adobe PDF or other formats mutually agreeable between the parties which preserve the final terms of this Agreement or such writing. A party's signature transmitted by facsimile, E-mail, or other acceptable electronic means shall be considered an "original" signature which is binding and effective for all purposes of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument binding all Parties notwithstanding that all of the Parties are not signatories to the same counterparts. For all purposes, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.
- 29.12 Definitions. Capitalized terms used in this Agreement and not otherwise defined in the context in which they first appear are defined in the Definitions Section.
- 29.13 Severability. If any term or provision of this Agreement, or the application thereof to any person, entity or circumstances is to any extent invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons, entities or circumstances other

than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, and the Parties will take all commercially reasonable steps, including modification of the Agreement, to preserve the economic "benefit of the bargain" to both Parties notwithstanding any such aforesaid invalidity or unenforceability.

- 29.14 Settlement of Disputes. Except as otherwise expressly provided, any dispute or difference arising out of this Agreement or concerning the performance or the non-performance by either Party of its obligations under this Agreement shall be determined in accordance with the dispute resolution procedures set forth in Article 28 (Dispute Resolution) of this Agreement.
- 29.15 Environmental Credits and RPS. To the extent not prohibited by law, Company shall have the sole and exclusive right to use the electric energy purchased hereunder to meet RPS and any Environmental Credit shall be the property of Company; provided, however, that such Environmental Credits shall be to the benefit of Company's ratepayers in that the value must be credited "above the line". Seller shall use all commercially reasonable efforts to ensure such Environmental Credits are vested in Company, and shall execute all documents, including, but not limited to, documents transferring such Environmental Credits, without further compensation; provided, however, that Company agrees to pay for all reasonable costs associated with such efforts and/or documentation.
- 29.16 Schedule of Defined Terms and Attachments. The Schedule of Defined Terms and each Attachment to this Agreement constitute essential and necessary parts of this Agreement.
- 29.17 Proprietary Rights. Seller agrees that in fulfilling its responsibilities under this Agreement, it will not use any process, program, design, device or material that infringes on any United States patent, trademark, copyright or trade secret ("Proprietary Rights"). Seller agrees to indemnify, defend and hold harmless the Indemnified Company Party from and against all losses, damages, claims, fees and costs, including but not limited to reasonable attorneys' fees and costs, arising from or incidental to any suit or proceeding brought against the Indemnified Company Party for infringement of Third Party Proprietary Rights arising out

of Seller's performance under this Agreement, including but not limited to patent infringement due to the use of technical features of the Facility to meet the Performance Standards specified in the Agreement.

- 29.18 Negotiated Terms. The Parties agree that the terms and conditions of this Agreement are the result of negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.
- 29.19 Computation of Time. In computing any period of time prescribed or allowed under this Agreement, the Day of the act, event or default from which the designated period of time begins to run shall not be included. If the last Day of the period so computed is not a Business Day, then the period shall run until the end of the next Day which is a Business Day.
- 29.20 PUC Approval.
- (a) PUC Approval Order. The term "PUC Approval Order" means an order from the PUC that does not contain terms and conditions deemed to be unacceptable by Company, and is in a form deemed to be reasonable by Company, in its sole, but nonarbitrary, discretion, ordering that:
- (1) this Agreement is approved;
 - (2) Company is authorized to include the purchased energy costs (and related revenue taxes) that Company incurs under this Agreement in Company's Energy Cost Recovery Clause, or equivalent, to the extent such costs are not included in Base Rates for the Term;
 - (3) Company is authorized to include the Lump Sum Payment that Company incurs under this Agreement in Company's Purchase Power Adjustment Clause, to the extent such costs are not included in Base Rates for the Term;
 - (4) the purchased energy costs and the Lump Sum Payment to be incurred by Company as a result of this Agreement are reasonable; and

- (5) Company's purchased power arrangements under this Agreement, pursuant to which Company will purchase [energy and (Only if PPA has energy payment)] renewable dispatchable generation from Seller, are prudent and in the public interest.
- (b) Non-appealable PUC Approval Order. The term "Non-appealable PUC Approval Order" means a PUC Approval Order (i) that is not subject to appeal to any Circuit Court of the State of Hawai'i, Intermediate Court of Appeals of the State of Hawai'i, or the Supreme Court of the State of Hawai'i, because the period permitted for such an appeal (the "Appeal Period") has passed without the filing of notice of such an appeal, or (ii) that was affirmed on appeal to any Circuit Court of the State of Hawai'i, Intermediate Court of Appeals of the State of Hawai'i, or the Supreme Court of the State of Hawai'i, or was affirmed upon further appeal or appellate process, and that is not subject to further appeal, because the jurisdictional time permitted for such an appeal and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari has passed without the filing of notice of such an appeal or the filing for further appellate process.
- (c) Company's Written Statement. Not later than thirty-five (35) Days after the issuance of a PUC order approving this Agreement, Company shall provide Seller with a copy of such order together with a written statement as to whether the conditions set forth in Section 29.20(a) (PUC Approval Order) have been met and the order constitutes a PUC Approval Order. If Company's written statement declares that the conditions set forth in Section 29.20(a) (PUC Approval Order) have been satisfied, the date of the issuance of the PUC Approval Order shall be the "PUC Approval Order Date".
- (d) Non-appealable PUC Approval Order Date. If Company provides the written statement referred to in Section 29.20(c) (Company's Written Statement) to the effect that the conditions referred to in Section 29.20(a) (PUC Approval Order) have been satisfied, the term "Non-appealable PUC Approval Order Date" shall be defined as follows:

- (1) If a PUC Approval Order is issued and is not made subject to a motion for reconsideration or clarification filed with the PUC or an appeal, the Non-appealable PUC Approval Order Date shall be the date one Day after the expiration of the Appeal Period following the issuance of the PUC Approval Order, or the date of Company's written statement as required under Section 29.20(c) (Company's Written Statement), whichever is later;
 - (2) If the PUC Approval Order became subject to a motion for reconsideration or clarification, and the motion for reconsideration or clarification is denied or the PUC Approval Order is affirmed after reconsideration or clarification, and such order is not made subject to an appeal, the Non-appealable PUC Approval Order Date shall be deemed to be the date one Day after the expiration of the Appeal Period following the order denying reconsideration of or clarification of, or affirming, the PUC Approval Order; or
 - (3) If the PUC Approval Order, or an order denying reconsideration or clarification of the PUC Approval Order or affirming approval of the PUC Approval Order after reconsideration or clarification, becomes subject to an appeal, then the Non-appealable PUC Approval Order Date shall be the date upon which the PUC Approval Order becomes a non-appealable order within the meaning of the definition of a Non-Appealable PUC Approval Order in Section 29.20(b) (Non-appealable PUC Approval Order).
- (e) Unfavorable PUC Order. The term "Unfavorable PUC Order" means an order from the PUC concerning this Agreement that: (i) dismisses Company's application; (ii) denies Company's application; or (iii) approves Company's application but contains terms and conditions deemed unacceptable by Company in its sole discretion and therefore does not meet the definition of a PUC Approval Order as set forth in Section 29.20(a) (PUC Approval Order).

29.21 Community Outreach.

- (a) The Parties acknowledge that, prior to the Execution Date, Seller provided to Company a comprehensive community outreach and communications plan to work with and inform neighboring communities and stakeholders to gain their support for the Project ("Community Outreach and Engagement Plan"). Seller agrees to work with neighboring communities and stakeholders and provide them timely information during all phases of the Project, including but not limited to the following information: Project description, Project stakeholders, community concerns and Seller's efforts to address such concerns, Project benefits, government approvals, Project schedule, and a Community Outreach and Engagement Plan. Seller's Community Outreach and Engagement Plan is a public document and shall remain available to members of the community on the Seller's website for the Term of this Agreement and upon request. Seller shall also provide Company with links to its Project website and Community Outreach and Engagement Plan.
- (b) The Parties also acknowledge that, prior to the Execution Date, Seller provided reasonable advance notice and hosted a public meeting for community and neighborhood groups in and around the vicinity of the Project site that provided neighboring community, stakeholders, and the general public with: (i) a reasonable opportunity to learn about the proposed Project; (ii) an opportunity to engage in a dialogue about concerns, mitigation measures, and potential community benefits of the proposed Project; and (iii) information concerning the process and/or intent for the public's input and engagement, including advising attendees that they will have thirty (30) Days from the date of said public meeting to submit written comments to Company and/or Seller for inclusion in the Company's submission to the PUC of its application for a satisfactory PUC Approval Order. Seller shall collect all public comments, and then provide Company copies of all comments received in their original, unedited form, along with copies of all comments with personal information redacted and ready for filing. Seller agrees that Company may submit any and all public comments (presented in its original, unedited form) as part of its PUC application for this Project.

- (c) Seller acknowledges and agrees that subsequent to the PUC Submittal Date and prior to the date when the Parties' statements of position are to be filed in the docketed PUC proceeding for this Project, Seller will solicit public comments concerning the Project a second time. Seller will submit to the PUC as part of the docketed PUC proceeding for this Project any and all public comments (presented in its original, unedited form) received by Company and/or Seller regarding the Project that are not received in time to include as part of the Company's application for a satisfactory PUC Approval Order.
- (d) The Parties acknowledge and agree that Seller is responsible for community outreach and engagement for the Project, and that the public meeting and comment solicitation process described in this Section 29.21 (Community Outreach) do not represent the only community outreach and engagement activities that can or should be performed by Seller. Without limitation to the generality of the preceding sentence, Seller agrees to take into account the Project's potential impacts on historical and cultural resources and, at a minimum, Seller shall describe: (i) any valued cultural, historical, or natural resources in the area in question, including the extent to which traditional and customary native Hawaiian rights are exercised in the area; (ii) the extent to which those resources - including traditional and customary native Hawaiian rights - will be affected or impaired by the Project; and (iii) the feasible action, if any, to be taken to reasonably protect native Hawaiian rights if they are found to exist. Seller shall determine and implement such additional means as may be reasonably necessary to share information with and involve the community and neighborhood groups in and around the vicinity of the Facility during the Project planning and development process through the Term of this Agreement, and shall timely inform Company of its plans and activities in this regard.
- (e) Upon the Execution Date and at all times during the Term of this Agreement, Seller shall designate an individual as the "Seller's Community Representative." The Seller's Community Representative shall be the primary contact between the community and the Seller and shall be available during the Term of this Agreement to

receive and answer questions from the community. As of the Execution Date the Seller's Community Representative shall be:

Name: [name of Seller's Community Representative]

Contact Information: [email address]

Seller shall notify Company in writing upon designation of any new Seller's Community Representative.

29.22 Change in Standard System or Organization.

- (a) Consistent With Original Intent. If, during the Term, any standard, system or organization referenced in this Agreement should be modified or replaced in the normal course of events, such modification or replacement shall from that point in time be used in this Agreement in place of the original standard, system or organization, but only to the extent such modification or replacement is generally consistent with the original spirit and intent of this Agreement.
- (b) Eliminated or Inconsistent With Original Intent. If, during the Term, any standard system or organization referenced in this Agreement should be eliminated or cease to exist, or is modified or replaced and such modification or replacement is inconsistent with the original spirit and intent of this Agreement, then in such event the Parties will negotiate in good faith to amend this Agreement to a standard, system or organization that would be consistent with the original spirit and intent of this Agreement.

29.23 No Third Party Beneficiaries. Nothing expressed or referred to in this Agreement will be construed to give any person or entity other than the Parties any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties and their successors and permitted assigns.

29.24 Hawai'i General Excise Tax. Seller shall, when making payments to Company under this Agreement, pay such additional amount as may be necessary to reimburse Company for the Hawai'i general excise tax on gross income and all other similar taxes imposed on Company by any Governmental

Authority with respect to payments in the nature of gross receipts tax, sales tax, privilege tax or the like (including receipt of any payment made under this Section 29.24 (Hawai'i General Excise Tax)), but excluding federal or state net income taxes. By way of example and not limitation, as of the Execution Date, all payments subject to the Hawai'i general excise tax plus surcharge on O'ahu (totaling 4.5% as of the Execution Date) would include an additional 4.712% so that the underlying payment will be net of such tax liability.

29.25 Survival of Obligations. The rights and obligations that are intended to survive a termination of this Agreement are all of those rights and obligations that this Agreement expressly provides shall survive any such termination and those that arise from Seller's or Company's covenants, agreements, representations, and warranties applicable to, or to be performed, at or during any time prior to or as a result of the termination of this Agreement, including, without limitation:

- (a) The obligation to pay Daily Delay Damages under Section 13.4 (Damages and Termination);
- (b) The obligation to pay Termination Damages under Article 16 (Damages in the Event of Termination by Company);
- (c) The indemnity obligations under Article 17 (Indemnification) and Section 29.17 (Proprietary Rights);
- (d) The dispute resolution provisions of Article 28 (Dispute Resolution);
- (e) Section 29.3 (Notices), Section 29.5 (Non-Waiver), Section 29.8 (Governing Law, Jurisdiction and Venue), Section 29.9 (Limitations), Section 29.13 (Severability), Section 29.14 (Settlement of Disputes), Section 29.15 (Environmental Credits and RPS), Section 29.17 (Proprietary Rights), Section 29.19 (Computation of Time), Section 29.23 (No Third Party Beneficiaries), Section 29.24 (Hawai'i General Excise Tax), Section 29.25 (Survival of Obligations), Section 7 (Land Restoration) of Attachment G (Company-Owned Interconnection Facilities) and Section 1(d) (Seller's Right to Transfer) and Section 2(d) (Right of First

Refusal) of Attachment P (Sale of Facility by Seller);
and

- (f) Seller's obligations under Section 3 (Seller Payment To Company for Company-Owned Interconnection Facilities and Review Of Facility) of Attachment G (Company-Owned Interconnection Facilities) to pay interconnection costs and Section 4 (Ongoing Operation and Maintenance Charges) of Attachment G (Company-Owned Interconnection Facilities) to pay operation and maintenance costs incurred up to the date of termination of the Agreement.

29.26 Certain Rules of Construction. For purposes of this Agreement:

- (a) "Including" and any other words or phrases of inclusion will not be construed as terms of limitation, so that references to "included" matters will be regarded as non-exclusive, non-characterizing illustrations.
- (b) "Copy" or "copies" means that the copy or copies of the material to which it relates are true, correct and complete.
- (c) When "Article," "Section," "Schedule," or "Attachment" is capitalized in this Agreement, it refers to an article, section, schedule or attachment to this Agreement.
- (d) "Will" has the same meaning as "shall" and, thus, connotes an obligation and an imperative and not a futurity.
- (e) Titles and captions of or in this Agreement, the cover sheet and table of contents of this Agreement, and language in parenthesis following Section references are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.
- (f) Whenever the context requires, the singular includes the plural and plural includes the singular, and the gender of any pronoun includes the other genders.
- (g) Any reference to any statutory provision includes each successor provision and all applicable Laws as to that provision.

29.27 Agreement is Not a Design or Construction Contract. This Agreement is not a design or construction contract. The Parties acknowledge and agree that Seller will finance and develop the Facility for Seller to own and operate. Seller is not a design professional or a contractor. Seller is not hereby undertaking to perform and is not holding itself out or offering to perform any work for which a professional or contractor's license may be required under the laws of the State of Hawai'i. Notwithstanding anything to the contrary, all work related to the design, engineering, and construction of the Facility shall be performed by design professionals and contractors who hold the appropriate licenses issued by the State of Hawai'i and intend to develop the Facility in full compliance with all applicable state laws. For the avoidance of doubt, in all instances where this Agreement refers to Seller performing the acts of constructing, building or installing, said language shall be interpreted to mean that such work will be performed by duly licensed contractors properly retained by Seller in accordance with laws of the State of Hawai'i.

**[Signatures for PPA for Renewable Dispatchable Generation
appear on the following page]**

IN WITNESS WHEREOF, Company and Seller have executed this Agreement as of the day and year first above written.

HAWAIIAN ELECTRIC COMPANY, INC.

By _____

Name:

Its:

By _____

Name:

Its:

("Company")

By _____

Name:

Its:

By _____

Name:

Its:

("Seller")

SCHEDULE OF DEFINED TERMS

For the purposes of this Agreement, the following capitalized terms shall have the meanings set forth below:

"Acceptance Notice": Shall have the meaning set forth in Section 1(a)(ii) of Attachment P (Sale of Facility by Seller) to this Agreement.

"Acceptance Test": A test conducted by Seller and witnessed by Company, within thirty (30) Days of completion of all Interconnection Facilities and in accordance with criteria and test procedures determined by Company and Seller as set forth in Section 2(f) (Acceptance Test Procedure) of Attachment G (Company-Owned Interconnection Facilities), to determine conformance with Article 3 (Facility Owned and/or Operated by Seller) and Attachment G (Company-Owned Interconnection Facilities) and Good Engineering and Operating Practices. Attachment N (Acceptance Test General Criteria) provides general criteria to be included in the written protocol for the Acceptance Test. Successful completion of the Acceptance Test shall be a condition precedent for the performance of the Control System Acceptance Test and the Commercial Operations Date.

"Active Power Control Interface": Shall have the meaning set forth in Section 1(g) (Active Power Control Interface) of Attachment B (Facility Owned by Seller) of this Agreement.

"Active Turbine Hours (ACTH)": Shall have the meaning set forth in Attachment Q (Calculation of Certain Metrics) of this Agreement.

"Actual Output": The total quantity of electric energy (measured in kilowatt hours) produced by the Facility over a given time period and delivered to the Point of Interconnection, as measured by the revenue meter. "Actual Output" is the equivalent of "Net Energy."

"Agreement": Shall have the meaning set forth in the preamble to this Agreement.

"Allowed Capacity": Shall have the meaning set forth in Section 5(e) of Attachment A (Description of Generation, Conversion and Storage Facility) to this Agreement.

"Appeal Period": Shall have the meaning set forth in Section 29.20(b) (Non-appealable PUC Approval Order) of this Agreement.

"Applicable Period Lump Sum Payment": For each applicable period, the total amount of Lump Sum Payment payable during such period, as such amount may be calculated and adjusted from time to time as set forth in Section 2.3 (Lump Sum Payment) of this Agreement and/or Section 3 (Calculation of Lump Sum Payment) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement, including but not limited to any downward adjustment made pursuant to Section 3.iv of said Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS), but excluding any set-off of liquidated damages under Section 2.13 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages). For purposes of calculating liquidated damages under Section 2.5(b) (Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages), the "Applicable Period Lump Sum Payment" is the monthly Lump Sum Payment payable for the last calendar month of the LD Period in question. For purposes of calculating liquidated damages under Section 2.6(b) (GPI Metric and Liquidated Damages), the "Applicable Period Lump Sum Payment" is the monthly Lump Sum Payments payable for the last calendar month of the PI Assessment Period in question. For purposes of calculating liquidated damages under Section 2.7 (c) (BOP Benchmark and Liquidated Damages) the "Applicable Lump Sum Payment" is the total of the monthly Lump Sum Payments payable for the Contract Year question. For purposes of calculating liquidated damages under Section 2.8(a) (BESS Capacity Test and Liquidated Damages), Section 2.8(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages) and Section 2.10 (BESS Annual Equivalent Forced Outage Factor; Liquidated Damages), the "Applicable Period Lump Sum Payment" is the total of the monthly Lump Sum Payments payable for the three months of the BESS Measurement Period in question.

"Applicable NEP Verification Date": For the Initial OEPR, the Initial NEP Verification Date. For any Subsequent OEPR, the first Day of the calendar month following the calendar month during which there occurs the second anniversary of the event (e.g., completion of equipment replacement) which occasioned the preparation of such Subsequent OEPR.

"Appraised Fair Market Value of the Facility": Shall have the meaning set forth in Section 3(d) of Attachment P (Sale of Facility by Seller) to this Agreement.

"Battery Energy Storage System" or "BESS": The battery energy storage system as described in Section 5 (Equipment) of Attachment

A (Description of Generation, Conversion and Storage Facility) to this Agreement, together with all other equipment, devices, and associated appurtenances owned, controlled, operated and managed by Seller in connections, with or to facilitate, the storage, transmission, delivery or furnishing by Seller to Company of the electric energy stored in the BESS.

"BESS Allocated Portion of the Lump Sum Payment": For each BESS Measurement Period and for any other applicable period, an amount equal to fifty percent (50%) of the total of the three monthly Lump Sum Payments for such period without taking into account any set-offs against such monthly Lump Sum Payments.

"BESS Annual Equivalent Availability Factor": Shall be as described in Attachment X (BESS Annual Equivalent Availability Factor) to this Agreement.

"BESS Annual Equivalent Forced Outage Factor": Shall have the meaning set forth in Attachment Y (BESS Annual Equivalent Forced Outage Factor) to this Agreement.

"BESS Capacity Performance Metric": Shall have the meaning set forth in Attachment W (BESS Tests) to this Agreement.

"BESS Capacity Cure Period": Shall have the meaning set forth in Section 2.8(b) (BESS Capacity Test Termination Rights).

"BESS Capacity Ratio": Shall have the meaning set forth in Attachment W (BESS Tests) to this Agreement.

"BESS Capacity Test": Shall have the meaning set forth in Attachment W (BESS Tests) to this Agreement.

"BESS Contract Capacity": The storage capacity, in MWh, of the BESS, or MWh.

"BESS EAF Performance Metric": Shall have the meaning set forth in Section 2.9(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages).

"BESS EFOF Performance Metric": Shall have the meaning set forth in Section 2.10 (BESS Annual Equivalent Forced Outage Factor; Liquidated Damages).

"BESS Measurement Period": Shall mean, in any Contract Year, the following periods of three calendar months each: (i) the period

beginning on the first day of the first calendar month of such Contract Year and extending through the last day of the third calendar month of such Contract Year; (ii) the period beginning on the first day of the fourth calendar month of such Contract Year and extending through the last day of the sixth calendar month of such Contract Year; (iii) the period beginning on the first day of the seventh calendar month of such Contract Year and extending through the last day of the ninth calendar month of such Contract Year; and (iv) the period beginning on the first day of the tenth calendar month of such Contract Year and extending through the last day of the twelfth calendar month of such Contract Year.

"BESS Measurement Period Report": For each BESS Measurement Period, the report of the data necessary for calculation of the Performance Metrics for such BESS Measurement Period to be provided by Seller to Company in the form set forth in Section 1 (Monthly Report) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement or such other form as the Company may approve in writing.

"Bill of Material": A list of equipment to be installed at the Facility including, but not necessarily limited to, items such as relays, breakers, and switches.

"BOP": The "balance of the plant", i.e., the infrastructural components of the Facility (excluding the WTG(s)) which support transfer of energy between the WTG(s) and the Point of Interconnection. The infrastructure normally consists of the site electrical facilities, SCADA and the civil plant (such as foundations and roads), which support the operation and maintenance of the WTG(s).

"BOP Benchmark": For each Contract Year, the BOP Benchmark for such Contract as determined under the applicable provisions of Section 2.7(b) (Determination of BOP Benchmark) of this Agreement and Section 2 (Disagreements Concerning Measured Power Curve, Production-Based Availability and BOP Benchmark) of Attachment T (Calculation and Reporting of Production-Based Availability and Dispute Resolution by Independent AF Evaluator) to this Agreement.

"BOP Benchmark Determination Notice": Shall have the meaning specified in, as applicable, Section 2.7(b)(i) (First Two Contract Years), Section 2.7(b)(ii) (Commencing With Third Contract Year) or Section 2.7(b)(iii) (Commencing With First Subsequent OEPR and Thereafter) of this Agreement.

"BOP Benchmark Disagreement": Shall have the meaning set forth in Section 2(b) (Notice of Disagreement With BOP Benchmark Determination) of Attachment T (Calculation and Reporting of Production-Based Availability and Dispute Resolution by Independent PBA Evaluator) to this Agreement.

"BOP Benchmark Minus 3" and "BOP Benchmark Minus 6": Shall have the respective meanings set forth for in Section 2.7(c) (BOP Benchmark and Liquidated Damages) of this Agreement. For example, if the BOP Benchmark is 97%, the "BOP Benchmark Minus 3" is 94% and the "BOP Benchmark Minus 6" is 91%.

"BOP Efficiency Ratio": For each Contract Year, the estimated efficiency of the Facility during such Contract Year in delivering to the Point of Interconnection the electric energy produced by the WTG(s). The BOP Efficiency Ratio constitutes the percentage calculated as provided in Section 2.7(a) (Calculation of Annual BOP Efficiency Ratio) of this Agreement.

"BOP LD Assessment Date": For each Contract Year, [**January 31st**] of the following Contract Year.

"BOP LD Assessment Notice": For each Contract Year for which liquidated damages are payable under Section 2.7(c) (BOP Benchmark and Liquidated Damages), the Company's written notice to Seller setting forth the amount of the liquidated damages together with the calculation of such liquidated damages.

"BOP Measurement Period": A Contract Year.

"Business Day": Any calendar day that is not a Saturday, a Sunday, or a federal or Hawai'i state holiday.

"Change in Control": Shall have the meaning set forth in Section 1(b) (Change in Ownership Interests and Control of Seller) of Attachment P (Sale of Facility by Seller) to this Agreement.

"Claim": Any claim, suit, action, demand or proceeding.

"Claiming Entity": Shall mean Seller and any direct or indirect owner of a membership interest in Seller which is eligible to claim a Refundable Tax Credit or Non-Refundable Tax Credit in a given year.

"COD Delay LD Period": Shall have the meaning set forth in Section 13.4(a)(2).

"Commercial Operations": Upon satisfaction of the following conditions, the Facility shall be considered to have achieved Commercial Operations on the Day specified in Seller's written notice described below: (i) the Acceptance Test has been passed, (ii) all generating units have passed Control System Acceptance Tests, (iii) the Transfer Date has occurred, (iv) Seller has (1) provided to Company the Required Models (as defined in Section 6(a) (Seller's Obligation to Provide Models) of Attachment B (Facility Owned by Seller)) in the form of Source Code, (2) placed the current version of the Source Code for the Required Models with the Source Code Escrow Agent as required in Section 6(b)(i)(A) (Establishment of Source Code Escrow) of Attachment B (Facility Owned by Seller), or (3) if Seller is unable to arrange for the placement of the appropriate Source Code into the Source Code Escrow account, placed the required funds with the Monetary Escrow Agent as required in Section 6(b)(ii)(A) (Establishment of Monetary Escrow) of Attachment B (Facility Owned by Seller), and (v) Seller provides Company with written notice that (aa) Seller is ready to declare the Commercial Operations Date and (bb) the Commercial Operations Date will occur within 24 hours (i.e., the next Day).

"Commercial Operations Date" or "COD": The date on which Facility first achieves Commercial Operations.

"Company": Shall have the meaning set forth in the preamble to this Agreement.

"Company-Designated NEP Estimate": The estimated Net Energy Potential of the Facility as designated by Company pursuant to Section 1(c) (NEP IE Estimate and Company-Designated NEP Estimate) of Attachment U (Calculation and Adjustment of Net Energy Potential) this Agreement.

"Company Dispatch": Company's right, through supervisory equipment or otherwise, to direct or control both the capacity and the energy output of the Facility from its minimum output rating to its maximum output rating consistent with this Agreement (including, without limitation, Good Engineering and Operating Practices and the requirements set forth in Section 3 (Performance Standards) of Attachment B (Facility Owned by Seller) to this Agreement), which dispatch shall include real power, reactive power, voltage, frequency, the determination to cycle a unit off-line or to restart a unit, the droop control setting, the ramp rate setting, and other characteristics of such electric energy

output whose parameters are normally controlled or accounted for in a utility dispatching system.

"Company Milestones": Each of the milestones identified as such in Attachment K-1 (Seller's Conditions Precedent and Company Milestones).

"Company-Owned Interconnection Facilities": Shall have the meaning set forth in Section 1(a) (General) of Attachment G (Company-Owned Interconnection Facilities).

"Company System": The electric system owned and operated by Company (to include any non-utility owned facilities) consisting of power plants, transmission and distribution lines, and related equipment for the production and delivery of electric power to the public.

"Company System Operator": The authorized representative of Company who is responsible for carrying out Company dispatch and curtailment of electric energy generation interconnected to the Company System.

"Company's Recommendations": Shall have the meaning set forth in Section 4(c) of Attachment B (Facility Owned by Seller) to this Agreement.

"Competitive Bidding Framework": The Framework for Competitive Bidding contained in Decision and Order No. 23121 issued by the Public Utilities Commission on December 8, 2006, and any subsequent orders providing for modifications from those set forth in Order No. 23121 issued December 8, 2006.

"Construction Delay LD Period": Shall have the meaning set forth in Section 13.4(a)(1).

"Construction Financing Closing Milestone": Shall have the meaning set forth in Attachment K (Guaranteed Project Milestones).

"Construction Milestones": The Reporting Milestones set forth in Attachment L (Reporting Milestones) and the Guaranteed Project Milestones set forth in Attachment K (Guaranteed Project Milestones).

"Consultants List": Shall have the meaning set forth in Section 4(e) of Attachment B (Facility Owned by Seller) to this Agreement.

"Consumer Advocate": Shall have the meaning set forth in Section 24.2 (Confidentiality).

"Contract Capacity": Shall have the meaning set forth in Section 5(b) of Attachment A (Description of Generation, Conversion and Storage Facility) to this Agreement.

"Contract Pricing": The total of the Energy Payment and the Lump Sum Payment.

"Contract Year": A twelve (12) calendar month period commencing on either: (i) the Commercial Operations Date (if the Commercial Operations Date occurs on the first Day of a calendar month) and thereafter on each anniversary of the Commercial Operations Date; or (ii) the first Day of the calendar month following the month during which the Commercial Operations Date occurs, and thereafter on each anniversary of the first Day of such month; provided, however, that, in the latter case, the initial Contract Year shall also include the Days from the Commercial Operations Date to the first Day of the succeeding calendar month.

"Contractors": Shall have the meaning set forth in Section 2(a)(i) of Attachment G (Company-Owned Interconnection Facilities) to this Agreement.

"Control System Acceptance Test(s)" or "CSAT": A test or tests performed on the centralized and collective control systems and Active Power Control Interface of the Facility, which includes successful completion of the Control System Telemetry and Control List, in accordance with procedures set forth in Section 1(h) (Control System Acceptance Test Procedures) of Attachment B (Facility Owned by Seller). Attachment O (Control System Acceptance Test Criteria) provides general criteria to be included in the written protocol for the Control System Acceptance Test.

"Control System Telemetry and Control List": The Control System Telemetry and Control List includes, but is not limited to, all of the Facility's equipment and generation performance/quality parameters that will be monitored, alarmed and/or controlled by Company's Energy Management System (EMS) throughout the Term of this Agreement.

Examples of the Control System Telemetry and Control List include:

- Seller's substation/equipment status - breaker open/closed status, equipment normal/alarm operating status, etc.
- Seller's generation data (analog values) - number of generators available/online, voltage, current, MW, MVAR, etc.
- Seller's generation performance (status and/or analog values) - ramp rate, generator frequency, etc.
- Active Power control interface - dispatch MW setpoint, etc.
- Voltage control interface - voltage kV setpoint, etc.
- Power factor control interface - power factor setpoint, etc.

"Daily Delay Damages": Shall have the meaning set forth in Section 13.4(a) (Daily Delay Damages) of this Agreement.

"Day": A calendar day.

"Defaulting Party": The Party whose failure, action or breach of its obligations under this Agreement results in an Event of Default under Article 15 (Events of Default) of this Agreement.

"Density-Adjusted Wind Speed": For each 10-minute increment for each WTG, the 10-minute averaged wind speed measurement from a calibrated anemometer on top of the nacelle for such turbine as adjusted for temperature and pressure as provided in Section 3 (Calculation of Density-Adjusted Wind Speed) of Attachment Q (Calculation of Certain Metrics) to this Agreement.

"Development Period Security": An amount equal to \$50/kW of the Contract Capacity.

"Disconnection Event": Shall have the meaning set forth in Section 4(a) of Attachment B (Facility Owned by Seller) to this Agreement.

"Dispute": Shall have the meaning set forth in Section 28.1 (Good Faith Negotiations).

"DPR": Shall have the meaning set forth in Section 28.2 (Dispute Resolution Procedures, Mediation).

"E-mail": Shall have the meaning set forth in Section 29.3 (Notices).

"Effective Date": Shall mean the last to occur of (i) the Non-appealable PUC Approval Order Date and (ii) the date that the Interconnection Requirements Amendment (if required pursuant to Section 12.4(a) of this Agreement) is executed and delivered as such date is set forth in the Interconnection Requirements Amendment.

"EMS" or "Energy Management System": The real-time, computer-based control system, or any successor thereto, used by Company to manage the supply and delivery of electric energy to its consumers. It provides the Company System Operator with an integrated set of manual and automatic functions necessary for the operation of the Company System under both normal and emergency conditions. The EMS provides the interfaces for the Company System Operator to perform real-time monitoring and control of the Company System, including but not limited to monitoring and control of the Facility for system balancing, supplemental frequency control and economic dispatch as prescribed in this Agreement.

"Energy Cost Recovery Clause": The provision in Company's rate schedules that allows Company to pass through to its customers Company's costs of fuel and purchased power.

"Energy Payment": The amount that Company will pay Seller for electric energy delivered to Company in accordance with the terms and conditions of this Agreement on a monthly basis as set forth in Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement.

"Engineering and Design Work": Shall have the meaning set forth in Section 3(a) (Seller Payment to Company) of Attachment G (Company-Owned Interconnection Facilities).

"Environment": Shall have the meaning set forth in Section 1(b)(iii)(G)(ii) (Malware) of Attachment B (Facility Owned by Seller) to this Agreement.

"Environmental Credits": Any environmental credit, offset, or other benefit allocated, assigned or otherwise awarded by any Governmental Authority, international agency, or non-governmental renewable energy certificate accounting and verification organization to Company or Seller based in whole or in part on the fact that the Facility is a non-fossil fuel facility. Such Environmental Credits shall include, without limitation, the non-energy attributes of renewable energy including, but not limited

to, any avoided emissions of pollutants to the air, soil, or water such as sulfur dioxide, nitrogen oxides, carbon monoxide, particulate matter, and hazardous air pollutants; any other pollutant that is now or may in the future be regulated under the pollution control laws of the United States; and avoided emissions of carbon dioxide and any other greenhouse gas, along with the renewable energy certificate reporting rights to these avoided emissions, but in all cases shall not mean tax credits.

"EPC Contractor": Shall mean Seller's engineering, procurement and construction contractor for the Facility.

"Equivalent Forced Derated Turbine Hours (EFDTH)": Shall have the meaning set forth in Attachment Q (Calculation of Certain Metrics) to this Agreement.

"Equivalent Maintenance Turbine Hours (EMDTH)": Shall have the meaning set forth in Attachment Q (Calculation of Certain Metrics) to this Agreement.

"Equivalent Planned Turbine Hours (EDPTH)": Shall have the meaning set forth in Attachment Q (Calculation of Certain Metrics) to this Agreement.

"Escrow Agent": Shall have the meaning set forth in Section 14.9 (L/C Proceeds Escrow).

"Event of Default": Shall have the meaning set forth in Article 15 (Events of Default) of this Agreement.

"Excess Energy Conditions": An operating condition on the Company System that may occur when Company has more energy available than is required to meet the load on the Company System at any point in time and the generating assets interconnected with the Company System are operating at or near their minimum levels, taking into consideration factors such as the need to maintain system reliability and stability under changing system conditions and configurations, the need for downward regulating reserves, the terms and conditions of power purchase agreements for base-loaded firm capacity or scheduled energy, and the normal minimum loading levels of such units.

"Exclusive Negotiation Period": Shall have the meaning set forth in Section 2(b) (Negotiations) of Attachment P (Sale of Facility by Seller) to this Agreement.

"Execution Date": The date designated as such on the first page of this Agreement or, if no date is so designated, the date the Parties exchanged executed signature pages to this Agreement.

"Exempt Sales": Shall have the meaning set forth in Section 1(c) (Exempt Sales) of Attachment P (Sale of Facility by Seller) to this Agreement.

"Extended Term": Shall have the meaning set forth in Section 12.1 (Term) of this Agreement.

"Facility": Seller's renewable electric energy facility that is the subject of this Agreement, including the WTGs, the BOP, the BESS, all Seller-Owned Interconnection Facilities and all other equipment, devices, associated appurtenances owned, controlled, operated and managed by Seller in connection with, or to facilitate, the production, generation, storage, transmission, delivery or furnishing of electric energy by Seller to Company and required to interconnect with the Company System.

"Facility Debt": The obligations of Seller and its affiliates to any lender pursuant to the Financing Documents, including without limitation, principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing.

"Facility Lender": Any lender(s) or tax equity financing party providing any Facility Debt and any successor(s) or assigns thereto, collectively.

"FASB": Shall have the meaning set forth in Section 24.1 (Financial Compliance).

"FASB ASC 810": Shall have the meaning set forth in Section 24.1 (Financial Compliance).

"Fast Frequency Response Performance Metric": Shall have the meaning set forth in Section 2.12 (Fast Frequency Response Performance Metric) of this Agreement.

"Federal Non-Refundable Tax Credit": Shall mean any U.S. federal tax credit for which the federal government is not required to refund any tax credit which exceeds the tax payments due to the

federal government by the Claiming Entity or to provide a cash rebate in lieu of such credit to the Claiming Entity.

"Federal Refundable Tax Credit": Shall mean any U.S. federal tax credit for which the federal government is required to refund any tax credit which exceeds the tax payments due to the federal government by the Claiming Entity or to provide a cash rebate in lieu of such credit to the Claiming Entity.

"FFR Allocated Portion of the Lump Sum Payment": An amount equal to [REDACTED] percent ([REDACTED]%) of the monthly Lump Sum Payment amount without taking into account any set-offs against such monthly Lump Sum Payment. **[DRAFTING NOTE: PERCENTAGE SHALL BE THE PROPORTIONATE RELATIONSHIP BETWEEN THE ANNUAL LUMP SUM PAYMENT SPECIFIED IN SELLER'S RESPONSE TO RFP AND THE ANNUAL COST OF THE CONTINGENCY STORAGE COMPONENT SPECIFIED IN SELLER'S RESPONSE TO RFP FOR THE CONTINGENCY STORAGE VARIATION INCLUDED IN THE PPA.]**

"Final Non-appealable Order from the PUC": Shall have the meaning set forth in Section 5(d) of Attachment P (Sale of Facility by Seller) to this Agreement.

"Financial Compliance Information": Shall have the meaning set forth in Section 24.1 (Financial Compliance).

"Financial Termination Costs": Shall have the meaning set forth in Section 6 (Make Whole Amount) of Attachment P (Sale of Facility by Seller) to this Agreement.

"Financing Documents": The loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction and/or permanent debt financing for the Facility, including any credit enhancement, credit support, working capital financing, tax equity financing or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time by and at the discretion of Seller and/or its affiliates in connection with financing for the development, construction, ownership, leasing, operation or maintenance of the Facility.

"Financing Purposes": Shall have the meaning set forth in Section 1(c) (Exempt Sales) of Attachment P (Sale of Facility by Seller) to this Agreement.

"First Benchmark Period": The period commencing on the Commercial Operations Date and ending on the last Day of the calendar month during which an OEPR Evaluator issues the Initial OEPR. During the First Benchmark Period, the First NEP Benchmark shall be the estimate of Net Energy Potential that is used to calculate the Lump Sum Payment as provided in Section 3.i (Lump Sum Payment During First Benchmark Period) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement.

"First NEP Benchmark": The estimate of Net Energy Potential that is used to calculate the Lump Sum Payment during the First Benchmark Period as provided in Section 3.i (Lump Sum Payment During First Benchmark Period) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement. The "First NEP Benchmark" shall consist of whichever of the following is applicable as of the Commercial Operation Date, as more fully provided in Section 1(c) (NEP IE Estimate and Company-Designated NEP Estimate) and Section 1(d) (NEP IE Estimate, Liquidated Damages and Seller's Null and Void Right) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement: (i) NEP RFP Projection, (ii) NEP IE Estimate, (iii) Company-Designated NEP Estimate or (iv) such other amount as the Parties may agree in writing.

"First OEPR": Shall have the meaning set forth in Section 4(f) (Timeline and Fees) of this Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

"Force Majeure": An event that satisfies the requirements of Section 21.1 (Definition of Force Majeure), Section 21.2 (Events That Could Qualify as Force Majeure) and Section 21.3 (Exclusions From Force Majeure).

"Forced Turbine Hours (FTH)": Shall have the meaning set forth in Attachment Q to this Agreement.

"Full Dispatch": A time period during which all WTGs are available and there are no technical restrictions or limitations affecting generation imposed to meet Company Dispatch.

"GAAP": Shall have the meaning set forth in Section 24.5(a) (Consolidation).

"Good Engineering and Operating Practices": The practices, methods and acts engaged in or approved by a significant portion of the

electric utility industry for similarly situated U.S. facilities, considering Company's isolated island setting, that at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should be known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with law, regulation, reliability for an island system, safety, environmental protection, economy and expedition. With respect to the Facility, Good Engineering and Operating Practices include, but are not limited to, taking reasonable steps to ensure that:

- (a) Adequate materials, resources and supplies, are available to meet the Facility's needs under normal conditions and reasonably foreseeable abnormal conditions.
- (b) Sufficient operating personnel are available and are adequately experienced and trained to operate the Facility properly, efficiently and within manufacturer's guidelines and specifications and are capable of responding to emergency conditions.
- (c) Preventive, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment, tools, and procedures.
- (d) Appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and reasonably foreseeable abnormal conditions.
- (e) Equipment is operated in a manner safe to workers, the general public and the environment and in accordance with equipment manufacturer's specifications, including, without limitation, defined limitations such as temperature, current, frequency, polarity, synchronization, control system limits, etc.

"Governmental Approvals": All permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities, as well as any agreements with Governmental Authorities, required for the construction, ownership, operation and maintenance of the Facility and the Company-Owned Interconnection Facilities, and all amendments,

modifications, supplements, general conditions and addenda thereto.

"Governmental Authority": Any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

"GPI": Shall have the meaning set forth in Section 2.4(a) (Design, Operation and Maintenance to Achieve Required Performance Metrics; Charging of BESS).

"GPI Metric": Shall have the value set forth in Section 2.6(b) (Determination of GPI Metric) of this Agreement.

"Guaranteed Commercial Operations Date": The date specified as such in Attachment K (Guaranteed Project Milestones) of this Agreement, by which Seller guarantees that it will achieve the Commercial Operations Date.

"Guaranteed Procurement Payment Date": The date specified in Attachment K (Guaranteed Project Milestones) that Seller shall make payment to Company of the amount required under Section 3(b)(iii) (Balance of Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities).

"Guaranteed Project Milestone": Each of the milestone events identified in Attachment K (Guaranteed Project Milestones) of this Agreement.

"Guaranteed Project Milestone Date": Each of the milestone dates identified in Attachment K (Guaranteed Project Milestones) of this Agreement.

"Hawai'i Investment Tax Credit": Shall mean a credit against Hawai'i source income for which Seller is eligible on the Commercial Operations Date or thereafter because of investment in renewable energy technologies incorporated into the Facility.

"Hawai'i Non-Refundable Tax Credit": Shall mean any Hawai'i Investment Tax Credit for which the State of Hawai'i is not required to refund any tax credit which exceeds the tax payments due to the State of Hawai'i by the Claiming Entity or to provide a cash rebate in lieu of such credit to the Claiming Entity.

"Hawai'i Production Tax Credit": Shall mean a credit against Hawai'i source income for which Seller is eligible on the Commercial Operations Date or thereafter because of the energy produced by the Facility.

"Hawai'i Refundable Tax Credit": Shall mean any Hawai'i Investment Tax Credit for which the State of Hawai'i is required to refund any tax credit which exceeds the tax payments due to the State of Hawai'i by the Claiming Entity or to provide a cash rebate in lieu of such credit to the Claiming Entity.

"Hawai'i Renewable Energy Tax Credit": The Hawai'i Investment Tax Credit and the Hawai'i Production Tax Credit.

"HEI": Shall have the meaning set forth in Section 19.7 (Assignment By Company).

"HERA": The Hawai'i Electricity Reliability Administrator.

"HERA Law": Act 166 (Haw. Leg. 2012), which was passed by the 27th Hawai'i Legislature in the form of S.B. No. 2787, S.D. 2, H.D.2, C.D.1 on May 2, 2012 and signed by the Governor on June 27, 2012. The effective date for the law is July 1, 2012. The HERA Law authorizes (i) the PUC to develop, adopt, and enforce reliability standards and interconnection requirements, (ii) the PUC to contract for the performance of related duties with a party that will serve as the HERA, and (iii) the collection of a Hawai'i electricity reliability surcharge to be collected by Hawai'i's electric utilities and used by the HERA. Reliability standards and interconnection requirements adopted by the PUC pursuant to the HERA Law will apply to any electric utility and any user, owner, or operator of the Hawai'i electric system. The PUC also is provided with the authority to monitor and compel the production of data, files, maps, reports, or any other information concerning any electric utility, any user, owner or operator of the Hawai'i electric system, or other person, business, or entity, considered by the commission to be necessary for exercising jurisdiction over interconnection to the Hawai'i electric system, or for administering the process for interconnection to the Hawai'i electric system.

"IE Energy Assessment Report": The bankable energy assessment report (including but not limited to an assessment of the Facility's Net Energy Potential) prepared for the Facility Lender by an independent engineer as part of the Facility Lender's due

diligence leading up to the Facility Lender's legally binding commitment to provide a specific amount of financing for the Project as evidenced by the Facility Lender's execution of the Financing Documents.

"Indemnified Company Party": Shall have the meaning set forth in Section 17.1(a) (Indemnification Against Third Party Claims) of this Agreement.

"Indemnified Seller Party": Shall have the meaning set forth in Section 17.2(a) (Indemnification Against Third Party Claims) of this Agreement.

"Independent Evaluator": A person empowered, pursuant to Section 23.5 (Failure to Reach Agreement) and Section 23.10 (Dispute) of this Agreement, to resolve disputes due to failure of the Parties to agree on a Performance Standards Revision Document.

"Independent AF Evaluator": A person empowered, pursuant to Section 4(a) (Appointment of Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to resolve disagreements due to failure of the Parties to resolve a Monthly Report Disagreement.

"Independent Tax Expert": Shall mean a person (i) with experience and knowledge in the field of tax equity project finance for utility-scale electric generating facilities and in the field of the Hawai'i Renewable Energy Tax Credit and (ii) who is neutral, impartial and not predisposed to favor either Party.

"Initial NEP OEPR Estimate": The NEP OEPR Estimate set forth in or derived from the Initial OEPR, as more fully set forth in Section 4(e) (Terms of Engagement) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

"Initial NEP Verification Date": The first Day of the calendar month following the calendar month during which there occurs the second anniversary of the Commercial Operations Date.

"Initial OEPR": The OEPR to be prepared pursuant in Section 2 (Initial OEPR) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

"Initial Term": Shall have the meaning set forth in Section 12.1 (Term).

"Interconnection Facilities": The equipment and devices required to permit the Facility to operate in parallel with, and deliver electric energy to, the Company System and provide reliable and safe operation of, and power quality on, the Company System (in accordance with applicable provisions of the PUC's General Order No. 7, Company tariffs, operational practices, interconnection requirements studies, and planning criteria), such as, but not limited to, transmission and distribution lines, transformers, switches, and circuit breakers.

"Interconnection Requirements Amendment": Shall have the meaning set forth in Section 12.4(a) of this Agreement.

"Interconnection Requirements Study" or "IRS": A study, performed in accordance with the terms of the IRS Letter Agreements to determine, among other things, (a) the system requirements and equipment requirements to interconnect the Facility with the Company System, (b) the Performance Standards for the Facility, and (c) an estimate of interconnection costs and project schedule for interconnection of the Facility.

"IRS Letter Agreements": The system impact study and Facility study letter agreements and any written, signed amendments thereto, between Company and Seller that collectively describe the scope, schedule, and payment arrangements for the Interconnection Requirements Study.

"Interface Block Diagram": The visual representation of the signals between Seller and Company, including but not limited to, Telemetry and Control points, digital fault recorder settings, telecommunications and protection signals.

"kV": Kilovolt.

"kW": Kilowatt. Unless expressly provided otherwise, all kW values stated in this Agreement are alternating current values and not direct current values.

"Land Rights": All easements, rights of way, licenses, leases, surface use agreements and other interests or rights in real estate.

"Laws": All federal, state and local laws, rules, regulations, orders, ordinances, permit conditions and other governmental actions.

"L/C Proceeds": Shall have the meaning set forth in Section 14.8 (Failure to Renew or Extend Letter of Credit).

"LD Assessment Date": For the last month of each LD Period, the Day following the expiration of the 10-Business Day period provided for Company to submit a Notice of Disagreement pursuant to Section 2(a) (Notice of Disagreement With Monthly Report) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

"LD Period": A rolling period of twelve (12) calendar months each. At the end of each calendar month, the LD Period rolls forward to include the next calendar month. The initial "LD Period" shall consist of the 12 full calendar months of the initial Contract Year.

"Losses": Any and all direct, indirect or consequential damages, fines, penalties, deficiencies, losses, liabilities (including settlements and judgments), costs, expenses (including reasonable attorneys' fees and court costs) and disbursements.

"Lowest BESS Capacity Bandwidth": Shall have the meaning set forth in Section 2.8(a) (BESS Capacity Test and Liquidated Damages).

"Lump Sum Payment": The payment to be made by Company to Seller in exchange for Seller making the Net Energy Potential of the Facility available for dispatch by Company. When necessary to account for the availability of some but not all WTGs, the amount of the monthly Lump Sum Payment is to be allocated pro rata to each WTG and shall be calculated and adjusted as provided in Section 3 (Calculation of Lump Sum Payment) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement.

"Maintenance Turbine Hours (MTH)": Shall have the meaning set forth in Attachment Q to this Agreement.

"Make Whole Amount": Shall have the meaning set forth in Section 6 (Make Whole Amount) of Attachment P (Sale of Facility by Seller).

"Malware": means computer software, code or instructions that: (a) intentionally, and with malice intent by a third party, adversely affect the operation, security or integrity of a computing, telecommunications or other digital operating or processing system or environment, including without limitation,

other programs, data, databases, computer libraries and computer and communications equipment, by altering, destroying, disrupting or inhibiting such operation, security or integrity; (b) without functional purpose, self-replicate written manual intervention; (c) purport to perform a useful function but which actually performs either a destructive or harmful function, or perform no useful function other than utilize substantial computer, telecommunications or memory resources with the intent of causing harm; or (d) without authorization collect and/or transmit to third parties any information or data; including such software, code or instructions commonly known as viruses, Trojans, logic bombs, worms, adware and spyware.

"Management Meeting": Shall have the meaning set forth in Section 28.1 (Good Faith Negotiations).

"Maximum Rated Output": Net maximum output of the BESS in MW, which shall not exceed the Allowed Capacity.

"Measured Performance Ratio" or "PI": Shall have the meaning set forth in Attachment Q (Calculation of Measured Performance Ratio) of this Agreement.

"Measured Power Curve": For each WTG, the measured power curve for such turbine for the initial Contract Year as (i) calculated as set forth in Section 4 (Determination of Measured Power Curve) of Attachment Q (Calculation of Certain Metrics) to this Agreement, (ii) agreed by the Parties as set forth in Section 3(b) (Submission of MPC Disagreement to Independent AF Evaluator) of said Attachment T or (iii) decided by the Independent AF Evaluator as set forth in Section 4(d) (Written Decision of Independent AF Evaluator) of said Attachment T.

"Measured Wind Speed": For each WTG, the arithmetic mean, over any given period of time, of the wind speed readings from such turbine's nacelle anemometer, taken or sampled every two (2) seconds by the Facility's Monitoring and Communication Equipment, in miles per hour (mph). For calculations under this Agreement based on Measured Wind Speed in m/s, the conversion factor shall be 1 mph = 0.447 m/s.

"MMT": Meteorological monitoring tower.

"Modified Pooled OMC Equipment Availability Factor Performance Metric": Shall have the meaning set forth in Attachment Q

(Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages).

"Monitoring and Communication Equipment": Shall have the meaning set forth in Section 6.2 (Monitoring and Communication Equipment) of this Agreement.

"Monthly Progress Report": Shall have the meaning set forth in Section 13.7 (Monthly Progress Report).

"Monthly Report": The report of the data (for the calendar month and the LD Period, the PI Assessment Period and the BESS Measurement Period ending with such calendar month) necessary for the calculation of the Performance Metrics to be provided by Seller to Company as set forth in Section 1 (Monthly Report) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement. Without limitation to the generality of the preceding sentence, references to the Monthly Report for a month that constitutes the last month of a BESS Measurement Period shall be deemed to include the BESS Measurement Period Report for such BESS Measurement Period.

"Monthly Report Disagreement": Any disagreement arising out of the same Monthly Report.

"Most Recent Prior NEP Benchmark": In the event a Subsequent OEPR is prepared for an OEPR Period of Record ending on or after the commencement of the fourth (4th) Contract Year, the "Most Recent Prior NEP Benchmark" shall be (i) for the first such Subsequent OEPR, the Second NEP Benchmark that was used to calculate the Lump Sum Payment for the last month of the Second Benchmark Period pursuant to Section 3.iii.a of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement and (ii) for all Subsequent OEPRs prepared after the aforementioned first Subsequent OEPR, the NEP OEPR Estimate obtained from the immediately preceding Subsequent OEPR.

"MPC Disagreement": Shall have the meaning set forth in Section 3(a) (Notice of Disagreement With Determination of Measured Power Curve) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator).

"MW": Megawatt. Unless expressly provided otherwise, all MW values stated in this Agreement are alternating current values and not direct current values.

"NEP IE Estimate": The estimated Net Energy Potential of the Facility to which the IE Energy Assessment Report assigns a P-Value of 95 for a ten-year period.

"NEP OEPR Estimate": For each OEPR, the estimated Net Energy Potential of the Facility to which such OEPR assigns a P-Value of 95 for a ten-year period.

"NEP RFP Projection": The Net Energy Potential of the Facility to which the Seller in Seller's RFP Proposal assigns a P-Value of 95 for a ten-year period.

"NERC GADS": Shall have the meaning set forth in Section 2.4(a) (Design, Operation and Maintenance to Achieve Required Performance Metrics; Charging of BESS).

"Net Amount": Shall mean, with respect to any Hawai'i Renewable Tax Credit, the amount remaining after deducting any documented and reasonable financial, legal, administrative and other costs and expenses of applying for, pursuing, monetizing and receiving the applicable Hawai'i Renewable Tax Credit, payments by (or reserves established for the payment by) Seller and/or its investors on account of federal or state income taxes (at the highest applicable marginal corporate rate) payable with respect to receipt of such Hawai'i Renewable Tax Credit, and all payments to or reserves required by Seller's lenders or other financing parties in connection with the application for or receipt of such Hawai'i Renewable Tax Credit.

"Net Energy": The total quantity of electric energy (measured in kilowatt hours) produced by the Facility over a given time period and delivered to the Point of Interconnection, as measured by the revenue meter. "Net Energy" the equivalent of "Actual Output."

"Net Energy Potential": The estimated single number with a P-Value of 95 for the annual Net Energy that could be produced by the Facility based on the estimated long-term monthly and annual total of such production over a ten-year period. The Net Energy Potential is subject to adjustment as provided in Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement, but in no circumstances shall the Net Energy Potential exceed the NEP RFP Projection.

"Non-appealable PUC Approval Order": Shall have the meaning set forth in Section 29.20(b) (Non-appealable PUC Approval Order) of this Agreement.

"Non-appealable PUC Approval Order Date": Shall have the meaning set forth in Section 29.20(d) (Non-appealable PUC Approval Order Date) of this Agreement.

"Non-defaulting Party": Shall have the meaning set forth in Section 15.4 (Rights of Non-Defaulting Party; Forward Contract) of this Agreement.

"Non-performing Party": The Party who is in breach of, or is otherwise failing to perform, its obligations under this Agreement.

"Notice of Disagreement": Shall have the meaning set forth in Section 2(a) (Notice of Disagreement With Monthly Report) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

"Notice of MPC Disagreement": The written notice of MPC Disagreement submitted by Seller within the 30-Day period set forth in Section 3(a) (Notice of Disagreement With Measured Power Curve Determination) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

"OEPR": An Operational Energy Production Report, including the Initial OEPR and each Subsequent OEPR.

"OEPR Conference": Shall have the meaning set forth in Section 4(g) (Review of the First OEPR Evaluator Report) of this Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

"OEPR Consultants List": The engineering firms listed in Section 4(j) (Acceptable Persons and Entities) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement, as such list may be expanded or contracted by the Parties as provided in Section 4(b) (Eligibility for Appointment as OEPR Evaluator) of said Attachment U (Calculation and Adjustment of Net Energy Potential) or Section 4(b) (Eligibility for Appointment as Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

"OEPR Evaluator": Shall have the meaning set forth in Section 4(a) (Selection of OEPR Evaluator) of Attachment U (Calculation and Adjustment of Net Energy Potential) of this Agreement.

"OEPR Period of Record": For each OEPR, the twelve-month period preceding the Applicable NEP Verification Date for such OEPR.

"Offer Date": Shall have the meaning set forth in Section 1(a)(i) of Attachment P (Sale of Facility by Seller) to this Agreement.

"Offer Materials": Shall have the meaning set forth in Section 1(a)(i) of Attachment P (Sale of Facility by Seller) to this Agreement.

"Offer Notice": Shall have the meaning set forth in Section 1(a)(i) of Attachment P (Sale of Facility by Seller) to this Agreement.

"Offer Price": Shall have the meaning set forth in Section 1(a)(i) of Attachment P (Sale of Facility by Seller) to this Agreement.

"OMC Equivalent Forced Derated Turbine Hours (oEFDTH)": Shall have the meaning set forth in Attachment Q to this Agreement.

"OMC Equivalent Maintenance Derated Turbine Hours (EMDTH)": Shall have the meaning set forth in Attachment Q to this Agreement.

"OMC Equivalent Planned Derated Turbine Hours (oEPDTH)(Optional)": Shall have the meaning set forth in Attachment Q to this Agreement.

"OMC Forced Turbine Hours (oFTH)": Shall have the meaning set forth in Attachment Q to this Agreement.

"OMC Maintenance Turbine Hours (oMTH)": Shall have the meaning set forth in Attachment Q to this Agreement.

"OMC Planned Turbine Hours (oPTH)": Shall have the meaning set forth in Attachment Q to this Agreement.

"Operating Period Security": Shall have the meaning set forth in Section 14.4 (Operating Period Security).

"Outside Management Control" or "OMC": Shall have the meaning set forth in Attachment Q to this Agreement.

"P-Value": The probability of exceedance.

"Parties": Seller and Company, collectively.

"Party": Each of Seller or Company.

"Performance Index" ("PI"): Shall have the meaning set forth in Attachment Q (Calculation of Performance Index).

"Performance Metrics": Each of the Modified Pooled OMC Equipment Availability Factor Performance Metric, the GPI Metric, the BOP Performance Metric, the BESS Capacity Performance Metric, the BESS EAF Performance Metric, the BESS EFOF Performance Metric, the RTE Performance Metric, and the Fast Frequency Response Performance Metric [**DRAFTING NOTE: This metric only applies if Facility provides fast frequency response**].

"Performance Metrics LDs": Shall have the meaning set forth in Section 2.13(a) (Payment of Liquidated Damages).

"Performance Standards": The various performance standards for the operation of the Facility and the delivery of electric energy from the Facility to Company specified in Section 3 (Performance Standards) of Attachment B (Facility Owned by Seller), as such standards may be revised from time to time pursuant to Article 23 (Process for Addressing Revisions to Performance Standards) of this Agreement.

"Performance Standards Information Request": A written notice from Company to Seller proposing revisions to one or more of the Performance Standards then in effect and requesting information from Seller concerning such proposed revision(s).

"Performance Standards Modifications": For each Performance Standards Revision, any capital improvements, additions, enhancements, replacements, repairs or other operational modifications to the Facility and/or to changes in Seller's operations or maintenance practices necessary to enable the Facility to achieve the performance requirements of such Performance Standards Revision.

"Performance Standards Pricing Impact": Any adjustment in Contract Pricing necessary to specifically reflect the recovery of the net costs and/or net lost revenues specifically attributable to any Performance Standards Modification necessary to comply with a Performance Standard Revision, which shall consist of the following: (i) recovery of, and return on, any capital investment (aa) made over a cost recovery period starting after the Performance Standards Revision is made effective following a PUC Performance Standards Revision Order through the end of the

Initial Term and (bb) based on a proposed capital structure that is commercially reasonable for such an investment and the return on investment is at market rates for such an investment or similar investment); (ii) recovery of reasonably expected net additional operating and maintenance costs; and (iii) an adjustment in pricing necessary to compensate Seller for reasonably expected reductions, if any, in the delivery of electric energy to Company under this Agreement, which shall consist of (yy) an increase in payments necessary to compensate Seller for expected reduced electric energy payments under this Agreement; and (zz) to the extent applicable, an increase in payments necessary to compensate Seller for reasonably expected reductions in receipt of production tax credits (pursuant to Section 45 of the Internal Revenue Code) calculated on an after-tax basis.

"Performance Standards Proposal": A written communication from Seller to Company detailing the following with respect to a proposed Performance Standards Revision: (i) a statement as to whether Seller believes that it is technically feasible to comply with the Performance Standards Revision and the basis therefor; (ii) the Performance Standards Modifications proposed by Seller to comply with the Performance Standards Revision; (iii) the capital and incremental operating costs of any necessary technical improvements, and any other incremental net operating or maintenance costs associated with any necessary operational changes, and any expected lost revenues associated with expected reductions in electric energy delivered to Company; (iv) the Performance Standards Pricing Impact of such costs and/or lost revenues; (v) information regarding the effectiveness of such technical improvements or operational modifications; (vi) proposed contractual consequences for failure to comply with the Performance Standard Revision that would be commercially reasonable under the circumstances; and (vii) such other information as may be reasonably required by Company to evaluate Seller's proposals. A Performance Standards Proposal may be issued either in response to a Performance Standards Information Request or on Seller's own initiative.

"Performance Standards Revision": A revision, as specified in a Performance Standards Information Request or a Seller-initiated Performance Standards Proposal, to the Performance Standards in effect as of the date of such Request or Proposal.

"Performance Standards Revision Document": A document specifying one or more Performance Standards Revisions and setting forth the changes to the Agreement necessary to implement such Performance

Standards Revision(s). A Performance Standards Revision Document may be either a written agreement executed by Company and Seller or as directed by the Independent Evaluator pursuant to Section 23.10 (Dispute) of this Agreement, in the absence of such written agreement.

"Permitted Lien": Shall have the meaning set forth in Section 4 (Purchase and Sale Agreement) of Attachment P (Sale of Facility by Seller) to this Agreement.

"PI": Shall have the meaning set forth in Attachment Q to this Agreement.

"PI Assessment Period": Shall mean, for purposes of demonstrating a Performance Index, a rolling period of twelve (12) calendar months each. At the end of each calendar month, the PI Assessment Period rolls forward to include the next calendar month. The initial "PI Assessment Period" shall consist of the 12 full calendar months of the initial Contract Year.

"PI Assessment Period Lump Sum Payment": For each PI Assessment Period, the monthly Lump Sum Payment for the twelfth month of such PI Assessment Period after deducting the amounts (if any) payable as liquidated damages under Section 2.5(b) (Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages) for the same calendar month in question.

"PI Test": Shall have the meaning set forth in Section 2.6(a)(iii) (PI Test) of this Agreement.

"Planned Turbine Hours (PTH)": Shall have the meaning set forth in Attachment Q to this Agreement.

"Point of Interconnection" or "POI": The point of delivery of electric energy and/or capacity supplied by Seller to Company, where the Facility owned by the Seller interconnects with the Company System. The Seller shall own and maintain the facilities from the Facility to the Point of Interconnection, excluding any Company-Owned Interconnection Facilities located on the Site. The Company shall own and maintain the facilities from the Point of Interconnection to the Company's system. The Point of Interconnection will be identified in the IRS and set forth on the Single-Line Drawing and Interface Block Diagram in Attachment E (Single-Line Drawing and Interface Block Diagram).

"Power Curve": A table of wind speeds and MW at a reference density.

"Power Possible": The calculated potential maximum power production of the Facility reported in megawatts (MW) at the Point of Interconnection taking into account (i) equipment equivalent availability during the period, (ii) the available energy resource and (iii) the BESS State of Charge. The Power Possible is a telemetered value provided to Company as an analog value (i.e., instantaneous).

"PPA Amendment Deadline": The 75th Day following the date the completed IRS is provided to Seller, or such later date as Company and Seller may agree to by written agreement.

"Prime Rate": The "prime rate" of interest, as published from time to time by The Wall Street Journal in the "Money Rates" section of its Western Edition Newspaper (or the average prime rate if a high and a low prime rate are therein reported). The Prime Rate shall change without notice with each change in the prime rate reported by The Wall Street Journal, as of the date such change is reported. Any such rate is a general reference rate of interest, may not be related to any other rate, may not be the lowest or best rate actually charged by any lender to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by lenders or market rates in general.

"Proceeds": Shall have the meaning set forth in Section 6(b)(ii)(C) (Extend Letter of Credit) of Attachment B (Facility Owned by Seller) to this Agreement.

"Proceeds Authorized Use": Shall have the meaning set forth in Section 6(b)(ii)(H) (Authorized Use) of Attachment B (Facility Owned by Seller) of this Agreement.

"Proceeds Escrow Agent": Shall mean such escrow agent approved by Company.

"Proceeds Escrow Agreement": Shall mean the escrow agreement between Company and the Proceeds Escrow Agent naming Company as beneficiary thereunder, which agreement shall be acceptable in form and substance to Company.

"Project": The Facility as described in Attachment A (Description of Generation, Conversion and Storage Facility).

"Project Documents": This Agreement, any ground lease or other agreement or instrument in respect of the Site and/or the Land Rights, all construction contracts to which Seller is or becomes a party thereto, operation and maintenance agreements, and all other agreements, documents and instruments to which Seller is or becomes a party thereto in respect of the Facility, other than the Financing Documents, as the same may be modified or amended from time to time in accordance with the terms thereof.

"Proposed Actions": Shall have the meaning set forth in Section 4(c) of Attachment B (Facility Owned by Seller) to this Agreement.

"Proprietary Rights": Shall have the meaning set forth in Section 29.17 (Proprietary Rights) of this Agreement.

"PSA": Shall have the meaning set forth in Section 4 (Purchase and Sale Agreement) of Attachment P (Sale of Facility by Seller) to this Agreement.

"PUC": Shall have the meaning set forth in the Recitals.

"PUC Approval Order": Shall have the meaning set forth in Section 29.20(a) (PUC Approval Order) of this Agreement.

"PUC Approval Order Date": Shall have the meaning set forth in Section 29.20(c) (Company's Written Statement) of this Agreement.

"PUC Approval Time Period": Shall have the meaning set forth in Section 12.6(b) (Time Period for PUC Approval).

"PUC Order Appeal Period": Shall have the meaning set forth in Section 12.6(b) (Time Period for PUC Approval).

"PUC Performance Standards Revision Order": The decision and order of the PUC approving the application or motion by the Parties seeking (i) approval of the Performance Standards Revision in question and the associated Performance Standards Revision Document, (ii) finding that the impact of the changes to the Contract Pricing on Company's revenue requirements is reasonable, and (iii) approval to include the costs arising out of pricing changes in Company's Energy Cost Recovery Clause (or equivalent).

"PUC RPS Order": Shall have the meaning set forth in Section 3.4(e) (PUC RPS Order).

"PUC Submittal Date": The date of the submittal of Company's complete application or motion for a satisfactory PUC Approval Order pursuant to Section 12.3 (PUC Approval) of this Agreement.

"PUC's Standards": Standards for Small Power Production and Cogeneration in the State of Hawai'i, issued by the Public Utilities Commission of the State of Hawai'i, Chapter 74 of Title 6, Hawai'i Administrative Rules, currently in effect and as may be amended from time to time.

"Qualified Consultant": Shall have the meaning set forth in Section 4(e) of Attachment B (Facility Owned by Seller) to this Agreement.

"Recipient": Shall have the meaning set forth in Section 24.2 (Confidentiality).

"Renewable Portfolio Standards" or "RPS": The Hawai'i law that mandates that Company and its subsidiaries generate or purchase certain amounts of their net electricity sales over time from qualified renewable resources. The RPS requirements in Hawai'i are currently codified as Hawai'i Revised Statutes (HRS) 269-91 through 269-95.

"Renewable Resource Baseline": The estimated renewable resource potential of the Site for a typical meteorological year. For avoidance of doubt, the purpose of this term is to provide a short-hand characterization of the nature of the renewable resource risk assumed by the Seller under this Agreement in making its Site selection.

"Renewable Resource Variability": The variations, above and below the Renewable Resource Baseline, of the renewable resource actually available at the Site on a moment-to-moment basis. For avoidance of doubt, the purpose of this term is to provide a short-hand characterization of the nature of the renewable resource risk assumed by the Company under this Agreement in agreeing to make fixed payments in an amount calculated on the basis of the Facility's capability to deliver the Net Energy Potential regardless of whether or not sufficient renewable resource is in fact available at any particular moment.

"Required Model" or "Required Models": Shall have the meaning set forth in Section 6(a) (Seller's Obligation to Provide Models) of Attachment B (Facility Owned by Seller) of this Agreement.

"Reporting Milestones": Each of the milestones identified as such in Attachment L (Reporting Milestones).

"Revenue Metering Package": The revenue meter, revenue metering PTs and CTs, and secondary wiring.

"RFP": Company's Request for Proposals for Variable Renewable Dispatchable Generation and Energy Storage, Island of O'ahu, issued on _____, 2019.

"RFP Proposal": The documents and submissions comprising Seller's proposal selected in the Final Award Group in response to the RFP.

"Right of First Negotiation Period": Shall have the meaning set forth in Section 1(a)(ii) of Attachment P (Sale of Facility by Seller) to this Agreement.

"RPS Amendment": Any amendment to the RPS subsequent to Effective Date that revises the definition of "renewable electric energy" under the RPS such that the electric energy delivered from the Facility no longer comes within such revised definition.

"RPS Modifications": Any capital improvements, additions, enhancements, replacements, repairs or other operational modifications to the Facility and/or to changes in Seller's operations or maintenance practices necessary to enable the electric energy delivered from the Facility to come within the revised definition of "renewable electrical energy" resulting from a RPS Amendment.

"RPS Modifications Document": Shall have the meaning set forth in Section 3.4(c) (RPS Modifications Document).

"RPS Pricing Impact": Any adjustment in Contract Pricing necessary to specifically reflect the recovery of the net costs and/or net lost revenues specifically attributable to any RPS Modification, which shall consist of the following: (i) recovery of, and return on, any capital investment (aa) made over a cost recovery period starting after the RPS Modification is made effective following a PUC RPS Order through the end of the Initial Term and (bb) based on a proposed capital structure that is commercially reasonable for such an investment and the return on investment is at market rates for such an investment or similar investment); (ii) recovery of reasonably expected net additional operating and maintenance costs; and (iii) an adjustment in pricing necessary to compensate Seller for reasonably expected reductions, if any, in the delivery

of electric energy to Company under this Agreement, which shall consist of (aa) an increase in payments necessary to compensate Seller for expected reduced electric energy payments under this Agreement; and (bb) to the extent applicable, an increase in payments necessary to compensate Seller for reasonably expected reductions in receipt of production tax credits (pursuant to Section 45 of the Internal Revenue Code) calculated on an after-tax basis.

"RTE Performance Metric": Shall have the meaning set forth in Attachment W (BESS Tests) to this Agreement.

"SCADA" or "Supervisory Control And Data Acquisition" The Company system that provides remote control and monitoring of Company's transmission and sub-transmission systems and enables Company to perform real-time control of equipment in the field and to monitor the conditions and status of the Company System.

"Scheduled Maintenance": Time periods during which scheduled maintenance actions affecting the WTG in question are performed at the Facility.

"Second Benchmark Period": The period commencing on the first Day of the calendar month following the month during which an OEPR Evaluator issues the Initial OEPR and ending with the expiration of the fifth (5th) Contract Year. For avoidance of doubt, the effect of the foregoing definition is that the Second Benchmark Period will follow immediately upon the expiration of the First Benchmark Period.

"Second NEP Benchmark": For each calendar month during the Second Benchmark Period, the estimate of Net Energy Potential to be used during such calendar month to calculate the Lump Sum Payment pursuant to Section 3.ii.a of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement. For avoidance of doubt, the Second NEP Benchmark may vary during the Second Benchmark Period as and to the extent provided in said Section 3.ii.a.

"Second NUG Contract": Shall have the meaning set forth in Section 1(e) (Revisions to Costs) of Attachment G (Company-Owned Interconnection Facilities) to this Agreement.

"Second OEPR": Shall have the meaning set forth in Section 4(g) (Review of the First OEPR Evaluator Report) of this Attachment U

(Calculation and Adjustment of Net Energy Potential) to this Agreement.

"Second OEPR Evaluator": Shall have the meaning set forth in Section 4(g) (Review of the First OEPR Evaluator Report) of this Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

"Section 5": Shall have the meaning set forth in Section 5(f) of Attachment A (Description of Generation, Conversion and Storage Facility) to this Agreement.

"Security Funds": Shall have the meaning set forth in Section 14.6 (Security Funds).

"Seller": Shall have the meaning set forth in the preamble to this Agreement.

"Seller-Attributable Non-Generation": Time periods during which the WTG in question (or the Facility as a whole) is not dispatched or is derated or shutdown (or the Facility is disconnected) because of any of the following:

- (i) The Facility's failure to comply with any of the Performance Standards, Good Engineering and Operating Practices, Governmental Approvals, applicable Laws or Seller's other obligations under this Agreement;
- (ii) Seller-Attributable System Conditions;
- (iii) Conditions at or on either side of the Point of Interconnection arising from the acts or omissions of Seller or any of its affiliates, employees, agents, contractors, vendors, materialmen, independent contractors or suppliers of Seller, acting in such capacity for the benefit of Seller ("Seller Representatives"), unless such acts or omissions are themselves excused by reasons of Force Majeure pursuant to Article 21 (Force Majeure) of this Agreement;
- (iv) A disconnection initiated by the Company pursuant to Article 9 (Personnel and System Safety) of this Agreement) that is caused by Seller or any Seller
;

- (v) The Company has reasonably decided that it is inadvisable for such WTG (or the Facility as a whole) to continue normal operations without a further Control System Acceptance Test as provided in Section 7(a) (Testing Requirements) of Attachment B (Facility Owned by Seller);
- (vi) The Facility is deemed to be in Seller-Attributable Non-Generation status under any of the following Sections of Attachment B (Facility Owned by Seller): Section 1(b)(iii)(H)(i); Section 1(g)(vi), Section 1(j) (Demonstration of Facility) or Section 4(e); and
- (vii) The Facility is shutdown at the direction of Company as provided in Section 6.4 (Shutdown For Lack of Reliable Real Time Data), and such shutdown is caused by Seller or any Seller Representatives.

Each time period of Seller-Attributable Non-Generation shall constitute an Outage or Deration, as applicable.

"Seller-Attributable System Conditions": Conditions on the Company System:

- (i) that result from either (aa) the Facility's generation and delivery of electric power to the Company System or (bb) any condition arising from the acts or omissions of Seller or any Seller Representative, unless such acts or omissions are themselves excused by reasons of Force Majeure pursuant to Article 21 (Force Majeure) of this Agreement; and
- (ii) caused by or attributable to the Facility or Seller or any Seller Representatives that Company reasonably determines to either (xx) be inconsistent with Good Engineering and Operating Practices on the Company System or (yy) jeopardize the safety, reliability or stability of the Company System.

For avoidance of doubt, the Company's inability to dispatch the Facility due to the existence of Excess Energy Conditions on the Company System shall not constitute Seller-Attributable System Conditions.

"Seller-Owned Interconnection Facilities": The Interconnection Facilities constructed and owned by Seller.

"Seller Affiliate": Shall have the meaning set forth in Section 6(b)(ii)(A) (Establishment of Monetary Escrow) of Attachment B (Facility Owned by Seller) to this Agreement.

"Seller's RPS Modifications Proposal": Shall have the meaning set forth in Section 3.4(a) (Renewable Portfolio Standards).

"Site": The parcel of real property on which the Facility will be constructed and located, together with any Land Rights reasonably necessary for the construction, ownership, operation and maintenance of the Facility. The Site is identified in Attachment A (Description of Generation, Conversion and Storage Facility) to this Agreement.

"Source Code": Shall mean the human readable source code of the Required Models which: (i) will be narrated documentation related to the compilation, linking, packaging and platform requirements and any other materials or software sufficient to enable a reasonably skilled programmer to build, modify and use the code within a commercially reasonable period of time for the purposes of a Source Code Authorized Use; and (ii) can reasonably be compiled by a computer for execution.

"Source Code Authorized Use": Shall have the meaning set forth in Section 6(b)(i)(E) (Authorized Use) of Attachment B (Facility Owned by Seller) of this Agreement.

"Source Code Escrow": Shall mean the escrow established with the Source Code Escrow Agent under the terms of the Source Code Escrow Agreement under which Source Code shall be confidentially deposited by a Source Code Owner for safekeeping and, upon the satisfaction of certain conditions, release to the Company.

"Source Code Escrow Agent": Shall mean Iron Mountain Intellectual Property Management, Inc. or such other similar escrow agent approved by Company.

"Source Code Escrow Agreement": Shall mean a multi-party escrow agreement between Company, Source Code Escrow Agent and any and all Source Code Owners depositing Source Code into the Source Code Escrow which, among other matters, names Company as beneficiary thereunder, and is otherwise acceptable in form and substance to Company.

"Source Code Owner": Shall mean the developer and/or owner of the Required Models utilizing Source Code authorized to deposit the Source Code with the Source Code Escrow Agent upon the terms of the Source Code Escrow Agreement.

"SOX 404": Shall have the meaning set forth in Section 24.1 (Financial Compliance).

"Standards": Shall have the meaning set forth in Section 2(c) (Plans) of Attachment G (Company-Owned Interconnection Facilities) to this Agreement.

"Standby Letter of Credit": Shall have the meaning set forth in Section 6(a) (Standby Letter of Credit) of Attachment G (Company-Owned Interconnection Facilities) to this Agreement.

"State of Charge": Energy in the BESS stated as a percentage of BESS Contract Capacity.

"Study": Shall have the meaning set forth in Section 4(e) of Attachment B (Facility Owned by Seller) to this Agreement.

"Submission Notice": Shall have the meaning set forth in Section 4(a) (Appointment of Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

"Subsequent NEP OEPR Estimate": For each Subsequent OEPR, the NEP OEPR Estimate derived from such Subsequent OEPR.

"Subsequent OEPR": Any OEPR prepared pursuant to Section 3 (Subsequent OEPRs) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

"Subsequent Owner": Shall have the meaning set forth in Section 19.4 (Financing Document Requirements).

"Telemetry and Control": The interface between Company's EMS and the physical equipment at the Facility.

"Term": Shall mean, collectively, the Initial Term and the Extended Term (if any).

"Termination Damages": Liquidated damages calculated in accordance with Article 16 (Damages in the Event of Termination by Company) of this Agreement.

"Termination Deadline": The 30th Day following the date the completed IRS is provided to Seller, or such later date as Company and Seller may agree to by a written agreement.

"Third OEPR": Shall have the meaning set forth in Section 4(h) (Review of the Second OEPR Evaluator Report) of this Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

"Third OEPR Evaluator": Shall have the meaning set forth in Section 4(h) (Review of the Second OEPR Evaluator Report) of this Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

"Third Party": Any person or entity other than Company or Seller, and includes, but is not limited to, any subsidiary or affiliate of Seller.

"Tier 1 Bandwidth": The Tier 1 bandwidth set forth in Section 2.6(b) (GPI Metric and Liquidated Damages) of this Agreement.

"Tier 2 Bandwidth": The Tier 2 bandwidth set forth in Section 2.6(b) (GPI Metric and Liquidated Damages) of this Agreement.

"Total Actual Interconnection Cost": Actual costs for the Interconnection Facilities, to be designed, engineered and constructed by Company, as provided in Attachment G (Company-Owned Interconnection Facilities) to this Agreement.

"Total Actual Relocation Cost": Shall have the meaning set forth in Section 5(b) of Attachment G (Company-Owned Interconnection Facilities) to this Agreement.

"Total Estimated Interconnection Cost": Estimated costs for the Interconnection Facilities, to be designed, engineered and constructed by Company, as provided in Attachment G (Company-Owned Interconnection Facilities) to this Agreement.

"Total Estimated Relocation Cost": Shall have the meaning set forth in Section 5(a) of Attachment G (Company-Owned Interconnection Facilities) to this Agreement.

"Total Interconnection Cost": Shall have the meaning set forth in Section 3(a)(i) of Attachment G (Company-Owned Interconnection Facilities) to this Agreement.

"Transfer Date": The date, prior to the Commercial Operations Date, upon which Seller transfers to Company all right, title and interest in and to Company-Owned Interconnection Facilities to the extent, if any, that such facilities were constructed by Seller and/or its contractors.

"Unfavorable PUC Order": Shall have the meaning set forth in Section 29.20(e) (Unfavorable PUC Order).

"Unit Price": \$ [REDACTED] per [REDACTED] MWh of Net Energy Potential annually.
[TO BE CALCULATED FROM RESPONSE TO RFP.]

"WTG": Each wind turbine generating system and its internal components and subsystems, as installed at the Facility.

ATTACHMENT A
DESCRIPTION OF GENERATION, CONVERSION AND STORAGE FACILITY

1. Name of Facility: _____
- (a) Location: _____ (TMK No. _____)
- (b) Telephone number (for system emergencies):
_____ - _____
- (c) E-mail Address: _____
- (d) Contact Information for notices pursuant to Section 29.3 (Notices) of the Agreement:
Mailing Address: _____
Address for Delivery by Hand or Overnight Delivery:

E-Mail Address: _____

2. Owner (If different from Seller): _____

If Seller is not the owner, Seller shall provide Company with a certified copy of a certificate warranting that the owner is a corporation, partnership or limited liability company in good standing with the Hawai'i Department of Commerce and Consumer Affairs which shall be attached hereto as Exhibit A-1 (Good Standing Certificates).

3. Operator: _____

4. Name of person to whom payments are to be made:

- (a) Mailing address: _____
- (b) Hawai'i Gross Excise Tax License number: _____

5. Equipment:

- (a) Type of facility and conversion equipment:

[For example: Small power production facility designated as a Qualifying Facility that produces electric energy using _____.]

(b) Design and capacity

Total Facility Capacity ("Contract Capacity"):
_____kW

Total Number of Generators:
**[number and size of each generator. e.g. one (1)
Brand X, 200 kW; one (1) Brand Y, 300
kW]**

Description of Equipment:
**[For example: Describe the type of energy
conversion equipment, capacity, and any
special features.]**

Individual unit: **[if more than one generator, list
information for each generator]**

	kW	kVAR Consumed	kVAR Produced
<u>Full load</u>			
<u>Startup</u>			

Generator:

Type _____

Rated Power _____ kW

Voltage _____ V, _____ phase

Frequency _____ HZ

Class of Protection _____

Number of Poles _____

Rated Speed _____ rpm

Rated Current _____ A

Rated Power Factor See Exhibit B-2

Batteries _____

Total Number of Energy Storage Units:

Portion of Facility To Provide Fast Frequency
Response:

**[DRAFTING NOTE: This section only applies if
Facility provides fast frequency response.]**

Capacity: _____ MW
Storage: _____ MWH

Other Description(s):

- (c) Single or 3 phase: _ phase
- (d) Name of manufacturer:
- (e) Description of Facility SCADA and control system(s)
- (f) The "Allowed Capacity" of this Agreement shall be the lower of (i) Contract Capacity or (ii) the net nameplate capacity (net for export) of the Facility installed by the Commercial Operations Date.
- (g) Seller may propose revisions to this Section 5 (Equipment) of Attachment A (Description of Generation, Conversion and Storage Facility) ("Section 5") for Company's approval prior to commencement of construction, provided, however, that (i) no such revision to this Section 5 shall change the type of Facility or conversion equipment deployed at the Facility from a wind energy conversion facility; (ii) Seller shall be in compliance with all other terms and conditions of this Agreement; and (iii) such revision(s) shall not change the characteristics of the Facility equipment or the specifications used in the IRS. Any revision to this Section 5 complying with items (i) through (iii) above shall be subject to Company's prior approval, which approval shall not be unreasonably withheld. If Seller's proposed revision(s) to this Section 5 otherwise satisfies items (i) and (ii) above but not item (iii) such that Company, in its reasonable discretion, determines that a re-study or revision to all or any part of the IRS is required to accommodate Seller's proposed revision(s), Company may, in its sole and absolute discretion, conditionally approve such revision(s) subject to a satisfactory re-study

or revision to the IRS and Seller's payment and continued obligation to be liable and responsible for all costs and expenses of re-studying or revising such portions of the IRS and for modifying and paying for all costs and expenses of modification to the Facility, the Company-Owned Interconnection Facilities based on the results of the re-studies or revisions to the IRS. Any changes made to this Attachment A (Description of Generation, Conversion and Storage Facility) or the Agreement as a result of this Section 5(f) of Attachment A (Description of Generation, Conversion and Storage Facility) shall be reflected in a written amendment to the Agreement.

Seller understands and acknowledges that Company's review and approval of Seller's proposed revisions to this Section 5 and any necessary re-studies or revisions to the IRS shall be subject to Company's then-existing time and personnel constraints. Company agrees to use commercially reasonable efforts, under such time and personnel constraints, to complete any necessary reviews, approvals and/or re-studies or revisions to the IRS.

Any delay in completing, or failure by Seller to meet, any subsequent Seller milestones under Article 13 (Guaranteed Project Milestones Including Commercial Operations) as a result of any revision pursuant to this Section 5 by Seller (whether requiring a re-study or revision to the IRS or not) shall be borne entirely by Seller and Company shall not be responsible or liable for any delay or failure to meet any such milestones by Seller.

6. Insurance carrier(s): **[SELLER TO PROVIDE INFORMATION]**
7. If Seller is not the operator, Seller shall provide a copy of the agreement between Seller and the operator which requires the operator to operate the Facility and which establishes the scope of operations by the operator and the respective rights of Seller and the operator with respect to the sale of electric energy from Facility no later than the Commercial Operations Date. In addition, Seller shall provide a certified copy of a certificate warranting that the operator is a corporation, partnership or limited liability company in good standing with the Hawai'i Department of Commerce and

Consumer Affairs no later than the Commercial Operations Date.

8. Seller shall provide a certified copy of a certificate warranting that Seller is a corporation, partnership or limited liability company in good standing with the Hawai'i Department of Commerce and Consumer Affairs which shall be attached hereto as Exhibit A-1 (Good Standing Certificates).
9. Seller, owner and operator shall provide Company a certificate and/or description of their ownership structures which shall be attached hereto as Exhibit A-2 (Ownership Structure).
10. In the event of a change in ownership or identity of Seller, owner or operator, such entity shall provide within 30 Days thereof, a certified copy of a new certificate and a revised ownership structure.

EXHIBIT A-1
GOOD STANDING CERTIFICATES

EXHIBIT A-2
OWNERSHIP STRUCTURE

**[ATTACHMENT B WILL BE REVISED TO REFLECT
THE RESULTS OF IRS]**

ATTACHMENT B
FACILITY OWNED BY SELLER

1. The Facility.

(a) Drawings, Diagrams, Lists, Settings and As-Builts.

- (i) Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip Scheme. A preliminary single-line drawing (including notes), Interface Block Diagram, relay list, relay settings, and trip scheme of the Facility shall, after Seller has obtained prior written consent from Company, be attached to this Agreement on the Execution Date as Attachment E (Single-Line Drawing and Interface Block Diagram) and Attachment F (Relay List and Trip Scheme). A final single-line drawing (including notes), Interface Block Diagram, relay list and trip scheme of the Facility shall, after having obtained prior written consent from Company, be labeled "Final" Single-Line Drawing, the "Final" Interface Block Diagram and "Final" Relay List and Trip Scheme and shall supersede Attachment E (Single-Line Drawing and Interface Block Diagram) and Attachment F (Relay List and Trip Scheme) to this Agreement and shall be made a part hereof on the Commercial Operations Date. After the Commercial Operations Date, no changes shall be made to the "Final" Single-Line Drawing, the "Final" Interface Block Diagram and the "Final" Relay List and Trip Scheme without the prior written consent of Seller and Company. The single-line drawing shall expressly identify the Point of Interconnection of Facility to Company System.
- (ii) As-Builts. Seller shall provide final as-built drawings of the Seller-Owned Interconnection Facilities within 30 Days of the successful completion of the Acceptance Test.
- (iii) No Material Changes. Seller agrees that no material changes or additions to the Facility as reflected in the "Final" Single-Line Drawing (including notes), the "Final" Interface Block

Diagram and the "Final" Relay List and Trip Scheme, shall be made without Seller first having obtained prior written consent from Company. The foregoing are subject to changes and additions as part of any Performance Standards Modifications. If Company directs any changes in or additions to the Facility, records and operating procedures that are not part of any Performance Standards Modifications, Company shall specify such changes or additions to Seller in writing, and, except in the case of an emergency, Seller shall have the opportunity to review and comment upon any such changes or additions in advance.

(b) Certain Specifications for the Facility.

(i) Seller shall furnish, install, operate and maintain the Facility including breakers, relays, switches, synchronizing equipment, monitoring equipment and control and protective devices approved by Company as suitable for parallel operation of the Facility with Company System. The Facility shall be accessible at all times to authorized Company personnel.

(ii) The Facility shall include:

[LIST OF THE FACILITY

Examples may include, but not limited to:

- **Seller-Owned Interconnection Facilities**
- **Substation**
- **Control and monitoring facilities**
- **Transformers**
- **Generators and BESS equipment (as described in Attachment A)**
- **"lockable" cabinets or housings suitable for the installation of the Company-Owned Interconnection Facilities located on the Site**
- **relays and other protective devices**
- **leased telephone line and/or equipment to facilitate microwave communication]**

(iii) The Facility shall comply with the following
**[includes excerpts of language that may be requested
by Company]:**

- A. Seller shall install a _____ kV gang operated, load breaking, lockable disconnect switch and all other items for its switching station (relaying, control power transformers, high voltage circuit breaker). Bus connection shall be made to a manually and automatically (via protective relays) operated high-voltage circuit breaker. The high-voltage circuit breaker shall be fitted with bushing style current transformers for metering and relaying. Downstream of the high-voltage circuit breaker, a structure shall be provided for metering transformers. From the high-voltage circuit breaker, another bus connection shall be made to another pole mounted disconnect switch, with surge protection.
- B. Seller shall provide within the Seller-Owned Interconnection Facilities a separate, fenced area with separate access for Company. Seller shall provide all conduits, structures and accessories necessary for Company to install the Revenue Metering Package. Seller shall also provide within such area, space for Company to install its communications, supervisory control and data acquisition ("SCADA") equipment remote terminal unit or equivalent and certain relaying if necessary for the interconnection. Seller shall also provide AC and DC source lines as specified later by Company. Seller shall provide a telephone line for Company-owned meters. Seller shall work with Company to determine an acceptable location and size of the fenced-in area. Seller shall provide an acceptable demarcation cabinet on its side of the fence where Seller and Company wiring will connect/interface.
- C. Seller shall ensure that the Seller-Owned Interconnection Facilities have a lockable cabinet for switching station relaying equipment. Seller shall select and install

relaying equipment acceptable to Company. At a minimum the relaying equipment will provide over and under frequency (81) negative phase sequence (46), under voltage (27), over voltage (59), ground over voltage (59G), over current functions (50/51) and direct transfer trip. Seller shall install protective relays that operate a lockout relay, which in turn will trip the main circuit breaker.

- D. Seller shall configure the relay protection system to provide overpower protection to enable Facility to comply with the Allowed Capacity limitation.
- E. Seller's equipment also shall provide at a minimum:
 - (i) Interface with Company's Telemetry and Control, or designated communications and control interface, to provide telemetry of electrical quantities such as total Facility net MW, MVar, power factor, voltages, currents, and other quantities as identified by the Company;
 - (ii) Interface with Company's Telemetry and Control, or designated communications and control interface, to provide status for circuit breakers, reactive devices, switches, and other equipment as identified by the Company;
 - (iii) Interface with Company's Telemetry and Control, or designated communications and control interface, to provide control to incrementally raise and lower the voltage target at the point of regulation operating in automatic voltage regulation control. If Company's Telemetry and Control, or designated communications and control interface, is unavailable, due to loss of communication link, Telemetry and Control failure, or other event resulting in loss of the remote control by Company, provision must be made for Seller to be able to institute via local controls,

within 30 minutes (or such other period as Company accepts in writing) of the verbal directive by the Company System Operator, such change in voltage regulation target as directed by the Company System Operator;

(iv) Interface with Company's Telemetry and Control, or designated communications and control interface, to provide active power control to limit or set level of (when storage is not depleted) net real power import or export from the Facility and to remove the limit or change level (when storage is not depleted) of net real power import or export of the Facility.

(v) For Variable Energy Facilities:
Interface with Company's Telemetry and Control, or designated communications and control interface, to provide telemetry of WTG availability and meteorological and production data required under Section 8 (Data and Forecasting) of this Attachment B (Facility Owned by Seller) and the Facility's Power Possible.

F. If Seller adds, deletes and/or changes any of its equipment, or changes its design in a manner that would change the characteristics of the equipment and specifications used in the IRS, Seller shall be required to obtain Company's prior written approval. If an analysis to revise parts of the IRS is required, Seller shall be responsible for the cost of revising those parts of the IRS, and modifying and paying for the cost of the modifications to the Facility and/or the Company-Owned Interconnection Facilities based on the revisions to the IRS.

G. Critical Infrastructure Protection.

(i) Documentation. Seller shall submit documentation describing the approach, methodology and design to provide physical and cyber security with its submittal of

the design drawings pursuant to Section 1(c) (Design Drawings, Bill of Materials, Relay Settings and Fuse Selection) of Attachment B (Facility Owned by Seller) which shall be at least sixty (60) Days prior to the Acceptance Test.

- The design shall meet industry standards and best practices, as indicated by NERC CIP guidelines and requirements for critical generation facilities. The system shall be designed with the criteria to meet applicable industry standards and guidelines (at the time of this writing, NERC CIP, or any future standard adopted by the industry in its place) compliance requirements and identify areas that are not consistent with NERC CIP guidelines and requirements.
- The cyber-security documentation shall include a block diagram of the control system with all external connections clearly described.
- Seller shall provide such additional information as Company may reasonably request as part of a security posture assessment.
- Company shall be notified in advance when there is any condition that would compromise physical or cyber security, or if any breaches in security, or security incidents are detected.

(ii) Malware. Seller shall (consistent with the following sentence) ensure that no malware or similar items are coded or introduced into any aspect of the Facility, Interconnection Facilities, the Company Systems interfacing with the

Facility and Interconnection Facilities, and any of Seller's critical control systems or processes used by Seller to provide energy, including the information, data and other materials delivered by or on behalf of Seller to Company, (collectively, the "Environment"). Seller will continue to review, analyze and implement improvements to and upgrades of its Malware prevention and correction programs and processes that are commercially reasonable and consistent with the then current technology industry's standards and, in any case, not less robust than the programs and processes implemented by Seller with respect to its own information systems. If Malware is found to have been introduced into the Environment, Seller will promptly notify Company and Seller shall take immediate action to eliminate and remediate the effects of the Malware, at Seller's expense. Seller shall not modify or otherwise take corrective action with respect to the Company Systems except at Company's request. Seller will promptly report to Company the nature and status of all Malware elimination and remediation efforts.

- (iii) Security Breach. In the event that Seller discovers or is notified of a breach, potential breach of security, or security incident at Seller's Facility or of Seller's systems, Seller shall immediately (i) notify Company of such potential, suspected or actual security breach, whether or not such breach has compromised any of Company's confidential information, (ii) investigate and promptly remediate the effects of the breach, whether or not the breach was caused by Seller, (iii) cooperate with Company with respect to any such breach or unauthorized access or use; (iv) comply with all applicable privacy and data protection laws governing Company's or any other individual's or entity's data;

and (v) to the extent such breach was caused by Seller, provide Company with reasonable assurances satisfactory to Company that such breach, potential breach, or security incident shall not recur. Seller shall provide documentation to Company evidencing the length and impact of the breach. Any remediation of any such breach will be at Seller's sole expense.

(iv) Monitoring and Audit. Seller shall provide information on available audit logs and reports relating to cyber and physical and security. Company may audit Seller's records to ensure Seller's compliance with the terms of this Section 1(b)(iii)G (Critical Infrastructure Protection) of this Attachment B (Facility Owned by Seller), provided that Company has provided reasonable notice to Seller and any such records of Seller will be treated by Company as confidential.

H. Because a reliable Power Possible value under Section 1(b)(iii)(E)(v) of this Attachment B (Facility Owned by Seller) is necessary throughout the Term in order for Company to effectively optimize the benefits of its right of Company Dispatch, Seller's available power production considering equipment and resource availability ("Power Possible") will be determined at any given time using the best-available data and methods for an accurate representation of the amount of active power at the point of interconnection. To the extent available, the Parties shall use Seller's real time Power Possible communicated to Company through the SCADA system except to the extent that the potential energy does not accurately reflect the actual available active power at the point of interconnection (plus or minus 0.1 MW). During those periods of time when the SCADA derived Power Possible is unavailable, or does not accurately represent the available power production considering equipment and resource availability, the Parties shall use the best available data obtained through

commercially reasonable methods to determine the Power Possible.

- (i) If, at any time during the Term, there is a material discrepancy or pattern of discrepancies in the accuracy of Power Possible, the Parties shall review the method for determining Power Possible and develop modifications with the objective of avoiding future discrepancies. If the Parties are unable to resolve the issue, then (aa) the Parties shall promptly commission a study to be performed by one of the engineering firms then included on the Qualified Independent Third-Party Consultants List attached to the Agreement as Attachment D (Consultants List) to evaluate the cause of the Power Possible discrepancy and to make recommendations with the objective of avoiding future Power Possible discrepancies ("Study"); and (bb) if the Company decides that its ability to effectively optimize the benefits of its right of Company Dispatch to dispatch the Facility's Net Energy Potential is materially impaired by the lack of an accurate method to determine Power Possible, the Company shall have the right to derate the Facility and the Facility shall be deemed to be in Seller-Attributable Non-Generation status until the Study has been completed and the Study's recommendations have been implemented by Seller to Company's reasonable satisfaction. Seller shall pay for the cost of the Study. The Study shall be completed within ninety (90) days from the date the Study is commissioned, unless otherwise reasonably agreed to in writing by Seller and Company. The Consultant shall send the Study to Company and Seller. Seller (and/or its Third-Party consultants and contractors), at Seller's expense, shall take such action as the Study shall recommend (e.g., modifications to the model, modifications and/or additions to the data inputs used

in the model, modifications to the procedures for maintaining and/or recalibrating the Monitoring and Communication Equipment used to provide data inputs, replacement of such Monitoring and Communication Equipment, modifications of procedures for Facility operations) with the objective of avoiding future Power Possible discrepancies. Such recommendations shall be implemented by Seller to Company's reasonable satisfaction no later than forty-five (45) Days from the Day the completed Study is issued by the consultant, or such other longer commercially reasonable timeframe otherwise agreed to in writing by Company.

- I. Seller shall reserve space within the Site for possible future installation of Company-owned meteorological equipment (such as wind speed, direction and relative humidity monitors, and SODAR) and AC and DC source lines for such equipment. In the event Company decides to install such meteorological equipment: (i) Seller shall work with Company to determine an acceptable location for such equipment and any associated wiring, interface or other components; and (ii) Company shall pay for the needed equipment, and installation of such equipment, unless otherwise agreed to by the Parties. Company and Seller shall use commercially reasonable efforts to facilitate installation and minimize interference with the operation of the Facility.
- J. The Facility shall, at a minimum, satisfy the wind load and seismic load requirements of the International Building Code and any more stringent requirements imposed under applicable Laws.

- (c) Design Drawings, Bill of Materials, Relay Settings and Fuse Selection. Seller shall provide to Company for its review the design drawings, Bill of Material, relay settings and fuse selection for the Facility and Company shall have the right, but not the obligation, to specify the type of electrical equipment, the interconnection

wiring, the type of protective relaying equipment, including, but not limited to, the control circuits connected to it and the disconnecting devices, and the settings that affect the reliability and safety of operation of Company's and Seller's interconnected system. Seller shall provide the relay settings and protection coordination study, including fuse selection and AC/DC Schematic Trip Scheme (part of design drawings), for the Facility to Company during the 60% design. Company, at its option, may, with reasonable frequency, witness Seller's operation of control, synchronizing, and protection schemes and shall have the right to periodically re-specify the settings. Seller shall utilize relay settings prescribed by Company, which may be changed over time as Company System requirements change.

- (d) Disconnect Device. Seller shall provide a manually operated disconnect device which provides a visible break to separate Facility from Company System. Such disconnect device shall be lockable in the OPEN position and be readily accessible to Company personnel at all times.

- (e) Other Equipment. Seller shall install, own and maintain the infrastructure associated with the Revenue Metering Package, including but not limited to all enclosures (meter cabinets, meter pedestals, meter sockets, pull boxes, and junction boxes, along with their grounding/bonding connections), CT/PT mounting structures, conduits and ductlines, enclosure support structures, ground buses, pads, test switches, terminal blocks, isolation relays, telephone surge suppressors, and analog phone lines (one per meter), subject to Company's review and approval. **[COMPANY TO REVISE THIS SECTION 1(E) PRIOR TO EXECUTION FOR SPECIFICS OF THE PROJECT.]**

- (f) Maintenance Plan. Seller shall maintain Seller-Owned Interconnection Facilities in accordance with the following maintenance plan:

Transmission line: _____

___ kV Facility switching station:

Relay protection equipment: _____

Other equipment as identified: _____

Seller shall furnish to Company a copy of records documenting such maintenance, within thirty (30) Days of completion of such maintenance work.

(g) Active Power Control Interface.

- (i) Seller shall provide and maintain in good working order all equipment, computers and software associated with the control system (the "Active Power Control Interface") necessary to interface the Facility active power controls with the Company System Operations Control Center for real power control of the Facility by the Company System Operator. The Active Power Control Interface will be used to control the net real power import or export from the Facility as required under this Attachment B (Facility Owned by Seller). The implementation of the Active Power Control Interface will allow Company System Operator to control the net real power import or export from the entire Facility remotely from the Company System Operations Control Center through control signals from the Company System Operations Control Center.
- (ii) Company shall review and provide prior written approval of the design for the Active Power Control Interface to ensure compatibility with Company's SCADA and EMS systems. In order to ensure such continued compatibility, Seller shall not materially change the approved design without Company's prior review and prior written approval.
- (iii) The Active Power Control Interface shall include, but not be limited to, a demarcation cabinet, ancillary equipment and software necessary for Seller to connect to Company's Telemetry and Control, located in Company's portion of the Facility switching station which shall provide the control signals to the Facility and send feedback status to the Company System Operations Control Center. The control type shall be analog output (set point) controls.

- (iv) The Active Power Control Interface shall also include provision for feedback points from the Facility indicating when the Company System Operator active power controls are in effect and the analog value of the controls received from the Company. The Facility shall provide the feedback to the Company SCADA system within 2 seconds of receiving the respective control signal from the Company.
- (v) Seller shall provide an analog input to the Telemetry and Control for the MW output of the individual generating units, and an analog signal for the total MW output at the Point of Interconnection.
- (vi) The Active Power Control Interface shall provide for remote control of the net real power input or output of the Facility by the Company at all times. If the Active Power Control Interface is unavailable or disabled, the Facility shall not import or export net real power from or to Company, and the Facility shall be deemed to be in Seller-Attributable Non-Generation status, unless the Company, in its sole discretion, agrees to supply or accept net real power and Seller and Company agree on an alternate means of dispatch. Notwithstanding the foregoing, if Seller fails to provide such remote control features (whether temporarily or throughout the Term) and fails to discontinue importing or exporting electric energy to Company as required by this Section 1(g)(vi), then, notwithstanding any other provision of this Attachment B (Facility Owned by Seller), Company shall have the right to derate or disconnect the entire Facility during those periods that such control features are not provided and the Facility shall be deemed to be in Seller-Attributable Non-Generation status for such periods.
- If all local and remote active power controls become unavailable or fail, the Facility shall immediately disconnect from the Company's System.

- If the direct transfer trip is unavailable due to loss of communication link, Telemetry and Control failure, or other event resulting in the loss of the remote control by the Company, provision must be made for the Seller to shutdown Facility and open and lockout the main circuit breaker.
- (vii) The rate at which the Facility changes net real power import or export shall not exceed the ramp rate specified in Section 3(c) (Ramp Rate) of Attachment B (Facility Owned by Seller). The Facility's Active Power Control Interface will control the rate at which electric energy is changed to achieve the active power limit. The Facility will respond to the active power control request immediately. **[THESE REQUIREMENTS MAY BE CHANGED BY COMPANY FOLLOWING COMPLETION OF THE IRS]**
- (viii) The Active Power Control Interface shall accept the following active power control(s) from the Company SCADA and EMS systems:
- Maximum Power Import and Export Limits: The Facility is not allowed to exceed these settings under any circumstances. The frequency response control specified in Section 3(m) (Frequency Response) of Attachment B (Facility Owned by Seller) is not allowed to increase the Facility's net real power import or export above the Import and Export limits, respectively.
 - Power Reference Set Point: The Facility is to import or export active power at this level to the extent allowed by the solar resource and energy storage and is not allowed to exceed this setting when system frequency is within the deadband determined in Section 3(m)(iii) of Attachment B (Facility Owned by Seller). When system frequency exceeds the deadband determined in Section 3(m)(iii) of Attachment B (Facility Owned by Seller), the Facility's net real power import or export is allowed to exceed this setting

or be further reduced below this setting when commanded by the frequency response control specified in Section 3(m) of Attachment B (Facility Owned by Seller).

- WTG Enable/Disable Control: The Facility shall include WTG Enable/Disable control. When Disable is selected, the Facility shall ramp down, shutdown, and leave offline its WTGs. When Enable is selected, the Facility WTGs can start up, ramp up, and remain in normal operations.
- (ix) Seller shall not override Company's active power controls without first obtaining specific approval to do so from the Company System Operator.
- (x) The requirements of the Active Power Control Interface may be modified as mutually agreed upon in writing by the Parties.
- (h) Control System Acceptance Test Procedures.
- (i) Conditions Precedent. The following conditions precedent must be satisfied prior to conducting the Control System Acceptance Test:
- Successful Completion of the Acceptance Test.
 - Facility has been successfully energized.
 - All of the Facility's generators have been fully synchronized.
 - The control system computer has been programmed for normal operations.
 - All equipment that is relied upon for normal operations (including ancillary devices such as capacitors/inductors, energy storage device, statcom, etc.) shall have been commissioned and be operating within normal parameters.
- (ii) Facility Generators. Unless all of the Facility's generators are available for the duration of the Control System Acceptance Test, the Control System Acceptance Test will have to be re-run from the beginning unless Seller demonstrates to the satisfaction of the Company

that the test results attained with less than all of the Facility's generators are consistent with the results that would have been attained if all of the Facility's generators had been available for the duration of the test.

- (iii) Procedures. The Control System Acceptance Test will be conducted on Business Days during normal working hours on a mutually agreed upon schedule. No Control System Acceptance Test will be scheduled during the final 21 Days of a calendar year. No later than thirty (30) Days prior to conducting the Control System Acceptance Test, Company and Seller shall agree on a written protocol setting out the detailed procedure and criteria for passing the Control System Acceptance Test. Attachment O (Control System Acceptance Test Criteria) provides general criteria to be included in the written protocol for the Control System Acceptance Test. Within fifteen (15) Business Days of completion of the Control System Acceptance Test, Company shall notify Seller in writing whether the Control System Acceptance Test(s) has been passed and, if so, the date upon which such Control System Acceptance Test(s) was passed. If any changes have been made to the technical specifications of the Facility or the design of the Facility in accordance with Section 5(f) of Attachment A (Description of Generation, Conversion and Storage Facility), such changes shall be reflected in an amendment to this Agreement, and the written protocol for the Control Systems Acceptance Test shall be based on the Facility as modified. Such amendment shall be executed prior to conducting the Control System Acceptance Test and Company shall have no obligation for any delay in performing the Control Systems Acceptance Test due to the need to complete and execute such amendment.
- (i) Facility Security and Maintenance. Seller is responsible for securing the Facility. Seller shall have personnel available to respond to all calls related to security incidents and shall take commercially reasonable efforts to prevent any security incidents. Seller is also responsible for maintaining the Facility,

including vegetation management, to prevent security breaches. Seller shall comply with all commercially reasonable requests of Company to update security and/or maintenance if required to prevent security breaches.

- (j) Demonstration of Facility. Company shall have the right at any time, other than during maintenance or other special conditions, including Force Majeure, communicated by Seller, to notify Seller in writing of Seller's failure, as observed by Company and set forth in such written notice, to meet the operational and performance requirements specified in Section 2.12 (Fast Frequency Response Performance Metric) of this Agreement, and Section 1(g) (Active Power Control Interface) and Section 3 (Performance Standards) of this Attachment B (Facility Owned by Seller), and to require documentation or testing to verify compliance with such requirements. Upon receipt of such notice, Seller shall promptly investigate the matter, implement corrective action and provide to Company, within thirty (30) Days of such notice or such longer time period agreed to in writing by Company, a written report of both the results of such investigation and the corrective action taken by Seller. If the Seller's report does not resolve the issues to Company's reasonable satisfaction, the Parties shall promptly commission a study to be performed by one of the engineering firms then included on the Qualified Independent Third-Party Consultants List attached to the Agreement as Attachment D (Consultants List) to evaluate the cause of the non-compliance and to make recommendations to remedy such non-compliance. Seller shall pay for the cost of the study. The study shall be completed within ninety (90) days, unless the selected consultant determines that such study cannot reasonably be completed within ninety (90) days, in which case, such longer commercially reasonable period of time as it takes the consultant to complete the study. The consultant shall send the study to Company and Seller. Seller (and/or its Third-Party consultants and contractors), at Seller's expense, shall take such action as the study shall recommend with the objective of resolving the non-compliance. Such recommendations shall be implemented by Seller to Company's reasonable satisfaction no later than forty-five (45) Days from the Day the completed study is issued by the consultant unless the consultant determines that such recommendation cannot reasonably be implemented within

forty-five (45) days, in which case, such longer commercially reasonable period of time to implement such recommendation as determined by the consultant. Failure to implement such recommendations within this period shall constitute a material breach of this Agreement. Unless the aforementioned written report and study are being completed, and any recommendations are being implemented, solely to address Seller's failure to satisfy the requirements of Section 3(o) (Round Trip Efficiency) of this Attachment B (Facility Owned by Seller), the Company shall have the right to derate the Facility and the Facility shall be deemed to be in Seller-Attributable Non-Generation status until the Seller's aforementioned written report has been completed, any subsequent study commissioned by the Parties has been completed and any recommendations to resolve the non-compliance have been implemented to Company's reasonable satisfaction.

2. Operating Procedures. [NOTE: NUMERICAL SPECIFICATIONS IN THIS SECTION 2 MAY VARY DEPENDING ON THE SPECIFIC PROJECT AND THE RESULTS OF THE PROJECT SPECIFIC INTERCONNECTION REQUIREMENT STUDY.]

- (a) Reviews of the Facility. Company may require periodic reviews of the Facility, maintenance records, available operating procedures and policies, and relay settings, and Seller shall implement changes Company deems necessary for parallel operation or to protect the Company System from damages resulting from the parallel operation of the Facility with the Company System.
- (b) Separation. Seller must separate from Company System whenever requested to do so by the Company System Operator pursuant to Article 8 (Company Dispatch) and Article 9 (Personnel and System Safety) of the Agreement.
- (c) Seller Logs. Logs shall be kept by Seller for information on unit availability including reasons for planned and forced outages; circuit breaker trip operations, relay operations, including target initiation and other unusual events. Company shall have the right to review these logs, especially in analyzing system disturbances. Seller shall maintain

such records for a period of not less than six (6) years.

- (d) Reclosing. Under no circumstances shall Seller, when separated from the Company System for any reason, reclose into the Company System without first obtaining specific approval to do so from the Company System Operator.
- (e) Reserved.
- (f) Reserved.
- (g) Critical Infrastructure Protection. Seller shall comply with the critical infrastructure protection requirements set forth in Section 1(b)(iii)G of this Attachment B (Facility Owned by Seller).
- (h) Allowed Operations. Facility shall be allowed to import or export net real power to the Company System only when the [_____] circuit is in normal operating configuration served by breaker [_____] at [_____] Substation. **[TO BE DETERMINED BY COMPANY BASED ON THE RESULTS AND REQUIREMENTS OF THE IRS]**

3. Performance Standards.

- (a) Reactive Power Control. Seller shall control its reactive power by automatic voltage regulation control. Seller shall automatically regulate voltage at a point, the point of regulation, between the Seller's generator terminal and the Point of Interconnection to be specified by Company, to within 0.5% of a voltage specified by the Company System Operator to the extent allowed by the Facility reactive power capabilities as defined in Section 3(b)(Reactive Amount) of this Attachment B (Facility Owned by Seller). **[FOR FACILITIES CONNECTED TO THE DISTRIBUTION SYSTEM, THESE REQUIREMENTS MAY BE CHANGED BY COMPANY UPON COMPLETION OF THE IRS.]**
- (b) Reactive Amount. **[THESE REQUIREMENTS MAY BE CHANGED BY COMPANY UPON COMPLETION OF THE IRS.]**
 - (i) Seller shall install sufficient equipment so that each _____ kVA generator **inverter** and each kVA energy storage unit online at the Facility will have the ability to deliver or receive, at its terminal, reactive power as illustrated in the

[generator capability and energy storage unit]
curve[s] attached to this Agreement as Exhibit B-2
(Generator and Energy Storage Capability Curve(s)).
**[NOTE: THE IRS WILL DETERMINE IF ANY ADDITIONAL
REACTIVE POWER RESOURCES WILL BE REQUIRED.]**

- (ii) The Facility shall contain equipment able to continuously and actively control the output of reactive power under automatic voltage regulation control reacting to system voltage fluctuations. The automatic voltage regulation response speed at the point of regulation shall be such that at least 90% of the initial voltage correction needed to reach the voltage control target will be achieved within 1 second following a step change.
- (iii) If the Facility does not operate in accordance with Section 3(b)(i) of this Attachment B (Facility Owned by Seller), Company may disconnect all or a part of Facility from Company System until Seller corrects its operation (such as by installing capacitors at Seller's expense).
- (c) Ramp Rates.
- (i) Seller shall ensure that the ramp rate of the Facility is less than the following limits for all conditions including start up, normal operations, Seller adjusting the Facility Actual Output, changes in the wind resource, and shut down for the following periods as calculated in accordance with Attachment C (Methods and Formulas For Measuring Performance Standards).
- Maximum Ramp Rate Upward of [__] MW/minute for all periods. **[TO BE DETERMINED FOLLOWING IRS.]**
 - Maximum Ramp Rate Downward of 2 MW/minute for all periods other than periods for which such maximum is not operationally possible because of rapid loss of solar resource and the depletion of energy storage.
- (ii) Upon receiving a command from the Company active power control(s) described in Section 1(g)(viii) of this Attachment B (Facility Owned by Seller), Seller shall adjust the Facility's net real power

import or export at a ramp rate, as calculated in accordance with Attachment C (Methods and Formulas for Measuring Performance Standards), to be specified by the Company to the extent allowed by the wind resource and energy storage without exceeding such ramp rate and without intentional delay. Such ramp rate shall be in the range of [REDACTED] MW/min to [REDACTED] MW/min.

(iii) The Facility is allowed to exceed the maximum ramp rate limits in Section 3(c) (Ramp Rates) of this Attachment B (Facility Owned by Seller) when Facility net real power import or export is changed by the frequency response control described in Section 3(m) (Frequency Response) of this Attachment B (Facility Owned by Seller).

(d) Ride-Through Requirements.

In meeting the voltage and frequency ride-through requirements in this Attachment B Sections 3(e), 3(f), 3(i), and 3(j), the Facility shall not enter momentary cessation of operations within the voltage and frequency zones and time periods where the Facility must remain connected to the Company System. **[THIS PROVISION MAY BE ADJUSTED BY COMPANY UPON COMPLETION OF THE IRS IF MOMENTARY CESSATION IS NEEDED TO PREVENT EQUIPMENT DAMAGE DUE TO A POWER EQUIPMENT LIMITATION. DOCUMENTATION FROM THE EQUIPMENT MANUFACTURER OF SUCH LIMITATION SHALL BE PROVIDED TO COMPANY IN WRITING FOR THE OWNER'S RFP SUBMITTAL AND THE CONDUCT OF THE IRS.]**

(e) Undervoltage Ride-Through.

The Facility, as a whole, will meet the following undervoltage ride-through requirements during low voltage affecting one or more of the three voltage phases ("V" is the voltage of any three voltage phases at the Point of Interconnection). **[THESE VALUES MAY BE CHANGED BY COMPANY UPON COMPLETION OF THE IRS. WITHOUT LIMITATION, FOR A DISTRIBUTION-CONNECTED FACILITY, UPON COMPLETION OF THE IRS THE COMPANY MAY SPECIFY REQUIREMENTS FOR A MANDATORY DISCONNECTION FROM THE COMPANY SYSTEM.]**:

0.88 pu \leq V \leq 1.00 pu The Facility remains connected to the Company System.

- | | |
|----------------------------|--|
| 0.70 pu \leq V < 0.88 pu | The Facility may initiate disconnection from the Company System if the voltage remains in this range for more than 20 seconds. |
| 0.50 pu \leq V < 0.70 pu | The Facility may initiate disconnection from the Company System if the voltage remains in this range for more than 10 seconds. |
| 0.00 pu \leq V < 0.50 pu | The Facility may disconnection from the Company System if voltage remains in this range for more than 600 milliseconds. |

Seller shall have sufficient capacity to fulfill the above mentioned requirements to ride-through the following sequences or combinations thereof **[THE ACTUAL CLEARING TIMES WILL BE DETERMINED BY COMPANY IN CONNECTION WITH THE IRS]:**

- Normally cleared 138 kV transmission faults cleared after 5 cycles with one reclose attempt, cleared in 5 cycles, 30 cycles after the initial fault was cleared. The voltage at the Point of Interconnection will recover above the 0.80 p.u. level for the 30 cycles between the initial clearing time and the reclosing time.
- Normally cleared 46kV subtransmission faults cleared in 7 cycles with one reclose attempt, cleared in 7 cycles, 23 cycles after the initial fault was cleared. The voltage at the Point of Interconnection will recover above the 0.80 p.u. level for the 23 cycles between the initial clearing time and the reclosing time.

(f) Over Voltage Ride-Through.

The overvoltage protection equipment at the Facility shall be set so that the Facility will meet the following overvoltage ride-through requirements during high voltage affecting one or more of the three voltage

phases (as described below) ("V" is the voltage of any of the three voltage phases at the Point of Interconnection). [THESE VALUES MAY BE CHANGED BY THE COMPANY UPON COMPLETION OF THE IRS. WITHOUT LIMITATION, FOR A DISTRIBUTION-CONNECTED FACILITY, UPON COMPLETION OF THE IRS THE COMPANY MAY SPECIFY REQUIREMENTS FOR A MANDATORY DISCONNECTION FROM THE COMPANY SYSTEM AT $V > 1.2$ pu. RIDE-THROUGH REQUIREMENTS FOR OTHER SYSTEMS WILL BE DETERMINED IN THE IRS.]:

$1.00 \text{ pu} < V \leq 1.10 \text{ pu}$ The Facility remains connected to the Company System.

$1.10 \text{ pu} < V \leq 1.20 \text{ pu}$ The Facility may initiate disconnection from the Company System if voltage remains in this range for more 0.92 seconds.

$V > 1.2 \text{ pu}$ The Facility may initiate disconnection from the Company System immediately.

(g) [RESERVED].

(h) [RESERVED].

(i) Underfrequency ride-through.

The Facility shall meet the following underfrequency ride-through requirements during an underfrequency disturbance ("f" is the Company System frequency at the Point of Interconnection):

$57.0 \text{ Hz} \leq f \leq 60.0 \text{ Hz}$ The Facility remains connected to the Company System.

$56.0 \text{ Hz} \leq f \leq 57.0 \text{ Hz}$ The Facility may initiate disconnection from the Company System if frequency remains in this range for more than 20 seconds.

$f < 56.0 \text{ Hz}$ The Facility may initiate disconnection from the Company System immediately.

(j) Overfrequency ride-through.

The Facility will behave as specified below for overfrequency conditions ("f" is the Company System frequency at the Point of Interconnection):

60.0 Hz \leq f \leq 63.0 Hz The Facility remains connected to the Company System.

63.0 Hz \leq f \leq 64.0 Hz The Facility shall initiate disconnection from the Company System if frequency remains in this range for more than 20 seconds.

f > 64.0 Hz The Facility shall initiate disconnection from the Company System immediately.

(k) Voltage Flicker.

Any voltage flicker on the Company System caused by the Facility shall not exceed the limits stated in IEEE Standard 1453-2011, or latest version "Recommended Practice - Adoption of IEC 61000-4-15:2010, Electromagnetic compatibility (EMC) - Testing and measurement techniques - Flickermeter - Functional and design specifications".

(l) Harmonics.

Harmonic distortion at the Point of Interconnection caused by the Facility shall not exceed the limits stated in IEEE Standard 519-1992, or latest version "Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems". Seller shall be responsible for the installation of any necessary controls or hardware to limit the voltage and current harmonics generated from the Facility to defined levels.

(m) Frequency Response.

Seller Facility shall provide a primary frequency response with a frequency droop characteristic reacting to system frequency fluctuations at the Point of Interconnection in both the overfrequency and underfrequency directions except to the extent such

response is not operationally possible because of the level of available solar resource and depletion of energy storage.

- (i) The Facility frequency response control shall adjust, without intentional delay and without regard to the ramp rate limits in Section 3(c) (Ramp Rates) of this Attachment B (Facility Owned by Seller), the Facility's net real power import or export when system frequency is not 60 Hz based on frequency deadband and frequency droop settings specified by the Company.
 - (ii) The Facility frequency response control shall be allowed to increase the net real power import or export above the Power Reference Set Point set under Section 1(g)(viii) of this Attachment B (Facility Owned by Seller) or further decrease the net real power import or export from the Power Reference Set Point in its operations.
 - (iii) The frequency deadband shall be settable in the range from +/-0.01 Hz to +/- 0.10 Hz and the frequency droop shall be settable in the range of 0.1% to 10%.
 - (iv) The Facility frequency response control shall be in continuous operation when the Facility is online and connected to the Company unless directed otherwise by the Company.
- (n) Grid Forming.

Facility inverters shall be capable of operating in grid forming mode supporting system operation under normal and emergency conditions without relying on the characteristics of synchronous machines. This includes operation as a current independent ac voltage source during normal and transient conditions (as long as no limits are reached within the inverter), and the ability to synchronize to other voltage sources or operate autonomously if a grid reference is unavailable.

- (i) Seller shall operate the Facility in grid forming mode only as directed by the System Operator, in its sole discretion.

(ii) The Facility shall include safeguards to prevent the unintentional switching of the Facility into and out of grid forming mode. The safeguards shall be approved in writing by the Company and implemented by the Seller in the Facility prior to conducting the CSAT.

(o) Round Trip Efficiency.

The round trip efficiency of the BESS as measured at the POI shall be not less than [] percent ([]%).

[ND: The percentage for round trip efficiency should be

(p) Fast Frequency Response.

[DRAFTING NOTE: This section only applies if Facility provides fast frequency response.]

The Facility shall provide a fast frequency response to rapidly inject or absorb energy in the event of a sudden and rapid system frequency disturbance.

(i) The Facility fast frequency response control shall adjust, without intentional delay and without regard to the ramp rate limits in Section 3(c) (Ramp Rates) of this Attachment B (Facility Owned by Seller), the Facility's net real power import or export based on the rate of change of frequency setting(s) and deadband specified by the Company.

(ii) The Facility output as adjusted by the Facility fast frequency response control shall be proportional to or discrete but dynamically sized to the severity of the disturbance.

(iii) The Facility output as adjusted by the Facility fast frequency response control shall reach the control's full commanded response as measured at the POI in 200 milliseconds or less from the initiation of the disturbance.

(iv) The Facility fast frequency response control shall be allowed to increase the net real power import or export above the Power Reference Set Point under

Section 1(g)(viii) of this Attachment B (Facility Owned by Seller) or further decrease the net real power import or export from the Power Reference Set Point in its operations. The fast frequency response control is not allowed to control the Facility net real power import or export to exceed the Maximum Power Import and Export Limits under Section 1(g)(viii) of this Attachment B (Facility Owned by Seller).

- (v) The rate of change of frequency is proportional to the per unit generation-load mismatch and inversely proportional to the system inertial time constant. The Facility shall be capable of receiving a periodically updated signal from the Company EMS to assist in scaling the Facility fast frequency response. If the EMS signal becomes unavailable, the Facility shall be capable using a local look up table as a substitute.
- (vi) The Facility fast frequency response control shall be in continuous operation when the Facility is online and connected to the Company System unless directed otherwise by the Company.
- (vii) The Facility fast frequency response design shall be approved in writing by the Company and implemented by the Seller in the Facility prior to conducting the CSAT.

4. Maintenance of Seller-Owned Interconnection Facilities.

- (a) Seller must address any Disconnection Event (as defined below) according to the requirements of this Section 4 (Maintenance of Seller-Owned Interconnection Facilities) of Attachment B (Facility Owned by Seller). For this purpose, a Disconnection Event is a disconnection from Company System of at least ___ MW **[TO BE DETERMINED BY COMPANY FOLLOWING THE IRS]** from the Facility over a "rolling 120-second period", (i) that is not the result of Company dispatch, frequency droop response, or isolation of the Facility resulting from designed protection fault clearing, and (ii) for which Company

does not issue for such disconnection the written notice for failure to meet operational and performance requirements as set forth in Section 1(j) (Demonstration of Facility) of this Attachment B (Facility Owned by Seller). A "rolling 120-second period" means a period that is comprised of 120 seconds and such rolling period will change as each new one (1) second elapses. With the elapse of each new one (1) second, the newest one (1) second would be added to the 120-second period, and the oldest one (1) second would no longer be included in the rolling 120-second period. Company's election to exercise its rights under Section 1(j) (Demonstration of Facility) shall not relieve Seller of its obligation to comply with the requirements of this Section 4 (Maintenance of Seller-Owned Interconnection Facilities) for any future Disconnection Event during the pendency of such election or thereafter.

- (b) For every Disconnection Event, Seller shall investigate the cause. Within three (3) Business Days of the Disconnection Event, Seller shall provide, in writing to Company, an incident report that summarizes the sequence of events and probable cause.
- (c) Within forty-five (45) Days of a Disconnection Event, Seller shall provide, in writing to Company, Seller's findings, data relied upon for such findings, and proposed actions to prevent reoccurrence of a Disconnection Event ("Proposed Actions"). Company may assist Seller in determining the causes of and recommendations to remedy or prevent a Disconnection Event ("Company's Recommendations"). Seller shall implement such Proposed Actions (as modified to incorporate the Company's Recommendations, if any) and Company's Recommendations (if any) in accordance with the time period agreed to by the Parties.
- (d) In the event Seller and Company disagree as to (i) whether a Disconnection Event occurred, (ii) the sequence of events and/or probable cause of the Disconnection Event, (iii) the Proposed Actions, (iv) Company's Recommendations, and/or (v) the time period to implement the Proposed Actions and/or Company's Recommendations, then the Parties shall follow the procedure set forth in Section 5 (Expedited Dispute Resolution) of this Attachment B (Facility Owned by Seller).

- (e) Upon the fourth (4th) Disconnection Event (and each subsequent Disconnection Event) within any Contract Year, the Parties shall follow the procedures set forth in Section 4(a) and Section 4(d) of Attachment B (Facility Owned by Seller), to the extent applicable. If after following the procedures set forth in this Section 4 (Maintenance of Seller-Owned Interconnection Facilities) of Attachment B (Facility Owned by Seller), Seller and Company continue to have a disagreement as to (1) the probable cause of the Disconnection Event, (2) the Proposed Actions, (3) the Company's Recommendations, and/or (4) the time period to implement the Proposed Actions and/or the Company's Recommendations, then the Parties shall commission a study to be performed by a qualified independent Third-Party consultant ("Qualified Consultant") chosen from the Qualified Independent Third-Party Consultants List ("Consultants List") attached to the Agreement as Attachment D (Consultants List). Such study shall review the design of, review the operating and maintenance procedures dealing with, recommend modifications to, and determine the type of maintenance that should be performed on Seller-Owned Interconnection Facilities ("Study"). Seller and Company shall each pay for one-half of the total cost of the Study. The Study shall be completed within ninety (90) Days from such fourth Disconnection Event (and each subsequent Disconnection Event) within any Contract Year, unless otherwise reasonably agreed to in writing by Seller and Company. The Qualified Consultant shall send the Study to Company and Seller. Seller (and/or its Third-Party consultants and contractors), at Seller's expense, shall change the design of, change the operating and maintenance procedures dealing with, implement modifications to, and/or perform the maintenance on Seller-Owned Interconnection Facilities recommended by the Study. Such design changes, operating and maintenance procedure changes, modifications, and/or maintenance shall be completed no later than forty-five (45) Days from the Day the completed Study is issued by the Qualified Consultant, unless otherwise agreed to in writing by Company, such agreement not to be unreasonably withheld. Company shall have the right to derate the Facility to a level that maintains reliable operations in accordance with Good Engineering and Operating Practices, and the Facility shall be deemed to be in Seller-Attributable Non-Generation status, until the study has been

completed and the study's recommendations have been implemented by Seller to Company's reasonable satisfaction. Nothing in this provision shall affect Company's right to dispatch the Facility as provided for in this Agreement.

- (f) The Consultants List attached hereto as Attachment D (Consultants List) contains the names of engineering firms which both Parties agree are fully qualified to perform the Study. At any time, except when a Study is being conducted, either Party may remove a particular consultant from the Consultants List by giving written notice of such removal to the other Party. However, neither Party may remove a name or names from the Consultants List without approval of the other Party if such removal would leave the list without any names. Intended deletions shall be effective upon receipt of notice by the other Party, provided that such deletions do not leave the Consultants List without any names. Proposed additions to the Consultants List shall automatically become effective thirty (30) Days after notice is received by the other Party unless written objection is made by such other Party within said thirty (30) Day period. By mutual agreement between the Parties, a new name or names may be added to the Consultants List at any time.

5. Expedited Dispute Resolution.

If there is a disagreement between Company and Seller regarding (i) whether a Disconnection Event occurred, (ii) the sequence of events and/or probable cause of the Disconnection Event, (iii) the Proposed Actions, (iv) the Company's Recommendations, and (v) the time period to implement the Proposed Actions and/or the Company's Recommendations, then authorized representatives from Company and Seller, having full authority to settle the disagreement, shall meet in Hawai'i (or by telephone conference) and attempt in good faith to settle the disagreement. Unless otherwise agreed in writing by the Parties, the Parties shall devote no more than five (5) Business Days to settle the disagreement in good faith. In the event the Parties are unable to settle the disagreement after the expiration of the time period, then such disagreement shall constitute a Dispute for which either Party may pursue the dispute resolution procedure set forth in Section 28.2 (Dispute Resolution Procedures, Mediation) of this Agreement.

6. Modeling.

- (a) Seller's Obligation to Provide Models. Within 30 Days of Company's written request, but no later than the Commercial Operations Date, Seller shall provide detailed data regarding the design and location of the Facility, in a form reasonably satisfactory to Company, to allow the modeling of the WTGs and any other equipment within the Facility identified in the IRS which utilizes Source Code (such as energy storage system, STATCOM or DVAR equipment), including, but not limited to, integrated and validated power flow and transient stability models (such as PSS/E models), a short circuit model (such as an ASPEN model), and an electro-magnetic transient model (such as a PSCAD model) of the WTGs and any additional equipment identified in the IRS as set forth above, applied assumptions, and pertinent data sets (each a "Required Model" and collectively, the "Required Models"). Thereafter, during the Term, Seller shall provide working updates of any Required Model within 30 Days of (i) Company's written request, or (ii) Seller obtaining knowledge or notice that any Required Model has been modified, updated or superseded by the Source Code Owner.
- (b) Escrow Establishment. If, pursuant to Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller), the Required Models are provided to the Company in a form other than Source Code, Seller shall arrange for and ensure that the Source Code for the relevant Required Model is deposited into the Source Code Escrow as set forth below in Section 6(b)(i) (Source Code Escrow) of this Attachment B (Facility Owned by Seller) no later than the time periods set forth in Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller) for delivery of the Required Models. Seller shall be responsible for all costs associated with establishing and maintaining the Source Code Escrow. If, however, Seller is unable to deposit the required Source Code into the Source Code Escrow within the time periods set forth in Section 6(a) (Seller's Obligation to Provide Models), Seller shall, no later than such time periods, instead establish a monetary escrow as set forth below in Section 6(b)(ii)

(Monetary Escrow) of this Attachment B (Facility Owned by Seller).

(i) Source Code Escrow.

(A) Establishment of Source Code Escrow. If the Required Models are not provided to the Company in the form of Source Code pursuant to Section 6(a) of this Attachment B (Facility Owned by Seller), Seller shall: (a) arrange for and ensure the deposit of a copy of the current version of the Source Code and relevant documentation for all Required Models with the Source Code Escrow Agent under the terms and conditions of the Source Code Escrow Agreement, and (b) arrange for and ensure the update of the deposited Source Code and relevant documentation for Major Releases and Minor Releases of the Required Models as soon as reasonably possible after they are made generally available.

(B) Release Conditions. Company shall have the right to obtain from the Source Code Escrow Agent one copy of the escrowed Source Code for the Required Models, under the following conditions upon Company's request:

(i) A receiver, trustee, or similar officer is appointed, pursuant to federal, state or applicable foreign law, for the Source Code Owner;

(ii) Any voluntary or involuntary petition or proceeding is instituted, under (x) U.S. bankruptcy laws or (y) any other bankruptcy, insolvency or similar proceeding outside of the United States, by or against the Source Code Owner; or

(iii) Failure of the Source Code Owner to function as a going concern or operate in the ordinary course; or

(iv) Seller and the Source Code Owner fail to provide to Company the Required Models or updated Required Models, or, alternatively, fail to issue a Source Code LC, within the time periods set forth in Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller), Company gives written notice of such failure to Seller and the Source Code Owner, and Seller and Source Code Owner fail to remedy such breach within five (5) Days following receipt of such notice.

(C) Remedies. If Company has the right to obtain from the Source Code Escrow Agent one copy of the escrowed Source Code for the Required Models pursuant to Section 6(b)(i)(B) (Release Conditions) of Attachment B (Facility Owned by Seller), and Company finds that Seller failed to arrange for and ensure the update the Source Code Escrow with the modified and/or updated Source Code and relevant documentation for Major Releases and Minor Releases of the Required Models as provided in Section 6(b)(i) (Establishment of Source Code Escrow) of Attachment B (Facility Owned by Seller) or that the Source Code for the Required Models is incomplete or otherwise unusable, Seller shall be liable to Company for liquidated damages in the amount of \$500 per Day for each Day Seller fails to provide such Source Code to Company or such update to the Source Code to Company from the date such Major Release or Minor Release was first made available by the Source Code Owner to customers of the Source Code Owner. Failure to provide the updated Source Code of the Required Models within 30 Days' notice from Company of a breach of Section 6(b)(i)(A) (Establishment of Source Code Escrow) of Attachment B (Facility Owned by Seller); provided, that Seller has also failed to provide a satisfactory Source Code LC as set forth in Section 6(b)(ii) (Source Code Security) of this Attachment B (Facility Owned by Seller) shall constitute an Event of Default pursuant to Section 15.2(f) under the Agreement.

(D) Certification. The Source Code Escrow Agent shall release the Source Code of the Required Models to Company upon receipt of a signed statement by a representative of Company that reads substantially as follows:

The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of Hawaiian Electric Company, Inc. ("Hawaiian Electric"), and (ii) Hawaiian Electric is entitled to a copy of the Source Code of the Required Models Pursuant to Section 6(b)(i)(B) (Release Conditions) of Attachment B (Facility Owned by Seller) of the Power Purchase Agreement dated as of _____, between _____, and Hawaiian Electric.

(E) Authorized Use. If Company becomes entitled to a release of the Source Code of the Required

Models from escrow, Company may thereafter correct, modify, update and enhance the Required Models for the sole purpose of providing itself the support and maintenance it otherwise would have been entitled to if it had been provided the Required Models by Seller under Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned By Seller) (the "Source Code Authorized Use").

(F) Confidentiality Obligations. Company shall keep the Source Code of the Required Models confidential pursuant to the confidentiality obligations of the Source Code Escrow Agreement. Company shall restrict access to the Source Code of the Required Models to those employees, independent contractors and consultants of Company who have agreed in writing to be bound by confidentiality and use obligations consistent with those specified in the Escrow Agreement, and who have a need to access the Source Code of the Required Models on behalf of Company to carry out their duties for the Authorized Use. Promptly upon Seller's request, Company shall provide Seller with the names and contact information of all individuals who have accessed the Source Code of the Required Models, and shall take all reasonable actions required to recover any such Source Code in the event of loss or misappropriation, or to otherwise prevent their unauthorized disclosure or use.

(ii) Source Code Security.

(A) Establishment of Source Code Security. If the Required Models and their relevant Source Code are not provided to the Company in the form of Source Code pursuant to Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller) and if the Seller is unable to arrange for and ensure the deposit of the Source Code into the Source Code Escrow established for the benefit of the Company pursuant to Section 6(b)(i) (Source Code Escrow) of this Attachment B (Facility Owned by Seller) then, no later than the time periods set forth in Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller) for delivery of the Required Models and Source Code, Seller shall provide an irrevocable standby letter of credit (the "Source Code LC") with no documentation requirement in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) per Required Model (and its relevant Source Code) substantially in the form attached to this Agreement as Attachment M (Form of Letter of Credit) from a bank chartered in the United States with a

credit rating of "A-" or better from Standard & Poor's or A3 or better from Moody's. Such letter of credit shall be issued for a minimum term of one (1) year. Furthermore, at the end of each year the security shall be renewed for an additional one (1) year term so that at the time of such renewal, the remaining term of any such security shall not be less than one (1) year. The letter of credit shall include a provision for at least thirty (30) Days' advance notice to Company of any expiration or earlier termination of the letter of credit so as to allow Company sufficient time to exercise its rights under said security if Seller fails to extend or replace the security. In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the letter of credit shall be borne by Seller.

(B) Release Conditions. Company shall have the right to draw on the letter of credit the funds necessary to develop and recreate the Required Model or Required Models upon Company's request if Seller fails to provide the Company the Required Models or updated Required Models within the time periods set forth in Section 6(a) (Seller's Obligation to Provide Models) or Section 6(b)(i)(C) (Remedies) of this Attachment B (Facility Owned by Seller), Company gives written notice of such failure to Seller, and Seller fails to remedy such breach within five (5) Days following receipt of such notice (for a breach under Section 6(a) (Seller's Obligation to Provide Models), or within thirty (30) Days following receipt of such notice (for a breach under Section 6(b)(i)(C) (Remedies)).

(C) Extend Letter of Credit. If the letter of credit is not renewed or extended no later than thirty (30) Days prior to its expiration or earlier termination, Company shall have the right to draw immediately upon the full amount of the letter of credit and to place the proceeds of such draw (the "Proceeds"), at Seller's cost, in an escrow account in accordance with Section 6(b)(ii)(D) (Proceeds Escrow), until and unless Seller provides a substitute form of letter of credit meeting the requirements of this Section 6(b)(ii) (Source Code Security) of this Attachment B (Facility Owned by Seller).

(D) Proceeds Escrow. If Company draws on the letter of credit pursuant to Section 6(b)(ii)(C) (Extend Letter of Credit) of this Attachment B (Facility Owned by Seller), Company shall, in order to avoid comingling the

Proceeds, have the right but not the obligation to place the Proceeds in an escrow account as provided in this Section 6(b)(ii)(D) (Proceeds Escrow) of this Attachment B (Facility Owned by Seller) with a reputable escrow agent acceptable to Company ("Proceeds Escrow Agent") subject to an escrow agreement acceptable to Company (the "Proceeds Escrow Agreement"). Without limitation to the generality of the foregoing, a federally-insured bank shall be deemed to be a "reputable escrow agent." Company shall have the right to apply the Proceeds as necessary to recover amounts Company is owed pursuant to this Section 6 (Modeling) of this Attachment B (Facility Owned by Seller). To that end, the Proceeds Escrow Agreement governing such escrow account shall give Company the sole authority to draw from the account. Seller shall not be a party to such Proceeds Escrow Agreement and shall have no rights to the Proceeds. Upon full satisfaction of Seller's obligations under Section 6 (Modeling) of this Attachment B (Facility Owned by Seller), Company shall instruct the Proceeds Escrow Agent to remit to the bank that issued the letter of credit that was the source of the Proceeds the remaining balance (if any) of the Proceeds. If there is more than one escrow account with Proceeds, Company may, in its sole discretion, draw on such accounts in any sequence Company may select. Any failure to draw upon the Proceeds for any damages or other amounts due Company shall not prejudice Company's rights to recover such damages or amounts in any other manner.

(E) Seller's Obligation. If the letter of credit is not sufficient to cover Company's associated consultant fees, costs and expenses to develop and recreate the Required Models, Seller shall pay to Company the difference within ten (10) Days of Company's written notice to Seller.

(F) Model Verification. Seller shall work with the Company to validate the new Required Models developed by or on behalf of Company within sixty (60) Days of receiving such new Required Models. Seller shall also arrange for and ensure that Company may obtain new Required Models directly from the Source Code Owner in the event that Seller ceases to operate as a going concern or is subject to voluntary or involuntary bankruptcy and is unable or unwilling to obtain the new Required Models from the Source Code Owner.

(G) Certification. The terms of the letter of credit shall provide for a release of the funds, or in the event the funds have been placed into a Proceeds Escrow, the Escrow Agent shall release the necessary funds to Company upon receipt of a signed statement by a representative of Company that reads substantially as follows:

The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of Hawaiian Electric Company, Inc. ("Hawaiian Electric"), and (ii) Hawaiian Electric is entitled to \$_____, pursuant to Section 6(b)(ii)(B) (Release Conditions) of Attachment B (Facility Owned by Seller) of the Power Purchase Agreement dated as of _____, between _____, and Hawaiian Electric.

(H) Authorized Use. If Company becomes entitled to a draw of funds from the Source Code Security or a release of funds from the Proceeds Escrow, Company may thereafter use such funds to develop, recreate, correct, modify, update and enhance the Required Models for the sole purpose of providing itself the support and maintenance it otherwise would have been entitled to if it had been provided the Required Models by Seller under Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller).

(iii) Supplementary Agreement. The parties stipulate and agree that the escrow provisions in this Section 6(b) (Escrow Establishment) of Attachment B (Facility Owned by Seller) and the Source Code Escrow Agreement and Proceeds Escrow Agreement are "supplementary agreements" as contemplated in Section 365(n)(1)(B) of the Code. In any voluntary or involuntary bankruptcy proceeding involving Seller, failure by Company to assert its rights to "retain its rights" to the intellectual property encompassed by the Source Code or the funds in the Proceeds Escrow, pursuant to Section 365(n)(1)(B) of the Code, under an executory contract rejected in a bankruptcy proceeding, shall not be construed as an election to terminate the contract by Company under Section 365(n)(1)(A) of the Code.

7. Testing Requirements.

- (a) Testing Requirements. Once the Control System Acceptance Test has been successfully passed, Seller shall not replace and/or change the configuration of the Facility Control, WTG control settings and/or ancillary device controls, without prior written notice to Company. In the event of any such replacement and/or change, the relevant test(s) of the Control System Acceptance Test shall be redone and must be successfully passed before the replacement or altered equipment is allowed to be placed in normal operations. In the event that Company reasonably determines that such replacement and/or change of controls makes it inadvisable for the Facility to continue in normal operations without a further Control Systems Acceptance Test, the Facility shall be deemed to be in Seller-Attributable Non-Generation status until the new relevant tests of the Control System Acceptance Test have been successfully passed.
- (b) Periodic Testing. Seller shall coordinate periodic testing of the Facility with Company to ensure that the Facility is meeting the performance standards specified under this Agreement.

8. Data and Forecasting.

Seller shall provide Site, meteorological and production data in accordance with the terms of Article 6 (Forecasting) of this Agreement and the following requirements:

- (i) Physical Site Data: Seller shall provide Company with an accurate description of the physical Site, including but not limited to the following, which may not be changed during the Term without Company's prior written consent:
- A. Location Facility Map showing the layout of the Facility (coverage area or footprint), coordinates (latitude and longitude) and height above ground of each Wind Turbine hub.
 - B. Location (latitude and longitude) of each MMT and elevation (above ground) of each field measurement device for, e.g., air density, ambient air pressure and ambient air temperature, located at each MMT.

C. BESS technology and related auxiliary equipment, location and type.

(ii) Meteorological and Production Data:

- A. For facilities with a Contract Capacity greater than 1 MW, Seller shall install and maintain at least one multi-level MMT on the prevailing, upstream side of the Facility to elevate the field measurement devices for such other meteorological conditions that Company shall from time to time reasonably require (e.g., air density, ambient air temperature and ambient air pressure). At a minimum, such measuring devices shall be placed at approximately "hub height" of the Wind Turbines, typically using a boom extension off the MMT. Typically, additional measuring devices for such other meteorological conditions shall be placed on boom extensions off the MMT at appropriate heights above and below "hub height" as such "appropriate heights" are agreed to between Company and Seller. For facilities with a Contract Capacity of 5 MW and greater, Company may require Seller to install and maintain additional MMTs and additional field measurement devices.
- B. For purposes of calculating the Performance Index, the Seller shall provide (i) the wind speed and Actual WTGs Production at each WTG within the Facility and (ii) the data on the other meteorological conditions (e.g. air density, ambient air pressure and ambient air temperature) at approximately "hub height" at each MMT.
- C. Seller shall provide to Company, via SCADA communication and protocol acceptable to Company to support operations and forecasting needs at a continuous scan, all meteorological and production data required under this Agreement updated every 2 seconds.
- D. For facilities with a Contract Capacity greater than 1 MW, Seller shall arrange for a

dedicated 12 kV line to provide separate service from Company, or for such other independent, backup power source as approved by Company in writing, to temporarily store and record the meteorological data from both the nacelle anemometers at the WTGs and the field measuring devices at the MMTs. Any such backup power source must be capable of providing power for the field measurement devices for a reasonable period of time until primary power is restored. The same backup power source can serve multiple MMTs as needed by the Facility.

(iii) Units and Accuracy:

- A. Units and accuracy of measured parameters to be provided to Company in real time shall be as shown in the Table below. These represent the minimum required accuracies.

Table of Units and Accuracy of Meteorological and Production Data (Wind)

Parameter	Data Source	Unit	Range	Accuracy
Wind speed at nacelle of each WTG	Cup or sonic anemometer	mph	0 to 134 mph	+/-1 mph
Wind direction at nacelle of each WTG	Vane, sonic device or equivalent	Degrees (from True North)	360°	+/-5°
Wind speed at MMT	Cup or sonic anemometer	mph	0 to 134 mph	+/-1 mph
Wind direction at MMT	Vane, sonic device or equivalent	Degrees (from True North)	360°	+/-5°
Ambient air temperature at MMT (hub height)*	Temperature probe	°C	-20 to +50 °C	+/-1 °C

* Plus such other "appropriate heights" as provided in Section 8(ii)(A) of this Attachment B (Facility Owned by Seller).

Ambient air pressure at MMT (hub height)*	Piezoresistive transducer, barometer or equivalent	mbar	150 to 1150 mbar	+/-60 mbar (0 to +50°C)
Power production for each WTG	Measured at WTG	MW	Up to WTGS name plate	+/-0.1 MW
Set point for each WTG	Reported by Seller	MW	0 to WTGS name plate	Not applicable
Power production of Facility	Measured at Facility's analog transducer on Seller's side of POI	MW	Up to Allowed Capacity	The lesser of the tolerances of the telemetry equipment or 2% of measurement
Facility power production ratio	Ratio of Facility's power production (MW)/Allowed Capacity (MW)	%	0 to 100%	+/-0.1%
Power Possible	Seller's Model	MW	0 to Allowed Capacity	+/-4%

(iv) Status of WTGs for Purposes of Calculating Facility Availability:

For each WTG, Seller shall, unless agreed otherwise by Company and Seller in writing, provide to Company, via SCADA communication and protocol acceptable to Company at a continuous scan updated not less frequently than every 2 seconds, a signal as to whether such WTG is available or unavailable.

9. Technology Specific Requirements.

(a) Three-Phase Synchronous Generators.

The generating facility circuit breakers shall be 3-phase devices with electronic or electromechanical control. The Seller shall be responsible for properly synchronizing its generating facility with the Company

System by means of either a manual or automatic synchronizing function. Automatic synchronizing is required for all synchronous generators which have an short circuit current rating ("SCCR") greater than 5%. For a generating facility whose SCCR exceeds 5%, the Facility shall provide protective equipment suitable for detecting loss of synchronism and automatically disconnecting the generating facility from the Company System. Unless otherwise agreed to between the Company and Seller, synchronous generators shall automatically regulate power factor, not voltage, while operating in parallel with the Company System.

(b) Induction Generators.

- (i) Induction generators may be connected and brought up to synchronous speed (as an induction motor) if it can be demonstrated that the initial voltage drop measured at the Point of Interconnection is within the visible flicker limits as defined by IEEE 519-1992 (or latest version). The same requirements also apply to induction generation connected at or near synchronous speed because a similar voltage dip is present due to an inrush magnetizing current. The Facility shall submit number of starts per specific time period and maximum starting kVA draw data for the utility to verify that the voltage dip due to starting is within the visible flicker limits and does not degrade the normal voltage provided by the utility.
- (ii) Induction generators do not require separate synchronizing equipment. Starting or rapid load fluctuations on induction generators can adversely impact the Company System voltage. Corrective step-switched capacitors or other techniques may be necessary if the voltage fluctuations measured at the Point of Interconnection are not within the visible flicker limits as defined by IEEE 519-1992 (or latest version). These measures can, in turn, cause ferroresonance. If these measures (additional capacitors) are installed on Seller's side of the Point of Interconnection, the Company will review these measures and may require Seller to install additional protective relaying equipment. Company will determine whether

additional equipment is required to protect the Company System.

(c) Inverter Systems.

- (i) Direct current generators and non-power (i.e. other than 60 Hertz) alternating current generators can only be installed in parallel with the Company System using a non-islanding synchronous inverter. The design shall comply with the requirements of IEEE Std 1547-2003 (or latest version), except as described in Section 3 (Performance Standards) of this Attachment B (Facility Owned by Seller).
- (ii) Self-commutated inverters of the Company-interactive type shall synchronize to the Company System. Line-commutated, thyristor-based inverters are not recommended and will require additional technical study to determine harmonic and reactive power requirements. All interconnected inverter systems shall comply with the harmonic current limits of IEEE Std 519-1992 (or latest version).

(d) Battery Storage System.

The Battery Energy Storage System ("BESS") operational conditions ("Operational Conditions") shall be as follows: **[NOTE - Revise to be specific to RFP and allowing for grid charging]**

- (i) No more than % of the BESS energy capacity can be charged from the grid prior to the fifth anniversary of the Commercial Operations Date. Thereafter, 100% of the BESS energy capacity can be charged from the grid. All charging from the grid will be at the direction of Company. **[DRAFTING NOTE: 5-YEAR LIMITATION ON GRID CHARGING WILL BE DELETED IF ITC RECAPTURE IS NOT APPLICABLE TO THE BESS.]**
- (iii) For Contract Years that are non-leap years, the BESS shall be discharged no more than BESS Rating x 365 MWh in each Contract Year. For Contract Years that are leap years, the BESS shall be discharged no more than BESS Rating x 366 MWh in each Contract Year.

- (iv) The BESS will not be required to discharge more energy than available relative to the available state of charge.
- (v) The BESS may be called on to provide frequency droop response, frequency regulation response, and frequency regulation (AGC dispatch) under the following conditions:
 - A. Dispatch to the grid is limited to the interconnection limit minus the generation from the WTGs.

EXHIBIT B-1
REQUIRED MODELS

PSS/E

ASPEN

PSCAD

EXHIBIT B-2
GENERATOR AND ENERGY STORAGE CAPABILITY CURVE(S)

**[ATTACHMENT C WILL BE REVISED TO REFLECT
THE RESULTS OF IRS]**

ATTACHMENT C
METHODS AND FORMULAS FOR MEASURING PERFORMANCE STANDARDS

1. Performance Standards as defined below shall be used, in part, to govern actions by Company to limit the Actual Output of the Facility for purposes of maintaining power quality on Company System. Specific standards are defined for:

- Ramp Rate (RR)

2. Formulas for measuring the performance standards are presented below, and assume that the power fluctuations will be monitored on the Company's SCADA and EMS systems. These formulas are based on the periodicity at which analog data is retrieved from Telemetry and Control. This periodicity is called the "scan rate". Company presently uses a two-second analog scan rate. The formulas below are based on the two-second scans. The two-second scan rate, characteristics of transducers and Telemetry and Control reporting, and SCADA method of calculation, were considered and included in the proposed values for the performance standards.

3. Ramp Rate Calculation:

$$RR = MW_s - MW_{s-30}$$

Where:

RR = Ramp Rate, may be calculated once every scan

MW_{s-30} = The instantaneous MW analog value 30 scans (60 seconds) prior the present scan

MW_s = The instantaneous MW analog value for the present scan

4. All changes in output shall be implemented as a ramp rate, and not with one or two step changes within the period. It is not acceptable, for example, for a two MW/minute ramp rate compliance, that all values be zero except for a 2 MW change in the last scan value.

ATTACHMENT D
CONSULTANTS LIST

ATTACHMENT E
SINGLE-LINE DRAWING AND INTERFACE BLOCK DIAGRAM

(To be attached as per Section 1(a) of Attachment B)

ATTACHMENT F
RELAY LIST AND TRIP SCHEME

(To be attached as per Section 1(a) of Attachment B.)

**[ATTACHMENT G SHALL BE REVISED TO REFLECT
THE RESULTS OF IRS]**

ATTACHMENT G
COMPANY-OWNED INTERCONNECTION FACILITIES

1. Description of Company-Owned Interconnection Facilities.

- (a) General. Company shall furnish or construct (or may have Seller furnish or construct, in whole or in part), own, operate and maintain all Interconnection Facilities required to interconnect Company System with Facility at [REDACTED] volts, up to the Point of Interconnection (collectively, the "Company-Owned Interconnection Facilities").
- (b) Site. Where any Company-Owned Interconnection Facilities are to be located on the Site, Seller shall provide, at no expense to Company, a location and access acceptable to Company for all such Company-Owned Interconnection Facilities, as well as an easement, license or right of entry to access such Company-Owned Interconnection Facilities. If power sources (120/240VAC) are required, Seller shall provide such sources, at no expense to Company.
- (c) IRS. An IRS addressing Facility requirements was completed for the Project in accordance with the IRS Letter Agreements, and the results have been incorporated in Attachment B (Facility Owned by Seller) and this Attachment G (Company-Owned Interconnection Facilities) as appropriate.
- (d) Seller's Payment Obligations. Company-Owned Interconnection Facilities, for which Seller has agreed to pay, whether designed, engineered and constructed by Seller or Company, include **[ADD LIST OF COMPANY-OWNED INTERCONNECTION FACILITIES THAT ARE REQUIRED PURSUANT TO THE RESULTS OF THE IRS. THE FOLLOWING IS AN EXAMPLE OF THE TYPES OF FACILITIES THAT COULD BE LISTED]:**
- (i) **[Line extension];**
- (ii) A manually operated, lockable, group operated switch located on a pole prior to the Facility switching station. Company will install a ___ kV drop into Seller-provided deadend structure.

- (iii) Substation additions and/or modifications of Company's existing structures as necessary. This would include but not be limited to protective relaying and setting changes;
 - (iv) Supervisory control and communications equipment (including but not limited to, SCADA/Telemetry and Control, microwave, satellite, dedicated phone line(s) and/or any other acceptable communications means (determined by Company), fiber optics, copper cabling, installation of batteries and charger system, etc.);
 - (v) Revenue Metering Package as provided in Section 10.1 (Meters) of the Agreement;
 - (vi) Any additional Interconnection Facilities needed to be installed as a result of final determination of Facility switching station site, final design of Facility to enable Company to complete the Interconnection Facilities and be compatible with Good Engineering and Operating Practices.
 - (vii) If equipment that is not standard to Company is utilized, Seller shall, at the discretion of Company, provide adequate spares.
- (e) Revisions to Costs. The list of Company-Owned Interconnection Facilities, and engineering and testing costs for Company-Owned Interconnection Facilities, for which Seller agrees to pay in accordance with this Attachment G (Company-Owned Interconnection Facilities), are subject to revision if (i) before approving this Agreement, the PUC approves a power purchase agreement for another non-Company owned electric generating facility ("Second NUG Contract") to supply electric energy to Company using the same line to which Facility is to be connected or (ii) the line to which Facility is to be connected and/or the related transformer(s) need(s) to be upgraded and/or replaced as a result of this Agreement and a Second NUG Contract, and the PUC, in approving this Agreement, determines that Seller should pay for all or part of the cost of such upgrade and/or replacement.
- (f) Review of the Listing and Costs. If the Commercial Operations Date is not achieved by the Guaranteed Commercial Operations Date, as such date may be extended

as provided in Section 13.3 (Guaranteed Project and Reporting Milestone Dates), the listing of the Company-Owned Interconnection Facilities required in this Agreement and the cost-estimates for such Company-Owned Interconnection Facilities are subject to review and revision. Such revision may include, but not be limited to, such items as reconductoring an existing transmission or distribution line, construction of a new line, increase transformer capacity, and alternative relay specifications. In addition, such review and revision may require that the Company re-perform or update the IRS at the Seller's expense.

- (g) Responsibility of Seller and Company. The general responsibilities of Seller and Company for the design, procurement, installation, programming/testing, and maintenance/ownership of equipment at the Facility and the Company-Owned Interconnection Facilities is specified in Matrix G-1 (Substation Responsibilities) and Matrix G-2 (Telecom Responsibilities). **[DRAFTING IRS.]**

2. Construction and Support Services By Seller.

(a) Construction and Support Services By Seller.

(i) Seller (and/or its Third Party consultants or contractors (collectively, "Contractors")) will design, engineer, construct, test and place in service, at Seller's expense:

- A. The items identified in Matrix G-1 (Substation Responsibilities) and Matrix G-2 (Telecom Responsibilities) as being the responsibility of Seller to construct; and
- B. **[ANY OTHER COMPANY-OWNED INTERCONNECTION FACILITIES TO BE CONSTRUCTED BY SELLER].
[NOTE: SUBPARTS "A" AND "B" BETWEEN THEM SHOULD GENERALLY INCLUDE A SUBSET OF THE LIST IN SECTION 1(d) ABOVE]**

All design, engineering and construction performed by Seller (and/or its Contractors) shall, without limitation, satisfy the wind load and seismic load requirements of the International Building Code and

any more stringent requirements imposed under applicable Laws.

(ii) Seller shall provide the necessary support for the Company's [REDACTED] kV overhead line extension work, which may include, but not limited to:

- A. Furnish surveyed topographical drawing including contour lines of project areas and beyond as needed in State Plane coordinates with overlay of the Facility and Company pole line route(s) indicating pole locations and anchors in CADD format acceptable to Company.
- B. Staking of Company proposed poles and anchors by surveyor.
- C. Graded access roads including gravel if required by Company to provide sufficient vehicle access to Company poles and anchors by Company trucks and cranes.
- D. Graded level pads to provide vehicle working areas around all Company poles and anchors.
- E. Grading of the areas beneath the Company's overhead lines as needed to provide required ground clearance.
- F. Grubbing and clearing of vegetation within Company's easement area or as required.

(b) Coordination of Construction. Prior to Seller engaging the Contractors, Seller shall obtain Company's written approval, which approval shall not be unreasonably withheld. Prior to Seller and/or its Contractors first starting to work on the construction plans for Company-Owned Interconnection Facilities to be constructed by Seller (and/or its Contractors), such as the civil, structural, and construction drawings, specifications to vendors, vendor approved final drawings and materials lists (collectively, the "Plans"), Seller and/or its Contractors shall meet with Company to discuss the construction of such Company-Owned Interconnection Facilities, including but not limited to subjects concerning coordination of construction milestone dates, agreement on areas of interface design, and Company's design/drawing layout and symbols standards, equipment

specifications and construction specifications and standards. Company will provide the equipment specifications, and construction specifications and standards information so Seller can incorporate such information in its bid documents.

- (c) Plans. Seller shall provide Company its complete Plans at 30%, 60% and 90% completion. No later than sixty (60) Days before Seller and/or its Contractors first start to order materials and equipment for Company-Owned Interconnection Facilities to be constructed by Seller and/or its Contractors, Seller shall provide Company with the final Plans. The Plans for Company-Owned Interconnection Facilities to be constructed by Seller (and/or its Contractors) shall comply with (i) all applicable Laws; (ii) Company's design/drawing layout and symbol standards, equipment specifications, and construction specifications and standards; and (iii) Good Engineering and Operating Practices (collectively, the "Standards"). Seller shall submit design drawings in MicroStation format per Company standards.
- (d) Company's Review of the Plans. Unless otherwise agreed to by the Parties, Company shall have thirty (30) Days following receipt of the complete Plans at each stage (30%, 60%, 90% and final) for it to review and comment on the Plans, and verify in writing to Seller that the Plans comply with the Standards, which verification shall not be unreasonably withheld. If Company reasonably determines that the Plans are not in accordance with the Standards, then it may request in writing a response from Seller to its comments and Seller shall respond in writing within thirty (30) Days of such request by providing (i) its justification for why its Plans conform to the Standards or (ii) changes in the Plans responsive to Company's comments and in accordance with the Standards.
- (e) Company Inspection. Construction work will be subject to Company inspections to ensure that construction is done in accordance with the Standards. Company inspectors will be allowed access to the construction sites for inspections and to monitor construction work. The inspector shall have the authority to work with the appropriate construction supervisor to stop any work that does not meet the Standards. All equipment and materials used in Company-Owned Interconnection

Facilities to be constructed by Seller and/or its Contractors shall meet the Standards.

(f) Acceptance Test Procedures.

- (i) Seller acknowledges that: (aa) Company has multiple on-going projects with other developers as well as its own capital improvement projects; (bb) Company has limited resources to provide engineering oversight (such as review of plans) to such projects and to participate in the testing of such projects; (cc) in order for Company to accommodate such oversight and testing, it is necessary for Company to sequentially allocate its resources for each project a year or more in advance; (dd) the result is a queue of such projects that reflects the scheduling commitments of Company's resources to conduct such oversight and to participate in such testing; (ee) if a project is behind the schedule on which Company's resources have been scheduled for the oversight of such project, or if a project is not ready for testing at the time Company's resources have been scheduled for the testing of such project, or if a project does not complete testing within the period for which Company's resources have been scheduled for such testing, the progress of projects later in the queue may be adversely affected; (ff) the Test Ready Deadline that is set forth in Attachment K-1 (Seller's Conditions Precedent and Company Milestones) reflects the scheduling commitment of Company's resources to (i) conduct the oversight necessary to facilitate Seller's achievement of that Test Ready Deadline, (ii) commence the Acceptance Test on the Acceptance Testing Milestone Date that is set forth in Attachment K-1 (Seller's Conditions Precedent and Company Milestones) and (iii) thereafter participate in the Control System Acceptance Test; and (gg) the Project will lose its place in the queue and will be assigned a new Acceptance Testing Milestone Date for commencement of the Acceptance Test that will be behind the other projects then in the queue if (i) the Seller fails to satisfy any of the conditions precedent set forth in Section f(ii) of this Attachment G (Company-Owned Interconnection Facilities) within the time period specified therein for the task in

question or, if no time period is specified therein, by the Test Ready Deadline, (ii) the Seller fails to satisfy any of the Seller's Conditions Precedent set forth in Attachment K-1 (Seller's Conditions Precedent and Company Milestones) and/or (iii) the Acceptance Test and the Control System Acceptance Test are not satisfactorily completed within the time allotted to complete such testing.

(ii) The Conduct of the Acceptance Test is subject to the satisfaction of the following conditions precedent within the time period specified below for the task in question or, if no time period is specified, by the Test Ready Deadline that is set forth in Attachment K-1 Seller's Conditions Precedent and Company Milestones):

- Final Single-Line Drawing, and notes, has received Company's written consent pursuant to Section 1(a)(i) (Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip Scheme) of Attachment B (Facility Owned by Seller) to this Agreement.
- Final Relay List and Trip Scheme have received Company's written consent pursuant to Section 1(a)(i) (Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip Scheme) of Attachment B (Facility Owned by Seller) to this Agreement.
- Final Interface Block Diagram has received Company consent pursuant to Section 1(a)(i) (Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip Scheme) of Attachment B (Facility Owned by Seller) to this Agreement.
- Final Control System Telemetry and Control List has received Company consent.
- Final phasor measurement unit (PMU) devices, if applicable, have received Company consent.
- Control system design and tunable parameters reviewed and mutually agreed upon as needed to meet the Company requirements in accordance with

Attachment B (Facility Owned by Seller)
Performance Standards.

- Agreement on Active Power Control Interface.
- No later than 14 Days prior to commencement of the Acceptance Test:
 - Seller shall have certified to Company that Seller-Owned Interconnection Facilities have been installed and commissioned and such certification has not, prior to the commencement of the Acceptance Test, been subsequently challenged by Company on the basis of on-site observations made by the Company's representatives following the walk-through to be conducted pursuant to Section 2(f)(iii) of this Attachment G (Company-Owned Interconnection Facilities).
 - Seller shall have certified to Company that any Company-Owned Interconnection Facilities built by Seller (and/or its Contractors) have been installed and commissioned and such certification has not, prior to the commencement of the Acceptance Test, been subsequently challenged by Company on the basis of on-site observations made by the Company's representatives following the walk-through to be conducted pursuant to Section 2(f)(iii) of this Attachment G (Company-Owned Interconnection Facilities).
- Any Company-Owned Interconnection Facilities not built by or on behalf of Seller have been installed and commissioned.
- No later than 7 Days prior to the commencement of the Acceptance Test, Seller and Company shall have participated in walk-through of fully constructed Interconnection Facilities.
- Redlined as-built drawings of the Seller-Owned Interconnection Facilities and any of the Company-Owned Interconnection Facilities built by Seller (and/or its Contractors) shall have been provided to Company.
- Continuous power is being supplied to Company's protection and SCADA equipment.

- Not less than four (4) weeks prior to the commencement of the Acceptance Test, the high speed communication lines required under this Agreement have been commissioned and are ready for use.
 - Not less than two (2) weeks prior to the commencement of the Acceptance Test, Seller and Company have participated in an on-Site Acceptance Test coordination meeting.
- (iii) Seller shall provide Company with at least fourteen (14) Days advance written notice of the commencement of the Acceptance Test. The Acceptance Test will be conducted on Business Days during normal business hours and may take a minimum of 30 Days to complete. No electric energy will be delivered from Seller to Company during the Acceptance Test. No later than thirty (30) Days prior to conducting the Acceptance Test, Company and Seller shall agree on a written protocol setting out the detailed procedure and criteria for passing the Acceptance Test. Attachment N (Acceptance Test General Criteria) provides general criteria to be included in the written protocol for the Acceptance Test. At the time that Seller provides its 14-Day notice of the Acceptance Test to Company, Seller shall concurrently schedule a site walk-through of the Facility with Company to occur no later than seven (7) Days prior to the Acceptance Test. Seller's 14-Day notice to Company of the Acceptance Test shall constitute its certification that (i) the completion of the installation and commissioning of the Seller-Owned Interconnection Facilities and the Company-Owned Interconnection Facilities built by Seller (and/or its Contractors) and (ii) a walk-through by Company shall demonstrate, to Company's reasonable satisfaction, Seller's readiness to commence with the Acceptance Test. If, after the site walk-through, Company representatives reasonably determine that Seller is not ready to commence with the Acceptance Test, the Project will lose its place in the queue and will be assigned a new Test Ready Deadline and a new Acceptance Testing Milestone Date that will be behind the other projects then in the queue. In the meantime, Seller shall remediate the deficiencies identified

by Company, and the process described in this Section 1(f) (Acceptance Test Procedures) of Attachment G (Company-Owned Interconnection Facilities), shall commence again until Seller's readiness for the Acceptance Test is demonstrated to Company's reasonable satisfaction. Successful completion of the Acceptance Test requires successful completion of each of the individual tests that comprise the Acceptance Test. Retesting of any individual test constitutes as restart of the Acceptance Test if such retesting is required because of a prior failure of such individual test or because of a prior test could not be completed because of a problem with the Facility. Within fifteen (15) Business Days of completion of the Acceptance Test and Company's receipt of the final report setting forth the results of the Acceptance Test, Company shall notify Seller in writing whether the Acceptance Test has been passed and, if so, the date upon which the Acceptance Test was passed.

(iv) Company will be present when the Acceptance Test is conducted, and Seller shall promptly correct any deficiencies identified during the Acceptance Test. Seller will be responsible for the cost of Company personnel (and/or Company contractors) performing the duties (such as reviewing the Plans and reviewing the construction) necessary for Company-Owned Interconnection Facilities to be constructed by Seller (and/or its Contractors). If Company (i) does not make any inspection or test, (ii) does not discover defective workmanship, materials or equipment, or (iii) accepts Company-Owned Interconnection Facilities (that were constructed by Seller and or its Contractors), such action or inaction shall not relieve Seller from its obligation to do and complete the work in accordance with the Plans approved by Company.

(g) As-Built Drawings. Within thirty (30) Days of the successful completion of the Acceptance Test, Seller shall provide for Company review a set of the proposed as-built drawings for the Company-Owned Interconnection Facilities constructed by Seller (and/or its Contractors). Within thirty (30) Days of Company's receipt of the proposed as-built drawings, Company shall

provide Seller with either (i) its comments on the proposed as-built drawings or (ii) notice of acceptance of the proposed as-built drawings as final as-built drawings. If Company provides comments on the proposed as-built drawings, Seller shall incorporate such comments into a final set of as-built drawings and provide such final as-built drawings to Company within twenty (20) Days of Seller's receipt of Company's comments.

3. Seller Payment To Company for Company-Owned Interconnection Facilities and Review Of Facility. [TO BE REVISED THROUGH INTERCONNECTION REQUIREMENTS AMENDMENT TO REFLECT COMPANY-BUILD OR DEVELOPER-BUILD SCENARIO, AS APPLICABLE]

(a) Seller Payment to Company.

(i) Seller shall pay the Total Estimated Interconnection Cost, which is comprised of the estimated costs of (aa) acquiring, constructing and installing the Company-Owned Interconnection Facilities to be designed, engineered and constructed by Company, (bb) the engineering and design work (including but not limited to Company, affiliated Company and contracted engineering and design work) associated with (i) the application process for the PUC Approval Order, (ii) developing such Company-Owned Interconnection Facilities and (iii) reviewing and specifying those portions of Facility which allow interconnected operations as such are described in Attachment B (Facility Owned by Seller) (collectively, the "Engineering and Design Work"), and (cc) conducting the Acceptance Test and Control System Acceptance Test. The Total Actual Interconnection Cost (the actual cost of items (aa) through (cc)) are the "Total Interconnection Cost".

(ii) Summary List of Company-Owned Interconnection Facilities and Related Services to be designed, engineered and constructed by Company:

[THIS LIST SHOULD GENERALLY INCORPORATE A SUBSET OF THE LIST IN ATTACHMENT G, SECTION 1(d), PLUS TESTING.]

(iii) The following summarizes the Total Estimated Interconnection Cost of the Company-Owned

Interconnection Facilities to be designed,
engineered and constructed by Company:

[THIS LIST SHOULD INCLUDE ESTIMATED COSTS FOR THE ITEMS LISTED IN ATTACHMENT G, SECTION 3(a)(ii).]

The Total Estimated Interconnection Cost is \$.

- (b) Total Estimated Interconnection Costs. The Total Estimated Interconnection Cost, which, except as otherwise provided herein, is non-refundable, shall be paid in accordance with the following schedule:
- (i) Initial Payment: Prior to the execution of the Interconnection Requirements Amendment, Seller has paid \$____,000.00 to Company;
 - (ii) Company-Owned Interconnection Facilities Prepayment: Within thirty (30) Days after the execution of the Interconnection Requirements Amendment, the total estimated costs related to the Engineering and Design Work are due and payable by Seller to Company;

Company shall not be obligated to perform any work with respect to Company-Owned Interconnection Facilities until Seller pays the amounts in Section 3(b)(i) (Initial Payment) and Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment) of this Attachment G (Company-Owned Interconnection Facilities), and receipt of such payment shall constitute Seller's irrevocable authorization to Company to perform such engineering and design work.
 - (iii) Balance of Company-Owned Interconnection Facilities Prepayment: On the Guaranteed Procurement Payment Date, the difference between the portion of the Total Estimated Interconnection Cost paid to date and the Total Estimated Interconnection Cost is due and payable by Seller to Company.
 - A. Company shall not be obligated to perform any work with respect to Company-Owned Interconnection Facilities until Seller pays the amount in this Section 3(b)(iii) (Balance of Company-Owned Interconnection Facilities

Prepayment) of this Attachment G (Company-Owned Interconnection Facilities), and receipt of such payment shall constitute Seller's irrevocable authorization to Company to perform such procurement and construction work.

- (c) True-Up. The final accounting shall take place within one hundred twenty (120) Days of the first to occur of (i) the Commercial Operations Date, (ii) the date this Agreement is declared null and void under either Section 12.5 (Prior to Effective Date) or Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval) of this Agreement, or (iii) the date this Agreement is terminated, whichever occurs first. Company shall be entitled to an extension for a commercially reasonable amount of time to complete the final accounting if a delay in such completion is caused by Seller's delay or failure to respond to any Company request for information needed to complete the final accounting or take any action necessary for Company to complete the final accounting. Upon completion of the final accounting, Company shall deliver to Seller an invoice for payment of the amount, if any, of the difference between the Total Estimated Interconnection Cost paid to date and the Total Actual Interconnection Cost, which is the final accounting of the Total Interconnection Costs. Payment of such invoice shall be made within thirty (30) Days of receipt of such invoice from Company. If the Total Actual Interconnection Cost is less than the payments received by Company as the Total Estimated Interconnection Cost, Company shall repay the difference to Seller within thirty (30) Days of the final accounting.
- (d) Audit Rights. Seller shall have the right for a period of one (1) year following receipt of the invoice: (i) upon reasonable prior notice, to audit the books and records of Company to the limited extent reasonably necessary to verify the basis for the amount (if any) by which the Total Actual Interconnection Cost invoiced to Seller exceeds the Total Estimated Interconnection Cost, and (ii) to dispute the amount of any such excess. Seller shall not have the right to audit any other financial records of Company. Company shall make such information available during normal business hours at its offices in Hawai'i. Seller shall pay Company's

reasonable actual, verifiable costs for such audits, including allocated overhead.

- (e) Ownership. All Company-Owned Interconnection Facilities including those portions, if any, provided, or provided and constructed, by Seller shall be the property of Company.

4. Ongoing Operation and Maintenance Charges.

- (a) Prior to the Transfer Date. Seller shall operate and maintain, at its sole cost and expense, Company-Owned Interconnection Facilities that it or its Contractors constructed, if any, prior to the Transfer Date.
- (b) On or After the Transfer Date. On and after the Transfer Date, Company shall own, operate and maintain Company-Owned Interconnection Facilities.
- (c) Monthly Bill. Company shall bill Seller monthly (or periodically as costs are incurred) for any reasonable costs incurred in operating, maintaining and replacing (to the extent not covered by insurance) Company-Owned Interconnection Facilities. Company's costs will be determined on the basis of, but not limited to, direct payroll, material costs, applicable overhead at the time incurred, consulting fees and applicable taxes. Seller shall, within thirty (30) Days after receipt of an invoice, reimburse Company for such monthly billed operation and maintenance charges. Company's invoice will include itemized charges reasonably necessary for Seller to verify the basis for such charges.

5. Relocation of Company-Owned Interconnection Facilities.

- (a) In the event that the Land Rights include a relocation clause and such clause is exercised or if Company-Owned Interconnection Facilities must be relocated for any other reason not caused by Company, Seller shall bear the cost of such relocation. Prior to the relocation of the Company-Owned Interconnection Facilities Company shall invoice Seller for the total estimated cost of relocating the Company-Owned Interconnection Facilities (the "Total Estimated Relocation Cost"). Seller shall, within thirty (30) Days after the invoice date, pay to Company the Total Estimated Relocation Cost.

(b) Once the relocation of the Company-Owned Interconnection Facilities is complete, Company shall conduct a final accounting of all costs related thereto. Within thirty (30) Days of the final accounting, which shall take place within one hundred and twenty (120) Days of completion of the relocation of Company-Owned Interconnection Facilities, Seller shall remit to Company the difference between the Estimated Relocation Cost paid to date and the total actual relocation cost incurred by Company (the "Total Actual Relocation Cost"). If the Total Actual Relocation Cost is less than the payments received by Company as the Total Estimated Relocation Cost, Company shall repay the difference to Seller within thirty (30) Days of the final accounting.

6. Guarantee for Interconnection Costs.

(a) Standby Letter of Credit. To ensure payment by Seller of all costs and expenses incurred by Company (i) in excess of the Total Estimated Interconnection Cost paid in connection with the Company-Owned Interconnection Facilities to be provided and/or constructed by Company described in Section 3 (Seller Payment To Company for Company-Owned Interconnection Facilities and Review Of Facility) of this Attachment G (Company-Owned Interconnection Facilities), and (ii) if applicable, in excess of the Total Estimated Relocation Costs paid in connection with the relocation of the Company-Owned Interconnection Facilities as provided in Section 5 (Relocation of Company-Owned Interconnection Facilities) of this Attachment G (Company-Owned Interconnection Facilities), Seller shall obtain an Irrevocable Standby Letter of Credit with no Documentary Requirement ("Standby Letter of Credit") in accordance with the requirements of Section 6(b) (Requirements of the Standby Letter of Credit) of this Attachment G (Company-Owned Interconnection Facilities), wherein Company shall receive payment from the bank upon request by Company.

(b) Requirements of the Standby Letter of Credit. The Standby Letter of Credit shall be (i) in an amount not less than twenty-five percent (25%) of the Total Estimated Interconnection Cost or Total Estimated Relocation Cost, as applicable, and (ii) in substantially in the form attached to this Agreement as Attachment M (Form of Letter of Credit) from a bank

chartered in the United States with a credit rating of "A-" or better. If the rating (as measured by Standard & Poors) of the bank issuing the Standby Letter of Credit falls below A-, Company may require Seller to replace the Standby Letter of Credit with a Standby Letter of Credit from another bank chartered in the United States with a credit rating of "A-" or better. In connection with the construction of the Company-Owned Interconnection Facilities, the Standby Letter of Credit shall be effective from the earlier of (aa) thirty (30) Days following the Effective Date, or (bb) the date that Seller requests Company to order equipment or commence construction on Company-Owned Interconnection Facilities. In connection with the relocation of the Company-Owned Interconnection Facilities, if applicable, the Standby Letter of Credit shall be effective within thirty (30) Days after Seller receives the invoice from Company for the Total Estimated Relocation Cost as set forth in Section 5 (Relocation of Company-Owned Interconnection Facilities) of this Attachment G (Company-Owned Interconnection Facilities). The Standby Letter of Credit shall be in effect through the earlier of forty-five (45) Days after the final accounting or seventy-five (75) Days after the Agreement is terminated. Seller shall provide to Company within fourteen (14) Days of the date the Standby Letter of Credit is to be effective as aforesaid, a document from the bank which indicates that such a Standby Letter of Credit has been established.

- (c) Other Form of Security. Notwithstanding the foregoing, in lieu of a Standby Letter of Credit, Company may, at its sole discretion, agree in writing to accept such other form of security as Company deems to provide Company with protection equivalent to a Standby Letter of Credit.

7. Land Restoration.

- (a) Definition of "Land". For the purposes of this Attachment G (Company-Owned Interconnection Facilities), "Land" means any portion of the Site and any other real property where any Company-Owned Interconnection Facilities are located.
- (b) Removal of Interconnection Facilities. After termination of this Agreement or in the event this Agreement is

declared null and void under either Section 12.5 (Prior to Effective Date) or Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval) of this Agreement, if requested by Company, Seller shall, at its sole cost and expense, remove (i) the Company-Owned Interconnection Facilities from the Land and (ii) the Seller-Owned Interconnection Facilities from the Land, and, in conjunction with such removal, shall develop and implement a program to recycle, to the fullest extent possible, or to otherwise properly dispose of, all such removed infrastructure; provided, however, that, Company may elect to remove all or part of the Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities from the Land because of operational concerns over the removal of such Interconnection Facilities, in which case Seller shall reimburse Company for its costs to remove such Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities. To the extent Seller is obligated to remove Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities, Seller shall complete such removal within ninety (90) Days of termination of this Agreement (or declaration that the Agreement is null and void under either Section 12.5 (Prior to Effective Date) or Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval) of this Agreement, or as otherwise agreed to by both Parties in writing.

- (c) Restoration of the Land. After the termination of this Agreement (or declaration that the Agreement is null and void under either Section 12.5 (Prior to Effective Date) or Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval) of this Agreement) and removal of the Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities, as the case may be, Seller shall, at its sole cost and expense, restore the Land to its condition prior to construction of such Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities, as applicable. Land restoration shall be completed within ninety (90) Days of termination of this Agreement (or declaration that the Agreement is null and void under either Section 12.5 (Prior to Effective Date) or Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval) of this Agreement), or as otherwise agreed to by both Parties in writing.

8. Transfer of Ownership/Title.

- (a) Transfer of Ownership and Title. On the Transfer Date, Seller shall transfer to Company all right, title and interest in and to Company-Owned Interconnection Facilities to the extent such facilities were designed and constructed by Seller and/or its Contractors together with (i) all applicable manufacturers' or Contractors' warranties which are assignable and (ii) all Land Rights necessary to own, operate and maintain Company-Owned Interconnection Facilities on and after the Transfer Date. Seller shall provide a written list of the manufacturers' and Contractors' warranties which will be assigned to Company and the expiration dates of such warranties no later than thirty (30) Days before the Transfer Date.
- (b) No Liens or Encumbrances. Company's title to and ownership of Company-Owned Interconnection Facilities that were designed and constructed by Seller and/or its Contractors shall be free and clear of liens and encumbrances.
- (c) Form of Documents. The transfers to be made to Company pursuant to this Section 8 (Transfer of Ownership/Title) of Attachment G (Company-Owned Interconnection Facilities) shall not require any further payment by Company. The form of the document to be used to convey title to the Company-Owned Interconnection Facilities that were designed and constructed by or on behalf of Seller shall be substantially in the form set forth in Attachment H (Form of Bill of Sale and Assignment). The form of the document(s) to be used to assign leases shall be substantially in the form set forth in Attachment I (Form of Assignment of Lease and Assumption). To the extent Land Rights other than leases are transferred to Company, appropriate modifications will be made to Attachment I (Form of Assignment of Lease and Assumption) to effectuate the transfer of such Land Rights.

9. Governmental Approvals for Any Company-Owned Interconnection Facilities.

Seller shall obtain at its sole cost and expense all Governmental Approvals necessary to the construction, ownership, operation and maintenance of the Company-Owned

Interconnection Facilities. For Company-Owned Interconnection Facilities to be constructed by Company, Seller shall provide all Governmental Approvals necessary for the construction of such Company-Owned Interconnection Facilities prior to the commencement of construction by Company. For Company-Owned Interconnection Facilities to be constructed by Seller, Seller shall obtain all Governmental Approvals necessary for construction of the Company-Owned Interconnection Facilities prior to commencement of the construction activity for which such Governmental Approval is required. For all other Governmental Approvals for Company-Owned Interconnection Facilities, Seller shall provide these prior to the Transfer Date. On or before the Transfer Date, Seller shall provide Company with (i) copies of all such Governmental Approvals obtained by Seller regarding the construction, ownership, operation and maintenance of Company-Owned Interconnection Facilities that Seller and/or its Contractors constructed and (ii) documentation regarding the satisfaction of any condition or requirement set forth in any Governmental Approvals for Company-Owned Interconnection Facilities (excluding on-going reporting or monitoring requirements that may continue beyond the Transfer Date in accordance with such Governmental Approval) or that such Governmental Approvals have otherwise have been closed with the issuing Governmental Authority.

10. Land Rights.

Seller shall, prior to the commencement of construction of the Company-Owned Interconnection Facilities (whether to be built by Seller or by Company) obtain at its sole cost and expense all Land Rights that are required to construct, own, operate and maintain the Company-Owned Interconnection Facilities. Without limitation to the preceding sentence, Seller shall pay all surveying and mapping costs, appraisal fees, document preparation fees, recording fees or other costs. Seller shall use commercially reasonable efforts to obtain on behalf of the Company perpetual Land Rights for the Company-Owned Interconnection Facilities. Such Land Rights shall contain terms and conditions which are acceptable to Company and the documents setting forth the Land Rights shall be provided in advance of execution to Company for its review and approval and shall be recorded if required by Company. Following the Execution Date, Seller shall provide as part of the Monthly Progress Report the status of negotiations with landowner(s) regarding the Land Rights. Notwithstanding the foregoing, Company shall have the right in its sole

discretion, at any time upon notice to Seller, to communicate directly with the landowner(s) and/or participate in the negotiations with landowner(s) for the Land Rights. For so long as Seller has the right under this Agreement to sell electric energy to Company, Seller shall pay for any rents and other payments due under such Land Rights that are associated with Company-Owned Interconnection Facilities.

11. Contracts for Company-Owned Interconnection Facilities.

For all contracts entered into by or on behalf of Seller for Company-Owned Interconnection Facilities to be designed, engineered and constructed, in whole or in part, by or on behalf of Seller, the following shall apply: (i) Company shall be made an intended third-party beneficiary of such contracts; and (ii) Company shall be provided with copies of such executed contracts, which may be redacted but only to the extent required to prevent disclosure of confidential or proprietary information of Seller or the counterparty to such agreement; provided, however, that such redactions may not conceal information that is necessary for the Company to determine and exercise Company's rights under such contracts as a third-party beneficiary.

[MATRIX TO BE INSERTED]

ATTACHMENT H
FORM OF BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT ("Bill of Sale"), made as of the ____ day of _____, 20____, by _____ ("Transferor") and _____ ("Transferee").

W I T N E S S E T H:

1. Bill of Sale. In consideration of the mutual covenants and agreements of Transferor and Transferee under the Power Purchase Agreement for Renewable Dispatchable Generation between Transferor and Transferee dated _____, 20__ ("PPA") and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Transferor does hereby sell, assign and transfer over to Transferee all of Transferor's right, title and interest, in and to (i) all the tangible personal property and fixtures (including but not limited to the items set forth in Schedule H-1 (Description of Tangible Personal Property and Fixtures) attached hereto and incorporated herein), that constitutes what is referred to as the "Company-Owned Interconnection Facilities to be installed by or on behalf of Seller" (or words to similar effect) as set forth in Attachment G (Company-Owned Interconnection Facilities) to the PPA between [**Transferor and Transferee**] and (ii) the intangible personal property (including but not limited to the intangible personal property set forth in Schedule H-2 (Description of Intangible Personal Property) attached hereto and incorporated herein) owned by Transferor and used or to be used in the ownership, operation and maintenance of the aforesaid tangible personal property, to the extent assignable by Transferor, including without limitation, certificates of occupancy, permits, licenses, transferable warranties and guaranties, instruments, documents of title, and general intangibles pertaining to the aforesaid intangible personal property.

2. Warranty of Title. Transferor hereby warrants to Transferee that Transferor is the legal owner of the aforesaid tangible personal property and the aforesaid intangible personal property (including but not limited to the property set forth in Schedule H-1 (Description of Tangible Personal Property and Fixtures) and Schedule H-2 (Description of Intangible Personal Property)), and that said property is being sold, assigned and transferred to Transferee free and clear of all liens and encumbrances.

3. Governing Law. This Bill of Sale shall be governed by, and construed and interpreted in accordance with, the laws of the State of Hawai'i.

**[Signatures for Bill of Sale and Assignment
Appear on the Following Page]**

IN WITNESS WHEREOF, Transferor and Transferee have executed this instrument on the day and year first above written.

_____,
a _____

By _____
Its _____

"Transferor"

_____,
a Hawai'i corporation

By _____
Its _____

By _____
Its _____

"Transferee"

SCHEDULE H-1
DESCRIPTION OF
TANGIBLE PERSONAL PROPERTY AND FIXTURES

SCHEDULE H-2
DESCRIPTION OF INTANGIBLE PERSONAL PROPERTY

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup () To:

Tax Map Key Nos.:

Total pages: _____

ATTACHMENT I
FORM OF ASSIGNMENT OF LEASE AND ASSUMPTION

THIS ASSIGNMENT is made as of this _____ day of _____, 20____, by _____, a _____, whose principal place of business and post office address is _____, hereinafter called the "Assignor," and _____, a Hawai'i corporation, whose principal place of business and post office address is _____, Honolulu, HI 968____, hereinafter called the "Assignee",

W I T N E S S E T H:

THAT the Assignor, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration to it paid by the Assignee, the receipt and sufficiency of which are hereby acknowledged, and of the covenants and agreements of the Assignee hereinafter contained and on the part of the Assignee to be faithfully kept and performed, does hereby sell, assign, delegate, transfer, set over and deliver unto the Assignee, and its successors and assigns, all of Assignor's right, title and interest in and to the lease described in Schedule 1 (the "Lease"); together with

all interests thereto appertaining, and together with the personal property located on the land thereby demised.

And all of the estate, right, title and interest of the Assignor in and to the land thereby demised, and all buildings, improvements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or used, occupied and enjoyed in connection with said Lease and the land thereby demised.

TO HAVE AND TO HOLD the same unto Assignee and its successors and assigns, for and during the respective unexpired term of said Lease, and as to said personal property (if any) absolutely and forever.

AND, in consideration of the premises, the Assignor does hereby covenant with the Assignee that the Assignor is the lawful owner of the herein described real property; that said Lease is in full force and effect and is not in default; that said real property is free and clear of and from all liens and encumbrances, except for the lien of real property taxes not yet by law required to be paid; that the Assignor is the lawful owner of said personal property (if any) and that Assignor's title thereto is free and clear of and from all liens and encumbrances, that the Assignor has good right to sell and assign said real property and personal property (if any) as aforesaid; and, that the Assignor will WARRANT AND DEFEND the same unto the Assignee against the lawful claims and demands of all persons, except as aforesaid.

AND, in consideration of the foregoing, the Assignee does hereby promise, covenant and agree to and with the Assignor and to and with said the lessor under the Lease, that the Assignee will, effective as of and from the date of the execution and delivery of this instrument and during the residue of the term of said Lease, pay the rents thereby reserved as and when the same become due and payable pursuant to the provisions of said Lease, and will also faithfully observe and perform all of the covenants and conditions contained in said Lease which from and after the date hereof are or ought to be observed and performed by the lessee therein named, and will at all times hereafter indemnify and save harmless the Assignor from and against the nonpayment of said rent and the nonobservance or nonperformance of said covenants and conditions and each of them.

The terms "Assignor" and "Assignee", as and when used herein, or any pronouns used in place thereof, shall mean and

include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context hereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein. The term "Lease", as and when used herein, means the lease or sublease demising the leasehold estate described in Schedule 1, together with all recorded amendments thereof, if any, whether or not listed in Schedule 1. The term "rent", as and when used herein, means and includes all rents, taxes, assessments and any other sums charged pursuant to the Lease.

This instrument may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument binding on all the Parties hereto, notwithstanding that all the Parties are not signatory to the original or the same counterpart.

**[Signatures for Assignment of Lease and Assumption are on
following page.]**

IN WITNESS WHEREOF, Company and Assignor have executed
this instrument as of the date first above written.

By _____
Name:
Title:

By _____
Name:
Title:

"Assignor"

By _____
Name:
Title:

By _____
Name:
Title:

"Assignee"

SCHEDULE 1

- Description of Lease
- To Be Attached

ATTACHMENT J
COMPANY PAYMENTS FOR ENERGY, DISPATCHABILITY AND AVAILABILITY OF
BESS

1. Price for Purchase of Electric Energy. Commencing on the Commercial Operations Date, Company shall pay Seller for electric energy produced by the Facility and delivered to the Point of Interconnection in response to Company Dispatch in accordance with this Agreement at the rate of \$[____]/MWh. Company shall not pay for electric energy delivered to the Point of Interconnection from the BESS to the extent such energy was originally taken from the grid to charge the BESS. If the BESS is delivering electric energy to the Point of Interconnection in response to Company Dispatch during a period in which a portion of the energy stored in the BESS is attributable to electric energy that was originally taken from the grid, the electric energy delivered to the Point of Interconnection from the BESS during such period shall be deemed to be produced by the Facility for purposes of the first sentence of this Section 1 (Price for Purchase of Electric Energy) until no portion of the energy stored in the BESS is attributable to the production of the Facility.
[DRAFTING NOTE: COMPANY WILL SEEK INPUT DURING THE NEGOTIATION PROCESS ON HOW TO ISOLATE THE ENERGY THAT IS NOT BE PAID FOR AND ANTICIPATES THAT WHATEVER SOLUTION IS ARRIVED AT WILL BE UNIFORM ACROSS ALL PAIRED RESOURCES PPAs.]
2. Lump Sum Payment for Purchase of Dispatchability. Commencing on the Commercial Operations Date, Company shall pay Seller for the availability of the Facility's Net Energy Potential, subject to the Renewable Resource Variability, to respond to Company Dispatch in accordance with this Agreement, as well as for the BESS Services, a monthly Lump Sum Payment as calculated and adjusted as set forth in Section 3 (Calculation of Lump Sum Payment) of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS). The monthly Lump Sum Payment shall be calculated and adjusted to reflect changes in the estimate of the Facility's Net Energy Potential as such estimate is revised from time to time as more fully set forth in Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.
3. Calculation of Lump Sum Payment. The monthly Lump Sum Payment shall be calculated and adjusted as follows:

- i. Lump Sum Payment During First Benchmark Period. During the First Benchmark Period, the monthly Lump Sum Payment shall be equal to one-twelfth ($1/12^{\text{th}}$) of the product (rounded to the nearest cent) obtained by multiplying the Unit Price by the First NEP Benchmark.
- ii. Lump Sum Payment During Second Benchmark Period.
 - a. One purpose of the Second Benchmark Period is to provide the Seller, in the event that the Initial NEP OEPR Estimate is less than NEP RFP Projection, with a limited period during which Seller will have an opportunity, by having a Subsequent OEPR prepared pursuant to Section 3(b) (Voluntary Subsequent OEPR) of Attachment U (Calculation Adjustment of Net Energy Potential) to this Agreement, to obtain an adjustment to the NEP OEPR Estimate used to calculate the Lump Sum Payment, subject to (i) the cap on any upward adjustment imposed by the limitation that the estimate of Net Energy Potential that is used to calculate the Lump Sum Payment shall not exceed the NEP RFP Projection and (ii) the risk that any Subsequent OEPR might result in a downward adjustment to the NEP OEPR Estimate used to calculate the Lump Sum Payment. Accordingly, for each calendar month during the Second Benchmark Period, the monthly Lump Sum Payment shall be equal to one-twelfth ($1/12^{\text{th}}$) of the product (rounded to the nearest cent) obtained by multiplying the Unit Price by the lesser of the (w) the NEP RFP Projection or (x) the NEP OEPR Estimate of the OEPR that is most recent as of the first Day of such calendar month. For avoidance of doubt:
 1. On the first Day of the Second Benchmark Period, the most recent OEPR will be the Initial OEPR;
 2. If no Subsequent OEPR is issued under Section 3 (Subsequent OEPRs) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement for an OEPR Period of Record ending prior to the end of the fifth (5^{th}) Contract Year, the "most recent OEPR" during the entirety of the Second Benchmark Period will be the Initial OEPR;

3. If any Subsequent OEPR is prepared for an OEPR Period of Record ending prior to the commencement of the sixth (6th) Contract Year, the monthly Lump Sum Payment shall, for the period commencing on the first Day of the calendar month following the month during which an OEPR Evaluator issues such Subsequent OEPR, be equal to one-twelfth (1/12th) of the product (rounded to the nearest cent) obtained by multiplying the Unit Price by the lesser of (w) the NEP OEPR Estimate obtained from such Subsequent OEPR or (x) the NEP RFP Projection. The monthly Lump Sum Payment calculated as aforesaid shall remain in effect through the first to occur of (y) the end of the Term or (z) the end of the calendar month during which an OEPR Evaluator issues the next Subsequent OEPR (if any) that is required or permitted under Section 4 (Preparation of OEPR) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

iii. Lump Sum Payment Following Second Benchmark Period.

- a. As of the first Day of the sixth (6th) Contract Year, the estimate of Net Energy Potential that was used to calculate the Lump Sum Payment for the last calendar month of the Second Benchmark Period shall continue in effect as the estimate of Net Energy Potential that is used to calculate the Lump Sum Payment until the end of the calendar month during which an OEPR Evaluator issues the first Subsequent OEPR for an OEPR Period of Record ending on or after the commencement of the sixth (6th) Contract Year and, effective at the end of such calendar month, the Second NEP Benchmark that was in effect immediately prior to the issuance of such Subsequent OEPR shall constitute the "Most Recent Prior NEP Benchmark" under clause (i) of the definition of that term set forth in this Agreement. For avoidance of doubt, if no Subsequent OEPR is issued for an OEPR Period of Record ending on or after the commencement of the sixth (6th) Contract Year, the Second NEP Benchmark that was used to calculate the Lump Sum Payment for the last calendar month of the Second Benchmark

Period shall continue in effect for the balance of the Term as the estimate of Net Energy Potential that is used to calculate the Lump Sum Payment.

- b. In order to facilitate planning for the Company System, no increase in Net Energy Potential (and hence in the monthly Lump Sum Payment) shall be permitted under this Agreement as a consequence of any Subsequent OEPR that is prepared for an OEPR Period of Record ending on or after the expiration of the Second Benchmark Period. Accordingly, if any such Subsequent OEPR is prepared, the monthly Lump Sum Payment shall, for the period commencing on the first Day of the calendar month following the month during which an OEPR Evaluator issues such Subsequent OEPR, be equal to one-twelfth ($1/12^{\text{th}}$) of the product (rounded to the nearest cent) obtained by multiplying the Unit Price by the lesser of (w) the NEP OEPR Estimate obtained from such Subsequent OEPR or (x) the Most Recent Prior NEP Benchmark. The monthly Lump Sum Payment calculated as aforesaid shall remain in effect through the first to occur of (y) the end of the Term or (z) the end of the calendar month during which an OEPR Evaluator issues the next following Subsequent OEPR (if any) that is required or permitted under Section 3 (Subsequent OEPRs) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement. If any such next following Subsequent OEPR is issued, the monthly Lump Sum Payment shall, for the period commencing on the first Day of the calendar month following the calendar month during which an OEPR Evaluator issues such Subsequent OEPR, be re-calculated and adjusted as provided in this Section 3.iii.b of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) and shall continue in effect for the period provided in the preceding sentence.
- iv. Under the Company's previous forms of as-available power purchase agreements for renewable energy, the independent power producer was compensated for the production and delivery of electrical energy and assumed the risk of non-payment for events such as Force Majeure that prevented such production and delivery. Although under this Agreement most of Seller's compensation will

be in the form of a Lump Sum Payment rather than for the production and delivery of electrical energy, it is not the intent of the Parties that Seller should be entitled to unrestricted compensation in circumstances in which an independent power producer would not have been able to earn compensation under the Company's prior form of power purchase agreements (*i.e.*, if the Facility or any portion thereof is unable to produce and deliver electric energy). Although the liquidated damages that are payable if the Modified Pooled OMC Equipment Availability Factor fails to satisfy the Modified Pooled OMC Equipment Availability Factor Performance Metric address this issue in certain of the circumstances when some or all of the WTGs are unable to generate electric energy, the Modified Pooled OMC Equipment Availability Factor does not account for events of Force Majeure because such events are OMC under Section 1 (Modified Pooled OMC) of Attachment Q (Calculation of Certain Metrics) this Agreement. Accordingly, and without limitation to the generality of the foregoing provisions of this Section 3 (Calculation of Lump Sum Payment) of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS), the monthly Lump Sum Payment shall be adjusted downward pro rata for each Day or portion thereof during the calendar month in question that one or more of the WTGs were not available to respond to Company Dispatch because of a Force Majeure condition (i) affecting the Facility or any portion thereof or (ii) that otherwise delays or prevents the Seller from making the WTG(s) in question available for Company Dispatch.

- v. Example 1: if a Facility has ten WTG(s) and, during the month of May (which has 31 calendar days), one WTG is not available to respond to Company Dispatch for a period of 15 Days due to a Force Majeure condition as aforesaid, the monetary amount of the resulting downward adjustment to the monthly Lump Sum Payment for the month of May would be calculated as follows:

$$\begin{array}{l} \text{Monetary Amount} \\ \text{of Downward} \\ \text{Adjustment} \end{array} = \begin{array}{l} (\text{MLSP} \times 1/10) \\ \times 15/31 \end{array}$$

where:

MLSP = The monthly Lump Sum Payment that would be payable for such month but for the downward adjustment.

For purposes of determining the monetary amount of the foregoing downward adjustment, the product obtained by multiplying a monetary value by a fraction shall be rounded to the nearest cent.

4. Test Energy. Company shall use reasonable efforts to accept test energy that is delivered as part of the normal testing for generators (such as energy delivered to Company during the Control System Acceptance Test but not during the Acceptance Test), provided Seller shall use reasonable efforts to coordinate such normal testing with Company so as to minimize adverse impacts on the Company System and operations. Company shall not compensate Seller for test energy.

5. Tax Credit Pass Through. Company acknowledges and agrees that the Federal Refundable Tax Credit and Federal Non-Refundable Tax Credit shall inure to the benefit of the Claiming Entity; provided, however, that Seller acknowledges and expressly agrees that the Federal Refundable Tax Credit and Federal Non-Refundable Tax Credit, with regard to Seller's Facility, have been calculated into the Contract Pricing based on the maximization of such credits. In the event that Seller's Facility does not gain the benefit of the Federal Refundable Tax Credit and/or the Federal Non-Refundable Tax Credit, Seller expressly acknowledges and agrees that it shall not seek to amend the Contract Pricing.
 - (a) Because the Hawai'i tax treatment that will apply to renewable energy technologies on the Commercial Operations Date is uncertain, the parties acknowledge that the Contract Pricing was set assuming Seller will not be eligible for any Hawai'i Renewable Energy Tax Credit. The intent of this Section 5 (Tax Credit Pass Through) is to entitle Company, for the benefit of its customers, to a payment equal to 100% of the maximum Hawai'i Renewable Energy Tax Credit for which Seller is eligible with respect to the Facility and receives during the Term, as more fully set forth in this Section 5 (Tax Credit Pass Through).

 - (b) If, as of the Commercial Operations Date, or, if not available at the Commercial Operations Date, at any subsequent time during the Term, a Hawai'i Refundable Tax Credit is reasonably available to Seller or its

Affiliates with respect to the Facility, the following shall apply:

- (i) Seller or Seller's Affiliate will apply for such Hawai'i Refundable Tax Credit, it being understood and agreed that if Seller applies for a Hawai'i Refundable Tax Credit as of the Commercial Operations Date, it shall have fulfilled its obligations hereunder to apply for the Hawai'i Refundable Tax Credit;
 - (ii) Seller shall make a payment to Company in an amount equal to one hundred percent (100%) of the Net Amount of such Hawai'i Refundable Tax Credit within thirty (30) Days after funds are received from the Hawai'i Department of Taxation;
 - (iii) Upon application for the Hawai'i Refundable Tax Credit, an officer of Seller will deliver to Company a notice (A) describing Seller's efforts to apply for and obtain the Hawai'i Refundable Tax Credit, (B) confirming that Seller has applied for the Hawai'i Refundable Tax Credit, and (C) certifying that Seller has used commercially reasonable efforts to apply for and obtain the maximum reasonably available Hawai'i Refundable Tax Credit as provided in this Section 5 (Tax Credit Pass Through);
 - (iv) Upon receipt of any funds from the Hawai'i Department of Taxation for the Hawai'i Refundable Tax Credit, an officer of Seller or an Affiliate of Seller, if applicable, will deliver a notice to Company certifying (A) the amount of funds received, (B) and the amount of payment that will be made to Company, net of federal tax and any documented and reasonable financial, legal, administrative, and other costs required to claim and transfer such funds to Seller, as supported by the officer's certificate as to the amount of such costs and the reasonableness thereof.
- (c) If, as of the Commercial Operations Date, a Hawai'i Refundable Tax Credit is unavailable, but a Hawai'i Non-Refundable Tax Credit is available to Seller or its Affiliates with respect to the Facility, or at any subsequent time during the Term, a Hawai'i Non-

Refundable Tax Credit becomes available to Seller or its Affiliates with respect to the Facility, notwithstanding that Seller may have applied for a Hawai'i Refundable Tax Credit, and in either case Seller can utilize, or enable its investors to utilize, such Hawai'i Non-Refundable Tax Credit, the following shall apply:

- (i) Seller or an Affiliate of Seller will apply for any available Hawai'i Non-Refundable Tax Credit, it being understood and agreed that if Seller applies for a Hawai'i Non-Refundable Tax Credit as of the Commercial Operations Date, it shall have fulfilled its obligations hereunder to apply for the Hawai'i Non-Refundable Tax Credit;
- (ii) Seller shall make a payment to Company in an amount equal to one hundred percent (100%) of the Net Amount of such Hawai'i Non-Refundable Tax Credit that Seller can utilize in the tax year in question within sixty (60) Days after the filing date of the applicable tax return for the tax year in which such Hawai'i Non-Refundable Tax Credit is utilized;
- (iii) Upon the filing of the applicable tax return(s), an officer of Seller or an Affiliate of Seller, if applicable, will deliver a notice to Company (A) describing Seller's efforts to apply for and obtain the Hawai'i Non-Refundable Tax Credit, (B) confirming that Seller has applied for the Hawai'i Non-Refundable Tax Credit, and (C) certifying that Seller has used commercially reasonable efforts to apply for and obtain the maximum reasonably available Hawai'i Non-Refundable Tax Credit as provided in this Section 5 (Tax Credit Pass Through);
- (iv) Upon receipt of any funds for the Hawai'i Non-Refundable Tax Credit, an officer of Seller or an Affiliate of Seller, if applicable, will deliver a notice to Company certifying (A) the amount of funds received, (B) and the amount of payment that will be made to Company, net of federal tax and any documented and reasonable financial, legal, administrative, and other costs required to claim, monetize and transfer such funds to Seller, as supported by the officer's certificate as to the

amount of such costs and the reasonableness thereof;

- (d) Seller shall use commercially reasonable efforts to apply for and obtain the maximum reasonably available Hawai'i Refundable and/or Non-Refundable Tax Credit as provided in this Section 5 (Tax Credit Pass Through). If Seller fails to apply for and to use commercially reasonable efforts to obtain such Hawai'i Renewable Energy Tax Credit as described above, then Company shall be entitled to liquidated damages in an amount equal **[\$150,000 per MW of Contract Capacity]**. Seller and Company agree and acknowledge that (i) the failure to use commercially reasonable efforts as provided in the preceding sentence would result in damages to Company in the form of reduction or loss of a benefit for Company's customers that would be difficult or impossible to calculate with certainty and (ii) **[Note - insert amount that equals \$150,000 per MW of Contract Capacity]** is an appropriate approximation of such damages. Company's right to collect liquidated damages as described in this Section 5(d) shall constitute Company's exclusive remedy and fulfillment of all Seller's liability with respect to its obligations to maximize the amount of Hawai'i Renewable Energy Tax Credit. Such liquidated damages shall be provided to Company in the form of a lump sum payment by Seller or as an energy price credit against any amounts due by Company to Seller for energy purchases under this Agreement, as Company reasonably determines.
- (e) If, prior to the application in Section 5(b) or filing in Section 5(c) of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS), as applicable, a change in tax law occurs to introduce a Hawai'i Production Tax Credit or an alternative renewable tax credit, Seller will use commercially reasonable efforts to determine which tax strategy is likely to result in the larger Net Amount (based on net present value for tax credits earned over time) of usable tax credits. If, based on such efforts, Seller determines that either Section 5(b) or Section 5(c) would result in a larger Net Amount of usable tax credits, an officer of Seller will deliver a notice to Company certifying that Seller has reasonably determined that the selected form of Hawai'i Renewable Energy Tax Credit is likely to result in the larger Net Amount

(based on net present value for tax credits earned over time) of usable tax credits and explaining the rationale for such determination. If, however, Seller reasonably determines that such Hawai'i Production Tax Credit is likely to result in the larger Net Amount (based on net present value for tax credits earned over time) of usable tax credits and that it reasonably can obtain such Hawai'i Production Tax Credit, Seller shall promptly notify Company in writing and explain the rationale for such determination, and Seller and Company shall negotiate in good faith and use commercially reasonable efforts to agree upon lump sum payments and/or credits or adjustments to the Contract Price and other terms of this Agreement as may be required to best benefit Company's customers with 100% of the Net Amount of such tax benefits and preserve the intended economic benefits to the Parties arising from this Agreement.

- (f) Company reserves the right to have Seller's application for the Hawai'i Renewable Energy Tax Credit in Section 5(b) or Section 5(c), or the Hawai'i Production Tax Credit or alternative tax credit under Section 5(e) of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) reviewed by an Independent Tax Expert to determine if such application is expected to maximize available tax credits to best benefit Company's customers, in which case, the provisions of this Section 5(f) shall apply. Company shall deliver to Seller a written notice (the "Nomination Notice") of: (i) the names of three persons qualified and willing to accept appointment as an Independent Tax Expert; (ii) a description provided by each nominee of his or her qualifications to serve as an Independent Tax Expert; (iii) a written undertaking by each nominee to review Seller's tax credit strategy and application, and (iv) each nominee's fee proposal. Seller and Company shall agree on a mutually acceptable person to serve as the Independent Tax Expert within ten (10) Business Days of Seller's receipt of Company's written notice. If the Parties fail to agree upon a mutually acceptable Independent Tax Expert within the aforesaid ten Business Day period, such disagreement shall be resolved pursuant to Section 3(g) of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS). Seller shall pay the fees and expenses of the Independent Tax Expert.

- (g) Any dispute arising under this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) shall constitute a "Dispute" within the meaning of Article 28 (Dispute Resolution) of this Agreement and shall be resolved as provided in said Article 28 (Dispute Resolution).
- (h) For purposes of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS), an Affiliate of Seller is a company that directly or indirectly controls, is controlled by, or is under common control with Seller, and Seller may perform its obligations under this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) directly or through one or more Affiliates.

**[ATTACHMENT K WILL BE REVISED TO REFLECT
THE RESULTS OF IRS]**

ATTACHMENT K
GUARANTEED PROJECT MILESTONES

[For Developer Interconnection Build]

Guaranteed Project Milestone Date	Description of Each Guaranteed Project Milestone
[SPECIFY DATE CERTAIN]	<u>Construction Financing Milestone</u> : Provide Company with documentation reasonably satisfactory to Company evidencing (i) the closing on financing for the Facility including ability to draw on funds by [insert same date certain as in left column] or (ii) the financial capability to construct the Facility (" <u>Construction Financing Closing Milestone</u> ").
[SPECIFY DATE CERTAIN]	<u>Permit Application Filing Milestone</u> : Provide Company with documentation reasonably satisfactory to Company evidencing the filing by or on behalf of Seller of the following applications for Governmental Approvals required for the ownership, construction, operation and maintenance of the Facility: County Plan Approval
[SPECIFY DATE CERTAIN]	<u>Guaranteed Commercial Operations Date</u> .

**[ATTACHMENT K WILL BE REVISED TO REFLECT
THE RESULTS OF IRS]**

ATTACHMENT K-1
SELLER'S CONDITIONS PRECEDENT AND COMPANY MILESTONES

[For Developer Interconnection Build]

Seller's Conditions Precedent Date	Description of Each of Seller's Conditions Precedent
	Seller shall make payment to Company of the amount required under <u>Section 3(b)(ii) of Attachment G</u> (Company-Owned Interconnection Facilities)
	Seller shall provide Company a right of entry for the Company-Owned Interconnection Facilities site(s).
	Seller shall make payment to Company of the amount required under <u>Section 3(b)(iii) of Attachment G</u> (Company-Owned Interconnection Facilities)
	Seller's engineering, procurement and construction (" <u>EPC</u> ") contractor shall obtain grading permit.
	Seller's EPC contractor shall obtain and provide Company all permits (other than any required occupancy permits, if applicable), licenses, easements and approvals to construct the Company-Owned Interconnection Facilities, including the building permit.
No later than three (3) months prior to the commencement of the Acceptance Test	Seller shall provide station service power, if applicable, as required by Company.

<p>No later than three (3) months prior to the commencement of the Acceptance Test</p>	<p>Seller or Seller's EPC contractor shall have Hawaiian Telcom Backup (or equivalent) installed which shall consist of a 1.5 Mbps Routed Network Services circuit for backup SCADA communications from Company's Substation at Seller's Facility to Company's EMS located at 820 Ward Avenue, Honolulu, Hawaii.</p>
	<p>Seller's EPC contractor shall complete installation of physical bus and structures within Company's substation up to the demark point as necessary to interconnect.</p>
<p>[specify date] ("Test Ready Deadline")</p>	<p>Seller's EPC contractor shall complete construction of the Seller-Owned Interconnection Facilities, the Seller shall have satisfied the conditions precedent to the conduct of the Acceptance Test set forth in <u>Section 2 (f)(ii) of Attachment G</u> (Company-Owned Interconnection Facilities) and Seller is otherwise ready to conduct the Acceptance Test.</p>
	<p>Seller shall close grading permit, unless Seller provides documentation establishing, to Company's reasonable satisfaction, that closing the grading permit is not required by the relevant Governmental Authority prior to energization, testing and use of the Facility.</p>

COMPANY MILESTONES

If Seller satisfies the foregoing Seller's Conditions Precedent, the following Company Milestones shall apply:

Company Milestone Date	Description of Each Company Milestone
[] Business Days following the Test Ready Deadline	Company shall, subject to Seller's continued satisfaction of the requirements set forth in <u>Section 2 (f)(ii)</u> and <u>Section 2 (f)(iii)</u> of <u>Attachment G</u> (Company-Owned Interconnection Facilities), commence Acceptance Testing.
	Energization of Company-Owned Interconnection Facilities, provision of back-feed power to support commissioning.

**[ATTACHMENT L WILL BE REVISED TO REFLECT
THE RESULTS OF IRS]**

ATTACHMENT L
REPORTING MILESTONES

[For Developer Interconnection Build]

Reporting Milestone Date	Description of Each Reporting Milestone
[Date]	Seller shall provide Company with a redacted copy of the executed Facility equipment, engineering, procurement and construction (" <u>EPC</u> ") or other general contractor agreements. Under no circumstances shall redactions conceal information that is necessary for Company to verify its rights under the Agreement.
[Date]	Seller shall provide Company with redacted copies of executed purchase orders/contracts for the delivery of Facility WTGs.
[Date]	Building Permit: Seller or Seller's EPC contractor shall obtain building permit.
[Date]	Construction Start Date (defined as the start of civil work on Site).
[Date]	Seller shall have laid the foundation for all Facility buildings, generating facilities and step-up transformer facilities.
[Date]	All WTGs for the Facility shall have been installed at the Site.
[Date]	The step-up transformer shall have been installed at the Site.

ATTACHMENT M
FORM OF LETTER OF CREDIT

Page 1 of 2

[Bank Letterhead]

[Date]

Beneficiary: Hawaiian Electric Company, Inc.

[Address]

[Bank's Name]

[Bank's Address]

Re: [Irrevocable Standby Letter of Credit Number]

Ladies and Gentlemen:

We hereby establish, in your favor, our irrevocable standby Letter of Credit Number _____ (this "Letter of Credit") for the account of [Applicant's Name] and [Applicant's Address] in the initial amount of \$_____ [dollar value] and authorize you, Hawaiian Electric Company ("Beneficiary"), to draw at sight on [Bank's Name].

Subject to the terms and conditions hereof, this Letter of Credit secures [Project Entity Name]'s certain obligations to Beneficiary under the Power Purchase Agreement dated as of _____ between [Project Entity Name] and Beneficiary.

This Letter of Credit is issued with respect to the following obligations:_____.

This Letter of Credit may be drawn upon under the terms and conditions set forth herein, including any documentation that must be delivered with any drawing request.

Partial draws of this Letter of Credit are permitted. This Letter of Credit is not transferable. Drafts on us at sight shall be accompanied by a Beneficiary's signed statement signed by a representative of Beneficiary as follows:

The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of Hawaiian Electric Company, and [(ii) the amount of the draft accompanying this certification is due and owing to

Hawaiian Electric Company under the terms of the Power Purchase Agreement dated as of _____, between _____, and Hawaiian Electric Company] [(ii) the Letter of Credit will expire in less than thirty (30) days, it has not been replaced or extended and collateral is still required under Section ___ of the Power Purchase Agreement*].

Such drafts must bear the clause "Drawn under [**Bank's Name and Letter of Credit Number _____ and date of Letter of Credit.**]"

All demands for payment shall be made by presentation of originals or copies of documents, or by facsimile transmission of documents to [**Bank Fax Number**] or other such number as specified from time to time by the bank. If presentation is made by facsimile transmission, you may contact us at [**Bank Phone Number**] to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation. If presented by facsimile, original documents are not required.

This letter of credit shall expire one year from the date hereof. Notwithstanding the foregoing, however, this letter of credit shall be automatically extended (without amendment of any other term and without the need for any action on the part of the undersigned or Beneficiary) for one year from the initial expiration date and each future expiration date unless we notify you and Applicant in writing at least thirty (30) days prior to any such expiration date that this letter of credit will not be so extended. Any such notice shall be delivered by registered or certified mail, or by FedEx, both to:

Beneficiary at:
Director, Renewable Acquisition Division
Hawaiian Electric Company, Inc.
Central Pacific Plaza
220 South King Street, 21st Floor
Honolulu, Hawai'i 96813

and to
SVP and Chief Financial Officer
Hawaiian Electric Company, Inc.
900 Richards Street, 4th Floor
Honolulu, Hawai'i 96813

* For draw relating to lapse of Letter of Credit while credit support is still required pursuant to the Power Purchase Agreement.

And to Applicant at:

We hereby agree with drawers that drafts and documents as specified above will be duly honored upon presentation to **[Bank's Name]** and **[Bank's Address]** if presented on or before the then-current expiration date hereof.

Payment of any amount under this Letter of Credit by **[Bank]** shall be made as the Beneficiary shall instruct on the next Business Day after the date the **[Bank]** receives all documentation required hereunder, in immediately available funds on such date. As used in this Letter of Credit, the term "Business Day" shall mean any day other than a Saturday or Sunday or any other day on which banks in the State of **[Note - insert State of bank's location]** are authorized or required by law to be closed.

Unless otherwise expressly stated herein, this irrevocable standby letter of credit is issued subject to the rules of the International Standby Practices, International Chamber of Commerce publication no. 590 ("ISP98").

[Bank's Name]:

By: _____
[Authorized Signature]

ATTACHMENT N
ACCEPTANCE TEST GENERAL CRITERIA

[THIS ATTACHMENT WILL NEED TO BE MODIFIED BASED ON THE TYPE AND DESIGN OF THE FACILITY AND RESULTS OF THE IRS]

Upon final completion of Company review of the Facility's drawings, final test criteria and procedures shall be agreed upon by Company and Seller no later than thirty (30) Days prior to conducting the Acceptance Test in accordance with the Agreement. The Acceptance Test may include the following:

1. Interconnection.

- (a) Based on manufacturer's specification, test the local operation of the Facility's ____kV breakers, which connect the Facility to Company System - must open and close locally using the local controls. Test and ensure that the status shown on the Energy Management System (EMS) is the same as the actual physical status in the field.
- (b) Remotely test the operation of the Facility's ____kV breakers which connect the Facility to Company System - must open and close remotely from Company's EMS. Test and ensure that the status shown on the EMS is the same as the actual physical status in the field.
- (c) Relay test engineers to connect equipment and simulate certain inputs to test and ensure that the protection schemes such as any under/over frequency and under/over voltage protection or the Direct Transfer Trip operate as designed. (For example, a fault condition may be simulated to confirm that the breaker opens to sufficiently clear the fault. Additional scenarios may be tested and would be outlined in the final test criteria and procedures.) Seller to also test the synchronizing mechanisms to which the Facility would be synchronizing and closing into the Company System to ensure correct operation. Other relaying also to be tested as specified in the protection review of the IRS and on the single line diagram, Attachment E (Single-Line Drawing and Interface Block Diagram) for the Facility.

- (d) All ___kV breaker disconnects and other high voltage switches will be inspected to ensure they are properly aligned and operated manually or automatically (if designed).
- (e) Switching Station inspections - The Switching Station may be inspected to test and ensure that the equipment that Seller has installed is installed and operating correctly based upon agreed-to design. Wiring may be field verified on a sample basis against the wiring diagrams to ensure that the installed equipment is wired properly. The grounding mat at the Switching Station may be tested to make sure there is adequate grounding of equipment.
- (f) Communication testing - Communication System testing to occur to ensure correct operation. Detailed scope of testing will be agreed by Company and Seller to reflect installed systems and communication paths that tie the Facility to Company's communications system.
- (g) Various contingency scenarios to be tested to ensure adequate operation, including testing contingencies such as loss of communications, and fault simulations to ensure that the Facility's ___kV breakers, if any, open as they are designed to open. (Back up relay testing)

2. Telephone Communication.

- (a) Test to confirm Company has a direct line to the Facility control room at all times and that it is programmed correctly.
- (b) Test to confirm that the Facility operators can sufficiently reach Company System Operator.

If agreed by the Parties in writing, some requirements may be postponed to the Control Systems Acceptance Test.

ATTACHMENT O
CONTROL SYSTEM ACCEPTANCE TEST CRITERIA

[THIS ATTACHMENT WILL NEED TO BE MODIFIED BASED ON THE TYPE AND DESIGN OF THE FACILITY AND THE RESULTS OF THE IRS]

Final test criteria and procedures shall be agreed upon by Company and Seller no later than thirty (30) Days prior to conducting the Control System Acceptance Test ("CSAT") in accordance with Good Engineering and Operating Practices and with the terms of this Agreement. The Control System RTU Points List is necessary for the effective operation of the Company System and will be tested during the Control System Acceptance Test.

The Control System Acceptance Test is comprised of two parts, a set of onsite (at Facility) specific tests and a monitoring performance test. These tests may include the following:

On-site Tests:

1. SCADA Test to verify the status and analog telemetry, and if the remote controls between the Company's EMS and the Facility are working properly end-to-end.
2. Dispatch Test to verify if the Facility's active power limit controls and the Active Power Control Interface with the Company's EMS are working properly. The Test is generally conducted by setting different active power setpoints and limits and observing the proper dispatch of the appropriate ramp rate of the Facility's real power output.
3. Control Test for Voltage Regulation to verify the Facility can properly perform automatic voltage regulation as defined in this Agreement. Test is generally conducted by making small adjustments of the voltage setpoint and verifying by observation that the Facility regulates the voltage at the point of regulation to the setpoint by delivering/receiving reactive power to/from the Company System to maintain the applicable setpoint according to the reactive power control and the reactive amount requirements of Sections 3(a) (Reactive Power Control) and Section 3(b) (Reactive Amount) of Attachment B (Facility Owned by Seller) to this Agreement.
4. Frequency Regulation Control Test to verify the Facility provides a frequency droop response as defined in this Agreement. Test is generally conducted by making adjustments

of the frequency reference setting and verifying by observation that the Facility responds per droop and deadband settings.

5. Fast Frequency Response Control Test to verify the Facility provides the fast frequency response required in this Agreement. Test is generally conducted by simulating rate of change of frequency and/or frequency inputs and verifying by observation that the Facility responds per design and settings. **[DRAFTING NOTE: This test only applies if Facility provides fast frequency response.]**
6. Loss-of-Communication Test to verify the Facility will properly shutdown upon the failure of the direct-transfer-trip communication system. Test is generally conducted by simulating a communications failure and observing the proper shutdown of the Facility.
7. Round Trip Efficiency Test to verify that the round trip efficiency of the BESS is not less than [] percent ([]%). **[ND: The round trip efficiency percentage will be]**
8. Capacity Test to verify the BESS Capacity Ratio.

Monitoring Test:

- a) The monitoring test requires the Facility to operate as it would in normal operations.
- b) To ensure useful and valid test data is collected, the monitoring test shall end when one of the following criteria is met:
 - A. The Facility's power production is greater than 85% of its Allowed Capacity, for at least four (4) hours in any continuous 24-hour CSAT period.
 - B. The recorded renewable energy resource at the Facility is above [600 W/m²] [a Measured Wind Speed of 9 meters per second] for at least eight (8) hours in any continuous 48-hour CSAT period.
 - C. 14 continuous Days from the start of the CSAT.
- c) At the end of the test, an evaluation period is selected based on the criteria that triggered the end of the test.
- d) The performance of the Facility during the period of a successfully completed monitoring test is evaluated for, e.g., voltage regulation, frequency response, dispatch

control, operating limits and ramp rate performance, to verify the performance meets the requirements of this Agreement. The Facility is considered to have complied with a requirement if the Facility was compliant with the requirement at least 99.0% of the time during the evaluation period and the Facility does not grossly violate the requirement when the Facility was in violation. The Parties understand and agree that these compliance conditions are limited only to determining whether the Facility successfully completes the CSAT monitoring test and are not for use in determining compliance during Commercial Operations, shall not be considered a waiver of any of the performance standards of Seller, all of which are hereby reserved, and shall not alleviate Seller from any of its obligations under the Agreement.

ATTACHMENT P
SALE OF FACILITY BY SELLER

1. Company's Right of First Negotiation Prior to End of the Term.

(a) Right of First Negotiation. Commencing as of the Commercial Operations Date, should Seller desire to sell, transfer or dispose of its right, title, or interest in the Facility, in whole or in part, including a Change in Control (as defined below), then, other than through an "Exempt Sale" (as defined below):

(i) Seller shall first offer to sell such interest to Company by providing Company with written notice of the same (the "Offer Notice"), which notice shall identify the proposed purchase price for such interest (including a description of any consideration other than cash that will be accepted) (the "Offer Price") and any other material terms of the intended transaction, and Company may, but shall not be obligated to, purchase such interest at the Offer Price and upon the other material terms and conditions specified in the Offer Notice, and in accordance with the terms and conditions of this Attachment P (Sale of Facility by Seller). Seller shall provide to Company as part of the Offer Notice, information in its possession regarding the Facility to allow Company to conduct due diligence on the potential purchase, including, but not limited to information on the operational status of the Facility and its components, and the amount of debt or other material Seller obligations remaining with respect to the Facility (the Offer Notice and due diligence information on the Facility are collectively referred to as, the "Offer Materials"). Within five (5) Days of Company's receipt of the Offer Materials, if Company believes the due diligence information is incomplete, Company shall specify in writing the additional information Company requires to conduct its due diligence. The date on which Company receives the Offer Materials from Seller is referred to hereinafter as the "Offer Date."

(ii) If Company desires to purchase such interest, Company shall indicate so by delivering to Seller a binding, written offer to purchase such interest at

the Offer Price and on the terms and conditions specified in the Offer Notice within thirty (30) Days of the Offer Date (an "Acceptance Notice"). In the event Company timely delivers an Acceptance Notice, Seller shall sell and transfer to Company the interest substantially on the terms and conditions contained in the Offer Notice consistent with this Attachment P (Sale of Facility by Seller) and in accordance with definitive documentation to be entered into between Seller and Company. The Parties shall have sixty (60) Days from the Company's Acceptance Notice, or such other extended timeframe as agreed to by the Parties in writing, to negotiate in good faith, the terms and conditions of a purchase and sale agreement. The period beginning with the Offer Date and ending with such sixty (60) Day period (as may be extended as aforesaid) is referred to as the "Right of First Negotiation Period".

- (iii) Seller shall not solicit any offers for the sale of such interest to any other party during the Right of First Negotiation Period unless, during that period, Company provides Seller with written notice that Company no longer desires to purchase such interest, whereupon negotiations shall terminate.
- (iv) In the event that (A) Company fails to timely deliver an Acceptance Notice, (B) Company delivers a notice to Seller that it no longer desires to purchase the interest, or (C) the Parties are not able to execute a purchase and sale agreement within the 60-Day period set forth in Section 1(a)(ii) of this Attachment P (Sale of Facility by Seller), Seller may for a period of two hundred seventy (270) Days following the event specified in subsection (A), (B) or (C) above, commence solicitation of offers and negotiations from and with other parties for the sale of such interest. If the interest is not transferred to a purchaser or purchasers for any reason within the two hundred seventy (270) Day period, the interest may only be transferred by again complying with the procedures set forth in this Section 1(a) (Right of First Negotiation) of Attachment P (Sale of Facility by Seller); provided, however, if Seller and the

prospective purchaser have entered into definitive agreement(s) for the sale of the interest that was reasonably expected to close within such two hundred seventy (270) Day period and such agreement(s) remain in full force and effect between Seller and such prospective purchaser and are subject to conditions precedent that are expected to be satisfied within a reasonable period, the two hundred seventy (270) Day period shall be extended as to such agreement(s) and such prospective purchaser for up to one hundred eighty (180) additional Days or, if sooner, until such date that such agreement(s) have been terminated, cancelled or otherwise become no longer in full force and effect.

- (v) After expiration of the Right of First Negotiation Period, Company will not be precluded from providing offers or proposals to Seller along with other prospective purchasers in accordance with any offer or bid procedures established by Seller in its discretion.

- (b) Change in Ownership Interests and Control of Seller. Commencing as of the Commercial Operations Date, the Right of First Negotiation shall also be triggered by a transfer or sale of an ownership interest in Seller (whether in a single transaction or a series of related or unrelated transactions) following which **[Note - insert parent entity]** or an entity controlled by **[parent entity]** is no longer a direct or indirect owner of at least fifty-one percent (51%) of the equity interest or voting control of Seller (excluding any equity interest or voting control of Seller held by a tax equity investor or for Financing Purposes (as defined below)) (such transfer of ownership interest and change in control collectively referred to as a "Change in Control"); provided, however that a transfer or sale whereby **[parent entity]** retains the possession, directly or indirectly, or the power to direct or cause the direction of the management and policies of Seller, whether through ownership, by contract, or otherwise, shall not be deemed a Change in Control.

- (c) Exempt Sales. Exempt Sales shall not trigger a Right of First Negotiation and shall not require the consent of Company. As used herein, "Exempt Sales" means: (i) a

change in ownership of the Facility or equity interests in Seller resulting from the direct or indirect transfer or assignment by or of Seller in connection with financing or refinancing of the Facility ("Financing Purposes"), including, without limitation, any exercise of rights or remedies (including foreclosure) with respect to Seller's right, title, or interest in the Facility or equity interests in Seller undertaken by any financing party in accordance with applicable financing documents, and including, without limitation, (x) a sale and leaseback of the Facility, (y) an inverted lease, (z) a sale or transfer of equity in Seller to facilitate a tax credit financing (including any partnership "flip" transaction), (ii) a disposition of equipment in the ordinary course of operating and maintaining the Facility, (iii) a sale that does not result in a Change in Control, and (iv) a sale or transfer of any interest in Seller or the Facility to one or more companies directly or indirectly controlling, controlled by or under common control with Seller.

- (d) Seller's Right to Transfer. The provisions of this Section 1(d) (Seller's Right to Transfer) shall apply (i) from the Execution Date through the Commercial Operations Date and (ii) from the Commercial Operations Date in the event that Company does not consummate a purchase pursuant to its exercise of the Right of First Negotiation in accordance with the terms and conditions of this Attachment P (Sale of Facility by Seller). In such circumstances, Seller shall, subject to the prior written consent of Company, which consent shall not be unreasonably withheld, conditioned or delayed, have the right to transfer or sell the Facility to any person or entity which proposes to acquire the Facility with the intent to continue the operation of the Facility in accordance with the provisions of this Agreement pursuant to an assignment of this Agreement. Company shall consent to the assignment of this Agreement to such prospective purchaser upon receiving documentation from Seller establishing, to Company's reasonable satisfaction, that the assignee (i) has a tangible net worth of \$100,000,000 or a credit rating of "BBB-" or better and has the ability to perform its financial obligations hereunder (or provides a guaranty from an entity that meets this description) in a manner consistent with the terms and conditions of this Agreement; and (ii) has experience in the ownership and

at least five (5) years of experience in the operation (or contracts with an entity that has at least five (5) years of experience in the operation) of power generation and BESS facilities; provided, however, that Company shall be deemed to have consented to the assignment if, within ten (10) Business Days of receiving from Seller the documentation establishing that the assignee meets all the foregoing criteria, Company does not either (y) deliver the required consent to Seller, or (z) notify Seller which of the foregoing criteria is not established by such documentation. Notwithstanding the foregoing, Company consent shall not be required for any Exempt Sale.

- (e) Purchase and Sale Agreement and PUC Approval. In the event that Company exercises its Right of First Negotiation under Section 1(a) (Right of First Negotiation) of this Attachment P (Sale of Facility by Seller) and the Parties conclude a purchase and sale agreement, such agreement shall contain, at a minimum, the terms set forth in Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Seller), and such agreement shall be subject to PUC Approval as provided in Section 5 (PUC Approval) of this Attachment P (Sale of Facility by Seller).
- (f) Right of First Refusal. In the event the Parties fail to agree upon a sale of the Facility or an interest in the Facility to Company prior to the expiration of the Right of First Negotiation Period, the provisions of this Section 1(f) (Right of First Refusal) of this Attachment P (Sale of Facility by Seller) shall apply if (i) Seller thereafter offers to sell the Facility to a third party for less than (as applicable) the final amount Company had offered to purchase the Facility or (ii) an ownership interest in the Facility that would result in a Change in Control is offered for sale to a third party that is less than the proportionate share of (as applicable) the final amount Company had offered to purchase the Facility. (By way of example, if the final amount offered by Company to purchase the Facility was \$100, and the ownership interest being offered for sale is 75%, the "proportionate share" is \$75, such that an offer to sell such ownership interest for less than \$75 would trigger this Section 1(f) (Right of First Refusal) of this Attachment P (Sale of Facility by Seller).) Seller shall notify Company in writing of an offer that

triggers this Section 1(f) (Right of First Refusal) of this Attachment P (Sale of Facility by Seller) and Company shall have the right to purchase the Facility for the amount of such offer on similar terms and conditions consistent with this Attachment P (Sale of Facility by Seller) and subject to PUC Approval; provided, that Company shall have one (1) month in which to notify Seller of its intent to exercise this right. If the offer of which Seller notifies Company as aforesaid is an offer to sell the Facility, Company shall have the right to purchase the Facility for the amount of such offer on similar terms and conditions. If the offer of which Seller notifies Company as aforesaid is an offer to sell an ownership interest that could result in a Change in Control, Company shall have the right to purchase the Facility by a price that is proportionate to the amount at which such ownership interest was offered on the terms and conditions to be negotiated by the Parties on the basis of Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Seller), and otherwise consistent with this Attachment P (Sale of Facility by Seller). (By way of example, if a 75% ownership Interest is being offered for sale at \$75, the proportionate amount at which Company shall have the right to purchase the Facility would be \$100.)

2. Company's Right of First Negotiation to Purchase at End of Term.
 - (a) Option of Exclusive Negotiation Period. Company shall have the option of an exclusive negotiation period to negotiate a purchase of the Facility on the last Day of the Term, and all rights of Seller therein or relating thereto. Company shall indicate its preliminary interest in exercising the option for exclusive negotiation by delivering to Seller a notice of its preliminary interest not less than two (2) years prior to the last Day of the Term. If Company fails to deliver such notice by such date, Company's option shall terminate.
 - (b) Negotiations. Once Company has given such notice of preliminary interest to Seller, for a period not to exceed three (3) months, Company shall have the exclusive right to negotiate in good faith with Seller,

the terms of a purchase and sale agreement pursuant to which Company may purchase the Facility, which purchase and sale agreement shall include, without limitation, the terms set forth in Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Seller) and a price equal to the Offer Price as presented by Seller in accordance with the procedures identified in Section 1(a)(i) through (v) of this Attachment P (Sale of Facility by Seller). The Parties may agree in writing to extend this period for negotiations. (Such period, as extended as aforesaid, is referred to herein as the "Exclusive Negotiation Period.") Seller shall not solicit any offers or negotiate the terms for the sale of the Facility with any other entity during the Exclusive Negotiation Period, unless, during the Exclusive Negotiation Period, Company gives written notice that such negotiations are terminated.

- (c) Purchase and Sale Agreement and PUC Approval. In the event that Company exercises its right of exclusive negotiation under Section 2(a) (Option of Exclusive Negotiation Period) of this Attachment P (Sale of Facility by Seller) and the Parties conclude a purchase and sale agreement pursuant to Section 2(b) (Negotiations) of this Attachment P (Sale of Facility by Seller), such agreement shall contain, at a minimum, the terms set forth in Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Seller), and such agreement shall be subject to PUC Approval as provided in Section 5 (PUC Approval) of this Attachment P (Sale of Facility by Seller).
- (d) Right of First Refusal. In the event the Parties fail to agree upon a sale of the Facility to Company prior to the expiration of the Exclusive Negotiation Period provided in Section 2(b) (Negotiations) of this Attachment P (Sale of Facility by Seller), and Seller thereafter offers to sell the Facility to a third party for less than the final amount Company had offered to purchase the Facility, Seller shall notify Company in writing of such offer and Company shall have the right to purchase the Facility for the amount of such offer and on no less favorable terms and conditions consistent

with this Attachment P (Sale of Facility by Seller) and subject to PUC Approval; provided, however, that Company shall have one (1) month in which to notify Seller of its intent to exercise this right. The Right of First Refusal shall not apply to any offer to purchase the Facility received from a third party more than twelve (12) months after the end of the Term.

3. Procedure to Determine Fair Market Value of the Facility.

- (a) If the Parties have agreed to effectuate a sale of the Facility pursuant to Section 24.5 (Consolidation) and are unable to agree on the fair market value of the Facility, each of Company and Seller shall engage the services of an independent appraiser experienced in appraising power generation assets similar to the Facility to determine separately the fair market value of the Facility. Subject to the appraisers' execution and delivery to Seller of a suitable confidentiality agreement in form reasonably acceptable to Seller, Seller shall provide both appraisers full access to the books, records and other information related to the Facility required to conduct such appraisal. Company shall pay all reasonable fees and costs of both appraisers, subject to Section 3(c) of this Attachment P (Sale of Facility by Seller). Each of Company and Seller shall use reasonable efforts to cause its appraisal to be completed within two (2) months following the engagement of the independent appraisers. If for any reason (other than failure by Seller to provide full access to Company's appraiser) one of the appraisals is not completed within such two (2) month period, the results of the other, completed appraisal shall be deemed to be the Appraised Fair Market Value of the Facility. Each Party may provide to both appraisers (with copies to each other) a list of factors which the Parties suggest be taken into consideration when the appraisers generate their appraisals.
- (b) Company and Seller shall exchange the results of their respective appraisals when completed and, in connection therewith, the Parties and their appraisers shall confer in an attempt to agree upon the fair market value of the Facility.

- (c) If, within thirty (30) Days after completion of both appraisals, the Parties cannot agree on a fair market value for the Facility, within ten (10) Days thereafter, the first two appraisers shall by mutual consent choose a third independent appraiser. If the first two appraisers fail to agree upon a third appraiser, such appointment shall be made by DPR upon application of either Party. The Parties shall direct the third appraiser (i) to select one of the appraisals generated by the first two appraisers as the Appraised Fair Market Value of the Facility (without compromise, aka "baseball" arbitration), and (ii) to complete his or her work within one month following his or her retention. If the third appraiser selects the appraisal originally generated by Seller's appraiser, Company shall pay the fees and costs of the third appraiser. If the third appraiser selects the appraisal originally generated by Company's appraiser, Seller shall pay the fees and costs of the third appraiser and shall pay or reimburse Company for the costs of Seller's original appraiser.
- (d) The "Appraised Fair Market Value of the Facility" means the fair market value determined by appraisal pursuant to Section 3(a) or Section 3(c) of this Attachment P (Sale of Facility by Seller) as applicable.
4. Purchase and Sale Agreement. The purchase and sale agreement ("PSA") concluded by the Parties pursuant to this Attachment P (Sale of Facility by Seller) (as applicable) shall contain, among other provisions, the following:
- (a) Seller shall, as of the closing of the sale, convey title to the Facility consistent with the state of title in existence as of the date of execution of the PSA, including all rights of Seller in the Facility or relating thereto, free and clear of all liens, claims, encumbrances, or rights of others, except any Permitted Lien;
- (b) To the extent assignable or transferrable, Seller shall assign or transfer to Company all of Seller's interest in all Project Documents and Governmental Approvals that are then in effect and that are utilized for the operation or maintenance of the Facility;

- (c) Seller shall execute and deliver to Company such deeds, bills of sale, assignments and other documentation as Company may reasonably request to convey title to the Facility consistent with the state of title in existence as of the date of execution of the PSA, free from all liens, claims, encumbrances, or rights of others, except any Permitted Lien;
- (d) Seller shall cause all liens on the Facility for monies owed (including liens arising from Financing Documents), and any liens in favor of Seller's affiliates, to be released prior to closing on the sale of the Facility to Company;
- (e) Seller shall warrant, as of the date of the closing of the sale of the Facility to Company, title to the Facility consistent with the state of title in existence as of the date of execution of the PSA, is free and clear of all other liens, claims, encumbrances and rights of others, except any Permitted Lien;
- (f) Company shall have no liability for damages (including without limitation, any development and/or investment losses, liabilities or damages, and other liabilities to third parties) incurred by Seller on account of Company's purchase of the Facility, nor any other obligation to Seller except for the purchase price, and Seller shall indemnify Company against any such losses, liabilities or damages;
- (g) Company shall assume all of Seller's obligations with respect to the Facility accruing from and after the date of closing on the sale of the Facility to Company, including (i) to the extent assignable, all Permits held by, for, or related to the Facility, and (ii) all of Seller's agreements with respect to the Facility provided to and approved by Company at least thirty (30) Days prior to the date of closing on the sale of the Facility to Company, except for such agreements Company has elected to terminate, in which case any related termination expenses shall be, at Company's option, paid directly by Company and deducted from the purchase price;
- (h) Seller shall indemnify Company against all of Seller's obligations with respect to the Facility accruing through the date of closing the sale of the Facility to

Company, and Company shall indemnify Seller against all of Company's obligations with respect to the Facility accruing from and after the date of closing on the sale of the Facility to Company;

- (i) Unless otherwise agreed to by the Parties, Seller makes no representations or warranties with respect to the condition of the Facility, and Company shall purchase the Facility on an as-is basis;
- (j) Seller shall warrant that, except as disclosed to and approved by Company in writing at least thirty (30) Days prior to the date of closing on the sale of the Facility to Company, the Facility has been operated by Seller in conformity with all Laws;
- (k) Seller shall warrant that Seller provided full access to Company and each appraiser in connection with the procedure to determine fair market value provided in Section 3 (Procedure to Determine Fair Market Value of the Facility) of this Attachment P (Sale of Facility by Seller);
- (l) If applicable, Seller's lease of the Site from Company will terminate and Seller will relinquish all rights, privileges and obligations relating to such lease; and
- (m) Seller shall maintain the Facility in accordance with Good Engineering and Operating Practices between appraisal and the closing date.

As used in this Attachment P (Sale of Facility by Seller), "Permitted Lien" shall mean (i) any lien for taxes not yet due or delinquent or being contested in good faith by appropriate proceedings, (ii) any lien arising in the ordinary course of business by operation of applicable Laws with respect to a liability not yet due or delinquent or that is being contested in good faith, (iii) all matters that are disclosed (whether or not subsequently deleted or endorsed over) on any survey, in the title policies insuring any Land Rights or in any title commitments, title reports or other title materials, (iv) any matters that would be disclosed by a complete and correct survey of the Property, (v) zoning, planning, and other similar limitations and restrictions, and all rights of any Governmental Authority to regulate the Site and/or the Facility, (vi) all matters of record, (vii) any lien that is released on or prior to closing of the sale of the Facility to Company, (viii) statutory or common law liens

in favor of carriers, warehousemen, mechanics and materialmen, and statutory or common law liens to secure claims for labor, materials or supplies arising in the ordinary course of business which are not delinquent, and (ix) the matters agreed by the Parties, to the extent that such Permitted Liens are taken into account at arriving at the appraised value.

5. PUC Approval. Any purchase and sale agreement related to the Facility entered into by the Parties is subject to approval by the PUC and the Parties' respective obligations thereunder are conditioned upon receipt of such approval, except as specifically provided otherwise therein.

(a) Company shall submit the purchase and sale agreement to the PUC for approval within thirty (30) Days after execution by both Parties, but Company does not extend any assurances that PUC approval will be obtained. Seller will provide reasonable cooperation to expedite obtaining an approval order from the PUC, including providing information requested by the PUC and parties to the PUC proceeding in which approval is being sought. Seller understands that lack of cooperation may result in Company's inability to file an application with the PUC and/or failure to receive PUC approval. Unless otherwise agreed to in writing by the Parties, neither Company nor Seller shall seek reconsideration, appeal, or other administrative or judicial review of any unfavorable PUC order. The Parties agree that neither Party has control over whether or not a PUC approval order will be issued and each Party hereby assumes any and all risk arising from, or relating in any way to, the inability to obtain a satisfactory PUC order and hereby releases the other Party from any and all claims relating thereto.

(b) Seller shall seek participation without intervention in the PUC docket for approval of the purchase and sale agreement pursuant to applicable rules and orders of the PUC. The scope of Seller's participation shall be determined by the PUC. However, Seller expressly agrees to seek participation for the limited purpose and only to the extent necessary to assist the PUC in making an informed decision regarding the approval of the purchase and sale agreement. If the Seller chooses not to seek participation in the docket, then Seller expressly agrees and knowingly waives the right to claim, before

the PUC, in any court, arbitration or other proceeding, that the information submitted and the application requesting the PUC approval are insufficient to meet Company's burden of justifying that the terms of the purchase and sale agreement are just and reasonable and in the public interest, or otherwise deficient in any manner for purposes of supporting the PUC's approval of the purchase and sale agreement. Seller shall not seek in the docket and Company shall not disclose any confidential information to Seller that would provide Seller with an unfair business advantage or would otherwise harm the position of others with respect to their ability to compete on equal and fair terms.

- (c) In order to constitute an approval order from the PUC under this Section 5 (PUC Approval) of this Attachment P (Sale of Facility by Seller), the order must approve the purchase and sale agreement, Company's funding arrangements and Company's acquisition of the Facility, shall not contain any terms and conditions deemed to be unacceptable by Company, and be in a form deemed reasonable by Company in its sole, but non-arbitrary, discretion.
- (d) The Final Non-Appealable Order from the PUC must be obtained within six (6) months of the submission of the purchase and sale agreement to the PUC, or any extension of such period as agreed by the Parties in writing within ten (10) Days of the expiration of the six (6) month period; provided, however, that if the purchase and sale agreement governs a sale of the Facility executed pursuant to Section 24.5 (Consolidation) of this Agreement, the Final Non-Appealable Order must be obtained within twelve (12) months of the submission of the purchase and agreement to the PUC, or any extension of such period as agreed by the Parties in writing within ten (10) Days of the expiration of the twelve (12) month period. The term "Final Non-appealable Order from the PUC" means an Approval Order from the PUC (i) that is not subject to appeal to any Circuit Court of the State of Hawai'i, Intermediate Court of Appeals of the State of Hawai'i, or the Supreme Court of the State of Hawai'i, because the period permitted for such an appeal has passed without the filing of notice of such an appeal, or (ii) that was affirmed on appeal to any Circuit Court of the State of Hawai'i, Intermediate Court of Appeals of the State of Hawai'i, or the Supreme

Court of the State of Hawai'i, or was affirmed upon further appeal or appellate process, and that is not subject to further appeal, because the jurisdictional time permitted for such an appeal and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari has passed without the filing of notice of such an appeal or the filing for further appellate process. Such Final Non-Appealable Order from the PUC shall constitute and be referred to as "PUC Approval" for purposes of this Attachment P (Sale of Facility by Seller).

- (e) If a Final Non-Appealable Order from the PUC has not been obtained prior to the deadline provided in Section 5(b) of this Attachment P (Sale of Facility by Seller), either Party may give written notice to the other Party that it does not wish to proceed further with a sale of the Facility to Company.
 - (f) If the Final Non-appealable Order from the PUC does not satisfy the conditions set forth in Section 5(a) of this Attachment P (Sale of Facility by Seller), either (i) the Parties may agree to renegotiate and submit a revised purchase and sale agreement to the PUC, or (ii) either Party may give written notice to the other Party that it does not wish to proceed further with a sale of the Facility to Company.
6. Make Whole Amount. For purposes of Section 24.5 (Consolidation), the "Make Whole Amount" shall be equal to the sum of the following: (a) Seller's book value (including depreciation on a twenty-five (25) year straight line basis) of all actual verifiable costs of studies, designs, engineering, and construction of the Facility and all Interconnection Facilities (including any Company-Owned Interconnection Facilities paid for by Seller), including cancellation charges and other costs of unwinding construction and demobilization if the determination is made prior to the Commercial Operation Date, (b) Seller's book value of all actual verifiable costs and expenses acquiring real estate rights for the Facility and Interconnection Facilities, (c) Seller's book value of all actual verifiable costs and expenses incurred in obtaining Governmental Approvals, (d) Seller's book value of all actual verifiable costs of financing the Facility and the Interconnection Facility, including fees and expenses of bankers, consultants and counsel, and any discounts or premiums paid in connection

with any financing, (e) any actual verifiable costs of repaying any financing in connection with a sale, including prepayment penalties or premiums, make whole payments, minimum interest payments, breakage fees, payments on account of taxes, duties and other costs, and other costs of unwinding swaps or other hedges, (f) other breakage, make whole or indemnity payments arising as the result of Company's purchase of the Facility, (g) tax costs, including recapture of federal or state tax credits and payment of transfer taxes, and (h) interest on the foregoing amounts at annual rate equal to the Prime Rate plus two percent (2%) as in effect from time to time from the date incurred through the date of payment, with all such costs being demonstrated by Seller with support and verified by Company. The items described in clauses (e), (f) and (g) (and clause (h) to the extent applicable to clauses (e), (f) and/or (g)) are referred to as the "Financial Termination Costs".

ATTACHMENT Q
CALCULATION OF CERTAIN METRICS

[DRAFTING NOTE: THE PERFORMANCE METRICS SET FORTH IN SECTIONS 1
SUBJECT TO MODIFICATION.]

1. Modified Pooled OMC Equipment Availability Factor ("MPXEEAF").

NERC formula

$$OutageHrs = (FTH + MTH + PTH)$$

$$DeratedHrs = (EFDTH + EMDTH + EPDTH)$$

$$OMCHrs = (oFTH + oMTH + oPTH)$$

$$DeratedOMCHrs = (oEFDTH + oEMDTH + oEPDTH)$$

$$PXEEAF = \frac{\sum [ACTH - (OutageHrs + DerateHrs) + (OMCHrs + DeratedOMCHrs)]}{\sum ACTH} * 100$$

Modified Pooled OMC Equipment Equivalent Availability Factor (MPXEEAF)

$$MPXEEAF = \frac{[(ACTH - ExcludedTime) - (OutageHrs) + (OMCHrs)]}{ACTH - ExcludedTime} * 100$$

Modifications made to the NERC formula are:

1. Deleted impact due to DeratedHrs. Derations will be assessed using the Performance Index metric.

Where:

Active Turbine Hours (ACTH) is the sum of all turbine-hours that the turbines are in an active state. See Exhibit Q.1

Contact Turbine Hours (CTH) is the sum of all turbine-hours that the turbines are synchronized to the system. It is the turbine-hours that the contactors are closed and generation is connected to the grid. The term is similar to service hours used in conventional generation.

Forced Turbine Hours (FTH) is the sum of all turbine-hours that that the turbine is off-line due to forced events. FTH are all forced events where the WTG must be removed from service for repairs before the next Sunday at 23:59 (just before Sunday becomes Monday).

OMC Forced Turbine Hours (oFTH) is a subset of FTH that equals any forced turbine-hours that were due to causes deemed to be OMC.

Maintenance Turbine Hours (MTH) is the sum of all turbine-hours that the turbine is off-line due to a Maintenance Event.

OMC Maintenance Turbine Hours (oMTH) is a subset of MTH that equals any maintenance turbine-hours that were due to causes deemed to be OMC.

Planned Turbine Hours (PTH) is the sum of all turbine-hours that the turbine is off-line due to a planned event. A Planned Event is scheduled well in advance and is of predetermined duration and can occur several times a year.

OMC Planned Turbine Hours (oPTH) is a subset of PTH that equals any planned turbine-hours that were due to causes deemed to be OMC.

Equivalent Forced Derated Turbine Hours (EFDTH) is the equivalent forced turbine hours when turbine output is reduced for forced issues.

OMC Equivalent Forced Derated Turbine Hours (oEFDTH) is a subset of EFDTH that equals any turbine-hours when turbine output is reduced for forced issues deemed to be OMC.

Equivalent Maintenance Turbine Hours (EMDTH) are the equivalent maintenance turbine hours when the turbine output is reduced for maintenance turbine hours, EMDTH must meet the requirements for a maintenance outage. The turbine must be capable of running until the following week unless the outage occurs on the weekend the turbine must be capable of running through the following week.

OMC Equivalent Maintenance Derated Turbine Hours (oEMDTH) are OMC equivalent maintenance hours when turbine output is reduced for OMC maintenance issues. This is a subset of EMDTH.

Equivalent Planned Turbine Hours (EPDTH) is the equivalent planned turbine hours when turbine output is reduced for a planned issue.

OMC Equivalent Planned Derated Turbine Hours (oEPDTH) are OMC equivalent planned hours when turbine output is reduced for OMC planned issues. This is a subset of EPDTH.

Equivalent Reserve Shutdown Derated Turbine Hours (ERSDTH): are the equivalent reserve shutdown hours when turbine output is reduced for economic reasons.

Outside Management Control (OMC): are events (other than Seller-Attributable Non-Generation events) that occur beyond the Facility boundaries or are caused by abnormal weather. OMC events can be Planned, Maintenance, Forced Outage, or Derating Events. OMC events can be due to Company dispatching the Facility resulting in a deration of the Facility's output or to Grid constraints, such as transmission/distribution maintenance or switching. OMC events do not include Seller-Attributable Non-Generation events.

ExcludedTime: ExcludedTime is unavailability as a result of the WTG(s) and the BOP or a portion of any of the foregoing being unavailable due to Force Majeure. The hours and/or equivalent hours of ExcludedTime shall be subtracted from Active Turbine Hours. This is calculated by multiplying the actual duration of the event that counts as ExcludedTime (in hours) by the number of WTG(s) in the Facility that are offline and dividing by the total number of WTG(s) in the Facility. These equivalent hour(s) are then summed.

The effect of Force Majeure is taken into account in calculating the Modified Pooled OMC Equivalent Availability Factor over the 12 calendar month LD Period as follows: When an LD Period

contains a month during which the WTG(s) and the BOP or a portion of any of the foregoing are unavailable due to Force Majeure, then such month shall be excluded from the LD Period and the LD Period shall be extended back in time to include the next previous month during which there was no such unavailability due to Force Majeure.

See also Section 8.3 (Company Rights of Dispatch) of this Agreement.

Example: The following is an example of a MPXEEAF calculation and is included for illustrative purposes only:

A	B	C	D	E	F	G	H
TID	ACTH	FTH	MTH	PTH	OFTH	OMTH	OPTH
Turbine1	100.00	5.05	6.20	3.75	4.00	4.25	3.05
Turbine2	100.00	5.05	6.15	3.75	4.00	4.25	3.05
Turbine3	100.00	5.05	6.20	3.75	4.00	4.25	3.05
SUM	300.00	15.15	18.55	11.25	12.00	12.75	9.15

$$[B - (C+D+E) + (F+G+H)]/B * 100$$

MPXEEAF

96.3

2. Performance Index.

$$PI_{Facility} = \frac{\sum_{i=1}^N Actual\ Generation_{WTG_i} [MWh]}{\sum_{i=1}^N Expected\ Generation_{WTG_i} * (1 - 0.001 * (Applicable\ Contract\ Year - 1)) [MWh]}$$

Performance Index Calculation

- Performance Index will not be calculated or assessed for the first Contract Year.
- For each calendar month, Seller shall calculate the Actual Generation at each WTG and estimate the Expected Generation at each WTG for all periods where the WTG's operational state is categorized as CTH excluding periods where the WTG's operational state is categorized as ERSDTH, oEFDTH, oMPH, oEPDTH, or Environmental Derate. See Exhibit Q.2
- Seller shall use the equation set forth above to calculate the Performance Index for the previous rolling 12 months.
- Seller shall also provide the Company the Measured Power Curve that was used for each WTG and data from periods where Actual Generation and Expected Generation were calculated for such WTG.

See also Section 8.3 (Company Rights of Dispatch) of this Agreement.

Example: The following is an example of a Performance Index Calculation and is included for illustrative purposes only:

A	B	C	D	E	F	G	H
ACTUAL GENERATION [MWH]							B - (C+D+E+F+G)
TID	CTH	ERSDTH	OEFDTH	OEMPTH	OEPDTH	Env. Derate	Actual Generation
Turbine1	900.00	20.00	10.00	15.00	5.00	5.00	845.00
Turbine2	1,000.00	15.00	10.00	15.00	5.00	5.00	950.00
Turbine3	1,200.00	20.00	10.00	15.00	5.00	5.00	1,145.00
Sum	3,100.00	55.00	30.00	45.00	15.00	15.00	2,940.00
EXPECTED GENERATION [MWH]							B - (C+D+E+F+G)
TID	CTH	ERSDTH	OEFDTH	OEMPTH	OEPDTH	Env. Derate	Expected Generation
Turbine1	945.00	35.00	15.00	20.00	10.00	10.00	855.00
Turbine2	1,115.00	40.00	15.00	25.00	10.00	15.00	1,010.00
Turbine3	1,300.00	35.00	18.00	21.00	10.00	10.00	1,206.00
Sum	3,360.00	110.00	48.00	66.00	30.00	35.00	3,071.00
H6/H13 * 100							
Performance Index							
95.7							

3. Calculation of Density-Adjusted Wind Speed. For purposes of calculating Density-Adjusted Wind Speed for each WTG for each PI Evaluation Period, the 10-minute averaged wind speed measurement from the nacelle anemometer for such turbine shall be adjusted for the 10-minute averaged ambient air temperature and the 10-minute averaged ambient air pressure (both as measured by the field measurement devices located at approximately "hub height" on the Facility's MMTs) by calculating the Density-Adjusted Wind Speed for such turbine for each 10-minute increment as follows:

$$V_n = V_{obs} \left(\frac{\rho_{calc}}{\rho_0} \right)^{1/3}$$

where:

- V_n = Density-Adjusted Wind Speed [m/s];
- V_{obs} = Measured Wind Speed (10-minute averaged) [m/s]
- ρ_0 = 1.225 kg/m³
- ρ_{calc} = Calculated Air Density (10-minute averaged) [kg/m³]

$$= \frac{B_{obs}}{R_0 * T_{K_{obs}}}$$

where:

B_{obs} = Measured Ambient Air Pressure (10-minute averaged) [Pa]

R_0 = specific gas constant for dry air (287.057 J/kg*K)

T_{Kobs} = Measured Ambient Air Temperature (10-minute averaged) [K]

For unit conversion purposes:

$$1 \text{ Pa} = 0.01 \text{ mbar}$$

$$T_{Kelvin} = T_{Celsius} + 273.15$$

The foregoing formulae are based on the formulae found at Section 8.1 of IEC 61400-12-1.

4. Determination of Measured Power Curve.

- During the first Contract Year, the Seller shall collect data to create a Measured Power Curve for each WTG that will be used for the remainder of the Initial Term to calculate the Expected Generation. The Measured Power Curve for each WTG will not be updated.
- To develop the Measured Power Curve for each WTG, Seller shall use data for such WTG during periods when such WTG is in the operational state categorized as CTH excluding periods where the WTG's operational state is categorized as ERSDTH, EFDTH, EMPH, EPDTH, oEFDTH, oMPH, oEPDTH, or Environmental Derate. See Exhibit Q.3

Following the end of the first Contract Year, the Measured Power Curve for each WTG shall be calculated by Seller using the following data from the first Contract Year: (aa) the Density-Adjusted Wind Speed (for avoidance of doubt, the only referenced air density shall be the ISO standard atmosphere for sea level air density of 1.225 kg/m³ as set forth in Section 3 (Calculation of Density-Adjusted Wind Speed) of this Attachment Q) (Calculation of Certain Metrics), (bb) the 10-minute averaged Measured Wind Speed and (cc) the 10-minute averaged power output of such WTG. The data set used for calculating the Measured Power Curve shall include only Measured Wind Speed and power output measurements during the periods specified in the second bullet point above. The Measured Power Curve shall be calculated using (i) 0.5 m/s wind bins ranging from 1 m/s below the manufacturer's specified cut-in-wind speed to, at least, 1.5 times the wind speed specified by the manufacturer as associated with 85% of the rated power of the WTG and (ii) the 10-minute averaged power output for each wind speed bin. The data set used to calculate the Measured Power Curve should include a minimum of 180 hours of sampled data from periods during the preceding Contract Year, where each wind bin includes the minimum of 30 minutes of sampled data, i.e. a minimum of 3

data points. If the aforementioned required minimums of sampled data are not available, Seller and Company may agree in writing upon a smaller data set to calculate the Measured Power Curve. Except as necessary to satisfy the foregoing requirements of this Section 4 (Determination of Measured Power Curve) of this Attachment Q (Calculation of Certain Metrics), the Measured Power Curve shall be calculated in a manner consistent with Clause 8.1 and Clause 8.2 of IEC 61400-12-1. Upon Seller's calculation of the Measured Power Curve for each WTG as provided in this Section 4 (Determination of Measured Power Curve), Seller shall provide written notice to Company of such Measured Power Curve(s).

5. Calculation of Expected Generation for Each WTG. The Expected Generation for each WTG shall be based on (i) the Density-Adjusted Wind Speed for such turbine for each 10-minute increment or portion thereof during the period and (ii) the Measured Power Curve for the WTG as determined as set forth in Section 4 (Determination of Measured Power Curve) of this Attachment Q (Calculation of Certain Metrics).
6. Resolution of Disagreements. Disagreements between Seller and Company concerning the calculations to be provided under this Attachment Q (Calculation of Certain Metrics) shall be resolved as set forth in Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator).

EXHIBIT Q.1

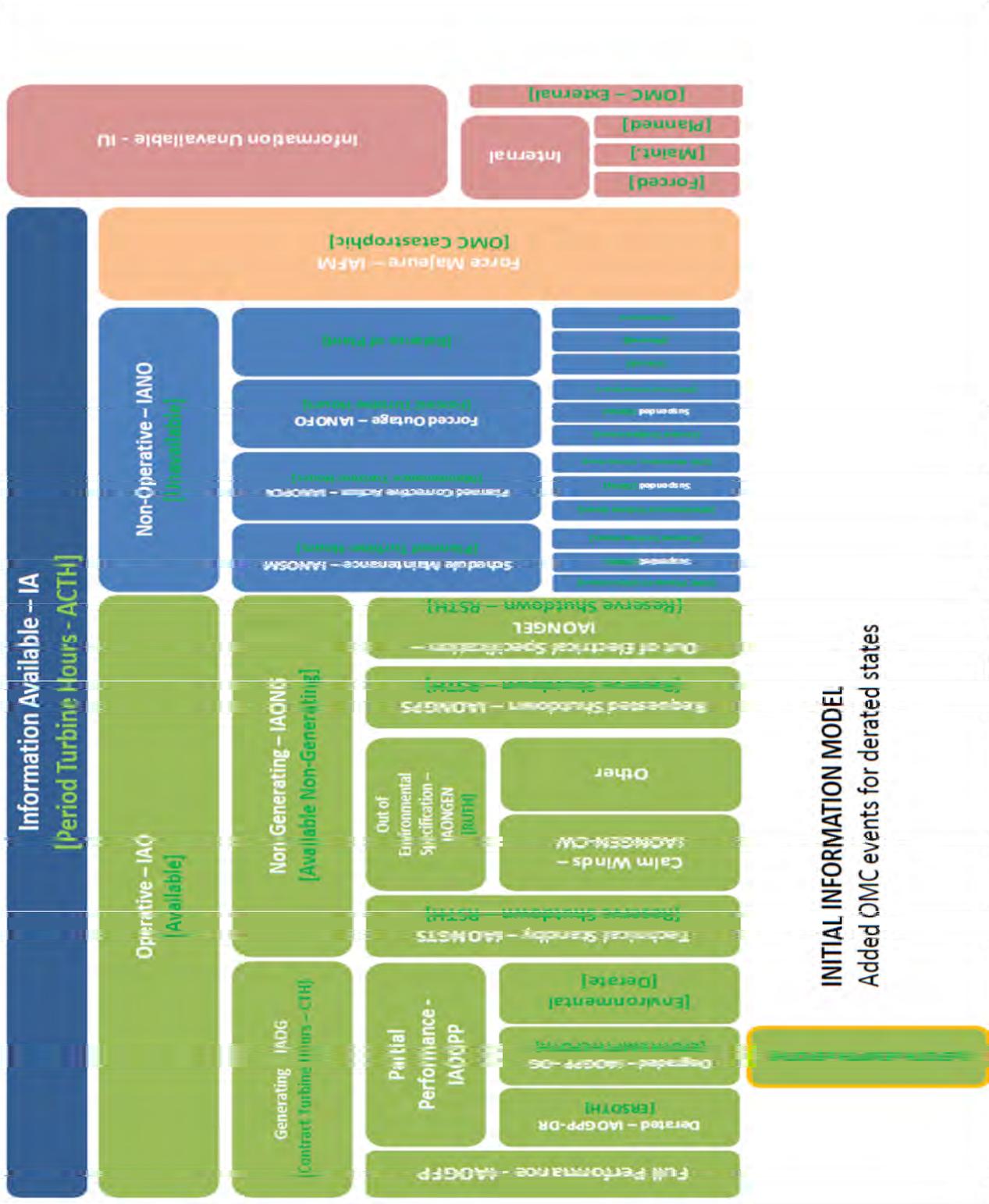


EXHIBIT Q.2

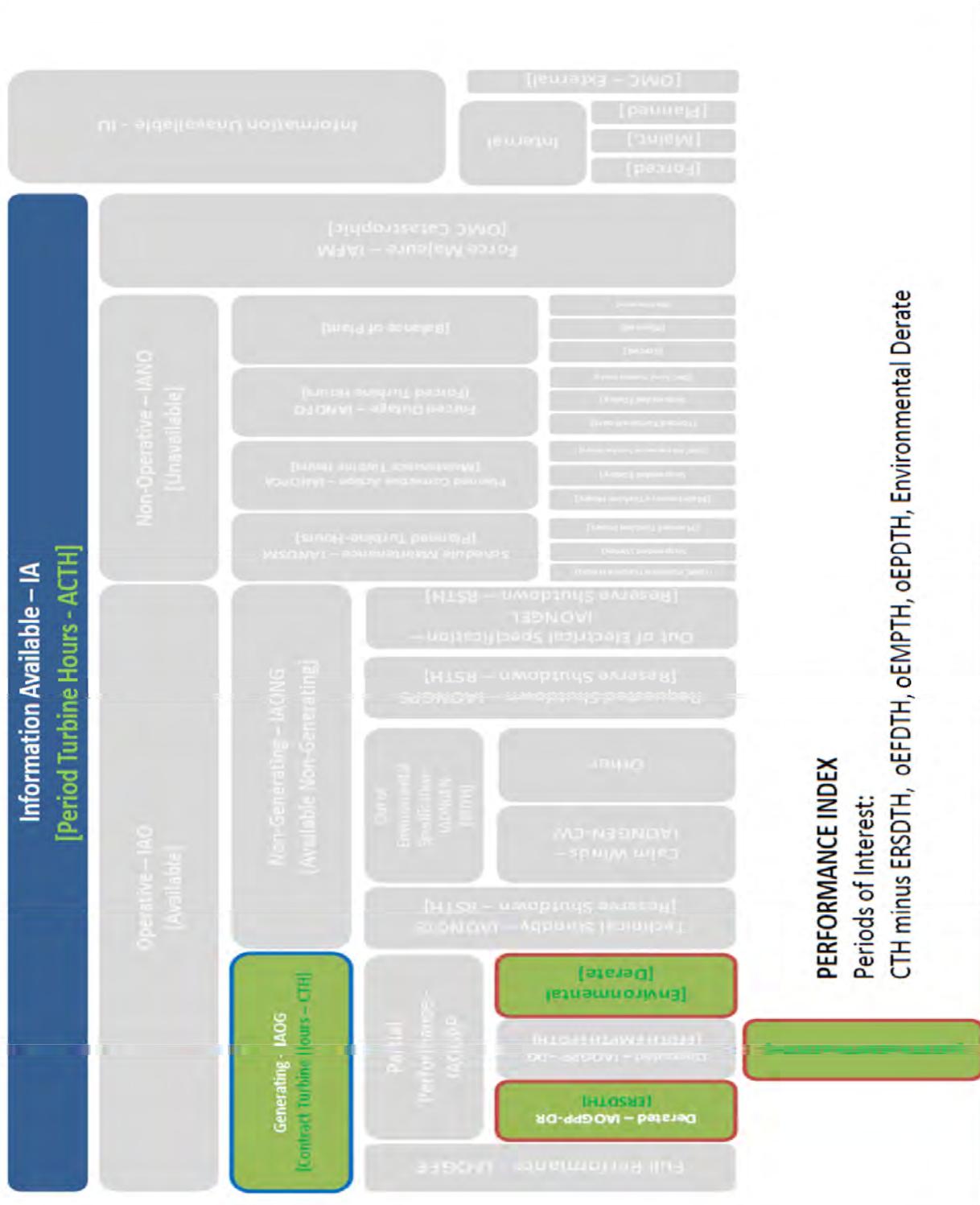
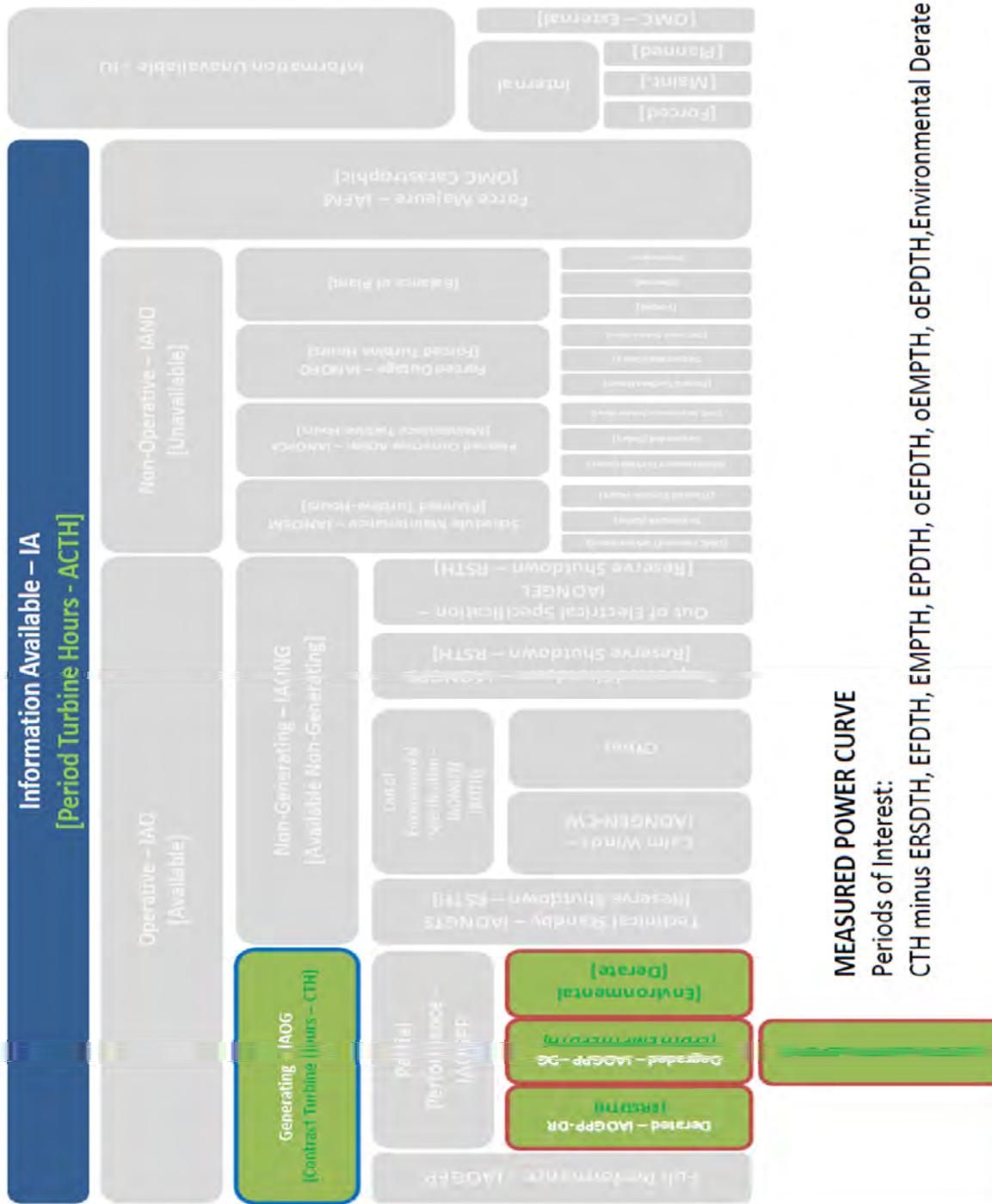


Exhibit Q.3



ATTACHMENT R
REQUIRED INSURANCE

(See also Article 18 (Insurance))

1. Worker's Compensation and Employers' Liability. This coverage shall include Worker's Compensation, Temporary Disability and other similar insurance required by applicable State or U.S. federal laws. If exposure exists, coverage required by the Longshore and Harbor Worker's Compensation Act (33 U.S.C. §688) shall be included. Employers' Liability coverage limits shall be no less than:

Bodily Injury by Accident - \$1,000,000 each Accident
Bodily Injury by Disease - \$1,000,000 each Employee
Bodily Injury by Disease - \$1,000,000 policy limit

2. General Liability Insurance.

- (i) This coverage shall include Commercial General Liability Insurance or the reasonable equivalent thereof, covering all operations by or on behalf of Seller. Such coverage shall provide insurance for bodily injury and property damage liability for the minimum limits of liability indicated below and shall include coverage for:

- (a) Premises, operations, and mobile equipment,
- (b) Products and completed operations,
- (c) Claims resulting from alleged damage to the environment and damage or injury caused by hazardous conditions or hazardous materials to the extent such coverage is appropriate and available at a commercially reasonable cost,
- (d) Blanket contractual liability,
- (e) Broad form property damage (including completed operations),
- (f) No exclusion for (XCU) explosion, collapse and underground hazard,
- (g) Personal injury liability, and
- (h) Failure to supply liability, which may be provided as a sublimit of \$1,000,000 per occurrence under

the general liability policy, on ISO endorsement CG 22 50 or equivalent, so long as such coverage is available on a commercially reasonable basis.

(ii) Limits of liability for Bodily Injury & Property Damage shall be:

\$10,000,000 combined single limit per occurrence and;
\$20,000,000 aggregate annually

Coverage limits may be satisfied using Umbrella and/or Excess Liability insurance policies.

3. Automobile Liability Insurance. This insurance shall include coverage for owned (if any), leased and non-owned automobiles. The minimum limits of liability shall be a combined single limit for bodily injury and property damage of Two Million Dollars (\$2,000,000) for each occurrence and in the aggregate annually. If exposure exists, the policy shall be endorsed to include Transportation Pollution Liability insurance, covering hazardous materials to be transported by Seller, as appropriate.
4. Builders All Risk Insurance. This insurance shall include but not be limited to coverage for wind including named windstorm, earthquake, flood, perils, property in transit (excluding ocean transit), off-site storage - property in temporary storage or assembly away from the project site, testing, covering all materials, equipment, machinery and supplies of any nature whatsoever, the property of the Seller or of others for which the Seller may have assumed responsibility, used or to be used in or incidental to the site preparation, demolition of existing structures, erection and/or fabrication and/or reconstruction and/or repair of the project insured, including temporary works (all scaffolding, formworks, fences, shoring, hoarding, false work and temporary buildings and all incidental to the project) from the start of construction through the earlier of the Commercial Operations Date or the effective date of the policy coverage set forth in Section 5 (All Risk Property/Comprehensive Mechanical and Electrical Breakdown Insurance (Upon Completion of Construction)) of this Attachment R (Required Insurance). The amount of coverage shall be purchased on a full replacement cost basis, except for earthquake, windstorm and flood perils which shall be provided as sublimits and aggregate limits supported by a Probable Maximum Loss (PML) study and/or Catastrophe (CAT)

Modeling report, if such insurance amounts are appropriate and available on commercially reasonable terms. The coverage shall be written on an "All Risks" completed value form and may allow for reasonable other sublimits for transit and for incidental offsite storage. Coverage shall be extended to include testing. Such policies shall be endorsed to require that the coverage afforded shall not be canceled (except for nonpayment of premiums) or reduced without at least thirty (30) Days' prior written notice to Seller and Company; provided, however, that such endorsement shall provide (i) that the insurer may not cancel the coverage for non-payment of premium without giving Seller and Company ten (10) Days' notice that Seller has failed to make timely payment thereof, and (ii) that, subject to the consent of the Facility Lender, Seller or Company shall thereupon have the right to pay such premium directly to the insurer.

5. All Risk Property/Comprehensive Mechanical and Electrical Breakdown Insurance (Upon Completion of Construction). This insurance shall provide All Risk Property Coverage (including the perils of wind including named windstorm, earthquake, and flood) and Comprehensive Mechanical and Electrical Breakdown Coverage against damage to the Facility. The amount of coverage shall be purchased on a full replacement cost basis (no coinsurance shall apply) except for earthquake, windstorm and flood perils which shall be provided as sublimits and aggregate limits supported by a Probable Maximum Loss (PML) study and/or Catastrophe (CAT) Modeling reports, if such insurance amounts are appropriate and available on commercially reasonable terms. Such coverage may allow for other reasonable sublimits. Such policies shall be endorsed to require that the coverage afforded shall not be canceled (except for nonpayment of premiums) or reduced without at least thirty (30) Days' prior written notice to Seller and Company; provided, however, that such endorsement shall provide (i) that the insurer may not cancel the coverage for non-payment of premium without giving Seller and Company ten (10) Days' notice that Seller has failed to make timely payment thereof, and (ii) that, subject to the consent of the Facility Lender, Seller or Company shall thereupon have the right to pay such premium directly to the insurer.
6. Business Interruption Insurance (Upon Completion of Construction). This insurance shall provide coverage for all of Seller's costs to the extent that they would not be eliminated or reduced by the failure of the Facility to operate for a period of at least twelve (12) months following

a covered physical damage loss deductible period or reasonable dollar deductible or waiting period.

7. [Reserved]
8. Ocean Transit. Seller shall take reasonable action to ensure that the risk of loss or damage to any material items of equipment which are subject to ocean transit is adequately protected against by the terms of delivery from contractors or suppliers of such equipment or Seller's own insurance coverage.

ATTACHMENT S
FORM OF MONTHLY PROGRESS REPORT

1. Instructions

Any capitalized terms used in this report which are not defined herein shall have the meaning ascribed to them in the Power Purchase Agreement for Renewable As-Available Energy by and between _____, a _____ ("Seller"), and Hawaiian Electric Company, Inc., a Hawai'i corporation, dated _____, (the "Agreement").

In addition to the remedial action plan requirement set forth in Article 13 (Guaranteed Project Milestones Including Commercial Operations) of the Agreement, Seller shall review the status of each Construction Milestone of the construction schedule (the "Schedule") for the Facility and identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller's reasonable judgment are expected to adversely affect the Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the Construction Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

(i) Any material matter or issue arising in connection with a Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a law, actual or threatened opposition to the granting of a necessary Governmental Approvals, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Facility, attaining any Construction Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Construction Milestone or which otherwise reasonably could be expected to materially threaten Seller's ability to attain any Construction Milestone.

(ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller's business or prospects which reasonably could be expected to materially threaten financing of the Facility, attainment of any Construction Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining

any Construction Milestone or could otherwise reasonably be expected to materially threaten Seller's ability to attain any Construction Milestone;

(iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller's ability to attain any Construction Milestone;

(iv) Any material change in the Seller's schedule for initiating or completing any material aspect of the Facility;

(v) The status of any matter or issue identified as outstanding in any prior Monthly Progress Report and any material change in the Seller's proposed actions to remedy or overcome such matter or issue.

For the purpose of this report, "EPC Contractor" means the contractor responsible for engineering, procurement and construction of the Facility, including Seller if acting as contractor, and including all subcontractors.

2. Executive Summary

2.1 Major activities completed

Please provide a cumulative summary of the major activities completed for each of the following aspects of the Facility (provide details in subsequent sections of this report):

- 2.1.1 **[Insert Construction Milestones from Attachment K and Attachment L, if needed]**
- 2.1.2 Financing
- 2.1.3 Governmental Approvals for Development
- 2.1.4 Site Control
- 2.1.5 Land Rights for Company-Owned Interconnection Facilities
- 2.1.6 Design and Engineering
- 2.1.7 Major Equipment Procurement
- 2.1.8 Construction

- 2.1.9 Interconnection
- 2.1.10 Startup Testing and Commissioning

2.2. Major activities recently performed

Please provide a summary of the major activities performed for each of the following aspects of the Facility since the previous report (provide details in subsequent sections of this report):

- 2.2.1 **[Insert Construction Milestones from Attachment K and Attachment L, if needed]**
- 2.2.2 Financing
- 2.2.3 Development Permits
- 2.2.4 Site Control
- 2.2.5 Land Rights for Company-Owned Interconnection Facilities
- 2.2.6 Design and Engineering
- 2.2.7 Major Equipment Procurement
- 2.2.8 Construction
- 2.2.9 Interconnection
- 2.2.10 Startup Testing and Commissioning

2.3 Major activities planned but not completed

Please provide a summary of the major activities that were planned to be performed since the previous report but not completed as scheduled, including the reasons for not completing the activities, for each of the following aspects of the Facility:

- 2.3.1 **[Insert Construction Milestones from Attachment K and Attachment L, if needed]**
- 2.3.2 Financing
- 2.3.3 Governmental Approvals for Development

- 2.3.4 Site Control
- 2.3.5 Land Rights for Company-Owned Interconnection Facilities
- 2.3.6 Design and Engineering
- 2.3.7 Major Equipment procurement
- 2.3.8 Construction
- 2.3.9 Interconnection
- 2.3.10 Startup Testing and Commissioning

2.4 Major activities expected during the current month

Please provide a summary of the major activities to be performed during the current month for each of the following aspects of the Facility (provide details in subsequent sections of this report):

- 2.4.1 Construction Milestones
- 2.4.2 Financing
- 2.4.3 Governmental Approvals
- 2.4.4 Site Control
- 2.4.5 Land Rights for Company-Owned Interconnection Facilities
- 2.4.6 Design and Engineering
- 2.4.7 Major Equipment procurement
- 2.4.8 Construction
- 2.4.9 Interconnection
- 2.4.10 Startup Testing and Commissioning

3. Milestones

3.1 Milestone schedule

Please list all Construction Milestones specified in Attachment K and Attachment L and state the current status of each.

Construction Milestone	Milestone Date Specified in the Agreement	Status (e.g., on schedule, delayed due to [<i>specify reason</i>]; current expected completion date)
-------------------------------	--	--

3.2 Remedial Action Plan (if applicable)

Provide a detailed description of Seller's course of action and plan to achieve the missed Construction Milestones and all subsequent Construction Milestones by the Guaranteed Commercial Operation Date using the outline provided below.

- 3.2.1 Identify Missed Construction Milestone
- 3.2.2 Explain plans to achieve missed Construction Milestone
- 3.2.3 Explain plans to achieve subsequent Construction Milestones
- 3.2.4 Identify and discuss (a) delays in engineering schedule, equipment procurement, and construction and interconnection schedule and (b) plans to remedy delays as a result of the missed Construction Milestones

4. Financing

Please provide the schedule Seller intends to follow to obtain financing for the Facility. Include information about each stage of financing.

Activity (e.g., obtain \$xx for yy stage from zz)	Completion Date
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

5. Project Schedule

Please provide a copy of the current version of the overall Facility schedule (e.g., Work Breakdown Structure, Gantt chart, MS Project report, etc.). Include all major activities for Governmental Approvals for Development, design and engineering, procurement, construction, interconnection and testing.

6. Governmental Approvals

6.1 Environmental Impact Review

Please provide information about the primary environmental impact review for the Facility. Indicate whether dates are expected or actual.

Agency

Date of application/submission

__/__/____
 (expected /
 actual)

**Date application/submission deemed
 complete by agency**

__/__/____
 (expected /
 actual)

Date of initial study (if applicable)

__/__/____
 (expected /
 actual)

Process (e.g., Notice of Exemption,
 Negative Declaration, Mitigated
 Negative Declaration, Environmental
 Impact Report)

Date of Notice of Preparation

__/__/____
 (expected /
 actual)

Date of Draft ND/MND/EIR

__/__/____
 (expected /
 actual)

**Date Notice of Determination filed at
 OPR or County Clerk**

__/__/____
 (expected /
 actual)

Governmental Approvals

Please describe each of the Governmental Approvals to be obtained by Seller and the status of each:

Agency / Approval	Status Summary
	e.g., dates of application / hearing / notice / etc. (note whether dates are anticipated or actual); major activities (indicate whether planned, in progress and/or completed); primary reasons for possible delay, etc.

6.3 Governmental Approval activities recently performed

Please list all Governmental Approval activities that occurred since the previous report.

6.4 Governmental Approval activities expected during the current month

Please list all Governmental Approval activities that are expected to occur during the current month.

6.5 Governmental Approval Notices received from EPC Contractor

Please attach to this Monthly Progress Report copies of any notices related to Governmental Approval activities received since the previous report, whether from EPC Contractor or directly from Governmental Authorities.

7. Site Control

7.1 Table of Site Control schedule

If not obtained prior to execution of the Agreement, please provide the schedule Seller intends to follow to obtain control of the Site (e.g., purchase, lease).

Activity	Completion Date
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

7.2 Site Control activities recently performed

Please explain in detail the property acquisition activities that were performed since the previous report.

7.3 Site Control activities expected during the current month

Please explain in detail the site control activities that are expected to be performed during the current month.

8. Land Rights for the Company-Owned Interconnection Facilities

8.1 Table of Land Rights schedule for Company-Owned Interconnection Facilities

If not obtained prior to execution of the Agreement, please provide the schedule Seller intends to follow to obtain control of the Land for the Company-Owned Interconnection Facilities (e.g., purchase, lease).

Activity	Completion Date
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

8.2 Land Control activities recently performed

Please explain in detail the property acquisition activities that were performed since the previous report.

8.3 Land Control activities expected during the current month

Please explain in detail the Land control activities that are expected to be performed during the current month.

9. Design and Engineering

9.1 Design and engineering schedule

Please provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a full notice to proceed (or equivalent).

Please list all major design and engineering activities, both planned and completed, to be performed by Seller and the EPC Contractor.

Name of EPC Contractor / Subcontractor	Activity	Completion Date
		__/__/____ (expected / actual)
		__/__/____ (expected / actual)

9.2 Design and engineering activities recently performed

Please explain in detail the design and engineering activities that were performed since the previous report.

9.3 Design and engineering activities expected during the current month

Please explain in detail the design and engineering activities that are expected to be performed during the current month.

10. Major Equipment Procurement

10.1 Major equipment to be procured

Please list all major equipment to be procured by Seller or the EPC Contractor:

Equipment Description	Manufacturer	Delivery Date (indicate whether expected or actual)	Installation Date (indicate whether expected or actual)
		__/__/____ (expected / actual)	__/__/____ (expected / actual)
		__/__/____ (expected / actual)	__/__/____ (expected / actual)

Equipment Description	No. Ordered	No. Made	No. On-Site	No. Installed	No. Tested

10.2 Major Equipment procurement activities recently performed

Please explain in detail the major equipment procurement activities that were performed since the previous report.

10.3 Major Equipment procurement activities expected during the current month

Please explain in detail the major equipment procurement activities that are expected to be performed during the current month.

11. Construction

11.1 Construction activities

Please list all major construction activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	EPC Contractor / Subcontractor	Completion Date
		__/__/____ (expected / actual)
		__/__/____ (expected / actual)

11.2 Construction activities recently performed

Please explain in detail the construction activities that were performed since the previous report.

11.3 Construction activities expected during the current month

Please explain in detail the construction activities are expected to be performed during the current month.

11.4 EPC Contractor Monthly Construction Progress Report

Please attach a copy of the Monthly Progress Reports received since the previous report from the EPC Contractor pursuant to the construction contract between Seller and EPC Contractor, certified by the EPC Contractor as being true and correct as of the date issued.

12. Interconnection

12.1 Interconnection activities

Please list all major interconnection activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		__/__/____ (expected / actual)
		__/__/____ (expected / actual)

12.2 Interconnection activities recently performed

Please explain in detail the interconnection activities that were performed since the previous report.

12.3 Interconnection activities expected during the current month

Please explain in detail the interconnection activities that are expected to be performed during the current month.

13. Startup Testing and Commissioning

13.1 Startup testing and commissioning activities

Please list all major startup testing and commissioning activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		__/__/____ (expected / actual)
		__/__/____ (expected / actual)

13.2 Startup testing and commissioning activities recently performed

Please explain in detail the startup testing and commissioning activities that were performed since the previous report.

13.3 Startup testing and commissioning activities expected during the current month

Please explain in detail the startup testing and commissioning activities that are expected to be performed during the current month.

14. Safety and Health Reports

14.1 Accidents

Please describe all Facility-related accidents reported since the previous report.

14.2 Work stoppages

Please describe all Facility-related work stoppages from that occurred since the previous report.

Please describe the effect of work stoppages on the Facility schedule.

15. Community Outreach

Please describe all community outreach efforts undertaken since the last report.

16. Certification

I, _____, on behalf of and as an authorized representative of [_____], do hereby certify that any and all information contained in this Seller's Monthly Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Facility as of the date specified below.

By: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT T
MONTHLY REPORTING AND DISPUTE
RESOLUTION BY INDEPENDENT AF EVALUATOR

1. Monthly Report. Commencing with the month during which the Commercial Operations Date is achieved, and for each calendar month thereafter during the Term, Seller shall provide to Company a Monthly Report in Excel, Lotus or such other format as Company may require, which Monthly Report shall include (i) the data for the calendar month in question populated into the form of "Monthly Report" below, (ii) the data for the BESS Measurement Period ending with the calendar month in question populated into the form of "BESS Measurement Period Report" below, and (iii) Seller's calculations of the performance metrics, other than the Fast Frequency Response Performance Metric, and any liquidated damages assessments for the LD Period ending with such calendar month as set forth below. Seller shall deliver such Monthly Report to Company by the fifth (5th) Business Day following the close of the calendar month in question. Seller shall deliver the Monthly Report electronically to the address provided by the Company. Company shall have the right to verify all data set forth in the Monthly Report by inspecting measurement instruments and reviewing Facility operating records. Upon Company's request, Seller shall promptly provide to Company any additional data and supporting documentation necessary for Company to audit and verify any matters in the Monthly Report.

Monthly Report

NAME OF IPP FACILITY: [Facility Name]

MONTHLY REPORT PERIOD: [Month Day, Year] to [Month Day, Year]

Enter the total number of hours for each WTG and state during the reporting period (to 2 decimal places).

TID	ACTH	FTH	MTH	PTH	OPTH	OMTH	OPTH
Turbine1							
Turbine2							
Turbine3							
...							

Enter the Actual Generation (MWh) for each WTG and state during the reporting period (to 2 decimal places).

TID	CTH	ERSDTH	OEFDTH	OEMPTH	OEPDTH	Env. Derate

Turbine1						
Turbine2						
Turbine3						
...						

Enter the Expected Generation (MWh) for each WTG and state during the reporting period (to 2 decimal places).

TID	CTH	ERSDTH	OEFDTH	OEMPTH	OEPDTH	Env. Derate
Turbine1						
Turbine2						
Turbine3						
...						

Calculated Pooled OMC Equipment Equivalent Availability Factor for the reporting period: _____

Calculated Performance Index for the reporting period: _____

BESS Measurement Period Report

NAME OF IPP FACILITY: [Facility Name]

BESS MEASUREMENT PERIOD: [Month Day, Year] to [Month Day, Year]

Enter the applicable information from which the IPP is using to demonstrate satisfaction of the BESS Capacity Performance Metric during the reporting period. This can either be from a BESS Capacity Test performed during the period or taken from operational data reflecting the net output of the BESS.

Date/Time Start	Date/Time End	Total MWh delivered to the POI (A)	BESS Contract Capacity (MWh) (B)	BESS Capacity Ratio 100% x (A/B)

Enter the information for each ExcludedTime event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, maximum rated output, and equivalent hours should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of Reduction (MW) (D)	Maximum Rated Output (MW) (E)	Equivalent Hours (hrs) (C x D)/E

...					
-----	--	--	--	--	--

Calendar hours in the reporting period: _____

Total equivalent ExcludedTime for the reporting period (from above): _____

Period Hours (PH) in the reporting period: _____

PH from the last three (3) reporting periods: _____

PH for the last four (4) reporting periods: _____

Enter the information for each Outage during the reporting period. Dates and times should be entered to the nearest minute. Duration should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (B-A)
...		

Calendar hours in the reporting period: _____

Total Outage hours for the reporting period (from above): _____

Available Hours (AH) in the reporting period: _____

AH from the last three (3) reporting periods: _____

AH for the last four (4) reporting periods: _____

Enter the information for each Planned Deration event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, maximum rated output, and equivalent hours should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of Reduction (MW) (D)	Maximum Rated Output (MW) (E)	Equivalent Hours (hrs) (C x D)/E
...					

Total equivalent planned derated hours (EPDH) for the reporting period: _____

EPDH from the last three (3) reporting periods: _____

EPDH for the last four (4) reporting periods: _____

Enter the information for each Unplanned Deration event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, maximum rated output, and equivalent hours should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of Reduction (MW) (D)	Maximum Rated Output (MW) (E)	Equivalent Hours (hrs) (C x D)/E
...					

Total equivalent unplanned derated hours (EUDH) for the reporting period: _____

EUDH for the last three (3) reporting periods: _____

EUDH for the last four (4) reporting periods: _____

Enter the Available Hours, EPDH, EUDH, and Period Hours for the last four (4) reporting periods as calculated above.

AH (A)	EPDH (B)	EUDH (C)	PH (D)	BESS Annual Equivalent Availability Factor 100% x (A - B - C)/D

Enter the information for each Forced Outage during the reporting period. Dates and times should be entered to the nearest minute. Duration should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (B-A)
...		

Total Forced Outage Hours (FOH) for the reporting period (from above): _____

FOH from the last three (3) reporting periods: _____

FOH for the last four (4) reporting periods: _____

Enter the FOH and EUDH for the last four (4) reporting periods as calculated above.

FOH (A)	EUDH (B)	BESS Annual Equivalent Forced Outage Factor $100\% \times (A + B)/8760$

2. Monthly Report Disagreements.

(a) Notice of Disagreement With Monthly Report. Within ten (10) Business Days following the close of the calendar month in question, Seller shall provide to Company the Monthly Report for such calendar month and the LD Period, the PI Assessment Period and the BESS Measurement Period (if any) ending with such calendar month, as provided in Section 1 (Monthly Report) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator). Within ten (10) Business Days after Company's receipt of a Monthly Report, Company shall provide written notice to Seller of any Monthly Report Disagreement, including with respect to the data for the calendar month covered by such Monthly Report and Seller's calculation of, as applicable, (i) the Modified Pooled OMC Equipment Availability Factor for the LD Period ending with such calendar month, (ii) the PI Assessment Period ending with such Performance Index calendar month, or (iii) any of the BESS Capacity Ratio, the BESS Annual Equivalent Availability Factor or the BESS Equivalent Forced Outage Factor for the BESS Measurement Period (if any) ending with such calendar month ("Notice of Disagreement"). Together with any such Notice of Disagreement, the Company shall include its own calculations and other support for its position. If Company fails to provide a Notice of Disagreement within said 10-Business Day period, the Monthly Report provided by Seller shall be deemed to be accepted by Company and shall no longer be subject to dispute by Company or Seller.

- (b) Notice of Disagreement With BOP Benchmark Determination. If Seller disagrees with either (i) the BOP Benchmark derived by Company from, as applicable, the IE Energy Assessment Report, the Initial OEPR or any Subsequent OEPR or (ii) Company's claim that it is unable to reasonably derive a BOP Benchmark from, as applicable, the IE Energy Assessment Report or any written clarification issued by an OEPR Evaluator pursuant to either Section 2.7(b)(ii) (Commencing With the Third Contract Year) or Section 2.7(b)(iii) (Commencing With the First Subsequent OEPR and Thereafter) of this Agreement, Seller shall, within thirty (30) Days after receipt of Company's written notice of the BOP Benchmark pursuant to Section 2.7(b) (Determination of BOP Benchmark) of this Agreement, provide written notice to Company of Seller's disagreement with either (i) the BOP Benchmark derived by Company as aforesaid or (ii) Company's claim that it is unable to reasonably derive a BOP Benchmark ("BOP Benchmark Disagreement"). Together with such notice of disagreement ("Notice of BOP Benchmark Disagreement"), the Seller shall include its own calculation and other support for its position. If Seller fails to provide such notice within such 30-Day period, the BOP Benchmark designated in Company's written notice shall be deemed to be accepted by Seller and shall no longer be subject to dispute by Company or Seller. For avoidance of doubt, if Company claims that it is unable to reasonably derive a BOP Benchmark from, as applicable, the IE Energy Assessment Report or any written clarification issued by an OEPR Evaluator, Company shall be deemed to have designated a BOP Benchmark of **97%**.
- (c) Submission of Monthly Report Disagreement to Independent AF Evaluator. Upon issuance of a Notice of Disagreement, the Parties shall review the contents of the Monthly Report(s) together with such Notice of Disagreement and attempt to resolve such Monthly Report Disagreement. If the Parties are able to agree on a resolution of any Monthly Report Disagreement, the resulting corrected Monthly Report(s) in question shall be set forth in a writing executed by both Parties, following which (i) such corrected Monthly Reports shall no longer be subject to dispute by either Party and (ii) to the extent such resolution of such Monthly Report Disagreement affects future

Monthly Reports, such future Monthly Reports shall be prepared, and the Modified Pooled OMC Equipment Availability Factor, the Performance Index, the BESS Annual Equivalent Factor and the BESS Annual Equivalent Forced Outage Factor in such future Monthly Reports shall be calculated, in a manner consistent with such resolution. If the Parties are unable to resolve such Monthly Report Disagreement within ten (10) Business Days after Company's issuance of such Notice of Monthly Report Disagreement, either Party may, within five (5) Business Days after the end of such 10-Business Day period, submit the unresolved Monthly Report Disagreement to an Independent AF Evaluator for resolution. Notwithstanding anything to the contrary in this Section 2(c) (Submission of Monthly Report Disagreement to Independent AF Evaluator), once the Measured Power Curve has been (i) deemed to be accepted by Company pursuant to Section 3 (Measured Power Curve Disagreement) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator), (ii) resolved pursuant to Section 3(b) (Submission of MPC Disagreement to Independent AF Evaluator), or (iii) resolved pursuant to Section 4(d) (Written Decision of Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator), the issue of the Measured Power Curve may not be reopened by either Party in the guise of a Monthly Report Disagreement.

- (d) Submission of BOP Benchmark Disagreement to Independent AF Evaluator. Upon issuance of a notice of BOP Benchmark Disagreement, the Parties shall review, as applicable, the IE Energy Assessment Report, the Initial OEPR and any written clarification thereof issued by the OEPR Evaluator who prepared the Initial OEPR, and any Subsequent OEPR and any written clarification thereof issued by the OEPR Evaluator who prepared the Subsequent OEPR, together with such notice of BOP Benchmark Disagreement, and attempt to resolve such BOP Benchmark Disagreement. If the Parties are able to agree on a resolution of any BOP Benchmark Disagreement, the resulting corrected BOP Benchmark shall be set forth in writing executed by both Parties, following which such corrected BOP Benchmark shall constitute the BOP Benchmark for the Contract Years in question. If the Parties are unable

to resolve such BOP Benchmark Disagreement within thirty (30) Days after Seller's issuance of such notice of BOP Benchmark Disagreement, either Party may, within five (5) Business Days after the end of such 30-Day period, submit the unresolved BOP Benchmark Disagreement to an Independent AF Evaluator for resolution. The authority of the Independent AF shall be limited to deciding the following issues:

(i) If Company derived a BOP Benchmark from, as applicable, the IE Energy Assessment, the Initial OEPR and/or any written clarification issued by the OEPR Evaluator who prepared the Initial OEPR or a Subsequent OEPR and/or any written clarification issued by the OEPR Evaluator who prepared such Subsequent OEPR, the authority of the Independent AF Evaluator shall be limited to deciding:

(aa) Is the BOP Benchmark derived by Company reasonably supported by the document from which it was derived as aforesaid?; and

(bb) If not, what is the BOP Benchmark that is best supported by such document?

(ii) If Company claimed that is was unable to reasonably derive a BOP Benchmark from, as applicable, the IE Energy Assessment, the Initial OEPR and/or written clarification issued by the OEPR Evaluator who prepared the Initial OEPR or a Subsequent OEPR and/or any written clarification issued by the OEPR Evaluator who prepared such Subsequent OEPR, the authority of the Independent AF Evaluator shall be limited to deciding:

(aa) Was Company correct in claiming that a BOP Benchmark cannot be reasonably derived from the document in question; and

- (bb) If Company was not correct, what is the BOP Benchmark that is best supported by such document?

For avoidance of doubt, because **97%** is the BOP Benchmark that shall apply to any Contract Year for which a BOP Benchmark cannot be reasonably be derived from the applicable document as aforesaid, the Independent PBA Evaluator shall not have the authority to resolve a BOP Benchmark Dispute by performing an independent evaluation of the Facility to estimate, among other things, BOP electrical losses, in order to arrive at an independent determination of BOP efficiency.

3. Measured Power Curve Disagreements.

- (a) Notice of Disagreement With Determination of Measured Power Curve. Within ten (10) Business Days after the first day of the second Contract Year, Seller shall provide written notice to Company of the Measured Power Curve for each WTG as provided in Section 4 (Determination of Measured Power Curve) of this Attachment Q (Calculation of Certain Metrics). Within thirty (30) Days after Company's receipt of Seller's written notice of the Measured Power Curve for each WTG, Company shall provide written notice to Seller of any disagreement with any such determination ("MPC Disagreement"). Together with any such notice of disagreement ("Notice of MPC Disagreement"), the Company shall include its own calculations and other support of its position. If Company fails to provide a Notice of MPC Disagreement within said 30-Day period, the Measured Power Curve for each WTG as calculated by the Seller pursuant to the aforesaid Section 4 (Determination of Measured Power Curve) of Attachment Q (Calculation of Certain Metrics) shall be deemed to be accepted by Company and shall no longer be subject to dispute by Company or Seller.
- (b) Submission of MPC Disagreement to Independent AF Evaluator. Upon issuance of a Notice of MPC Disagreement, the Parties shall review the Measured Power Curve(s) in question together with such Notice of MPC Disagreement and attempt to resolve such MPC Disagreement. If the Parties are able to agree on a

resolution of such MPC Disagreement, the resulting Measured Power Curve for each WTG shall be set forth in a writing executed by both Parties, following which such Measured Power Curve for such WTG shall be deemed to be the Measured Power Curve for such WTG under this Agreement and shall no longer be subject to dispute by either Party. If the Parties are unable to agree on a written resolution of such MPC Disagreement within thirty (30) Days after Company's issuance of such notice of disagreement, either Party may submit the unresolved MPC Disagreement to an Independent AF Evaluator for resolution. If, within five (5) Business Days following the expiration of said 30-Day period, neither Party has submitted such MPC Disagreement to an Independent AF Evaluator, the Measured Power Curve for each WTG as calculated by Seller pursuant to Section 4 (Determination of Measured Power Curve) of Attachment Q (Calculation of Certain Metrics) shall be deemed to be accepted by Company and shall no longer be subject to dispute by Company or Seller.

4. Independent AF Evaluator Process.

- (a) Appointment of Independent AF Evaluator. If either Party decides to submit an unresolved MPC Disagreement, unresolved Monthly Report Disagreement or an unresolved BOP Benchmark Disagreement to an Independent AF Evaluator, it shall provide written notice to that effect (the "Submission Notice") to the other Party, which notice shall designate which of the engineering firms on the OEPR Consultants List is to act as the Independent AF Evaluator for purposes of resolving such dispute; provided, however, for purposes of facilitating consistency in the resolution of Monthly Report Disagreements, all Monthly Report Disagreements concerning the same Performance Metric arising out of any one or more of the twelve (12) Monthly Reports issued for a given Contract Year shall be submitted to the same Independent AF Evaluator unless such Independent AF Evaluator declines to accept any such submission(s). A Submission Notice must be provided within the 5-Business Day period provided in Section 2(c) (Submission of Monthly Report Disagreement to Independent AF Evaluator) or Section 2(d) (Submission of BOP Benchmark Disagreement to Independent AF Evaluator) of this Attachment T

(Monthly Reporting and Dispute Resolution by Independent AF Evaluator). A Submission Notice must be provided within whichever of the following time periods is applicable:

- (i) For any MPC Disagreement, within the 5-Business Day period provided in Section 3(b) (Submission of MPC Disagreement to Independent AF Evaluator);
- (ii) for any Monthly Report Disagreement, within the 5-Business Day period provided in Section 2(c) (Submission of Monthly Report Disagreement to Independent AF Evaluator); and
- (iii) for any BOP Benchmark Disagreement, within the 5-Business Day period provided in Section 2(d) (Submission of BOP Benchmark Disagreement to Independent AF Evaluator).

The Parties shall each pay fifty percent (50%) of the fees and expenses charged by the Independent AF Evaluator.

- (b) Eligibility for Appointment as Independent AF Evaluator. Both Parties agree that the engineering firms listed in Section 4(j) (Acceptable Persons and Entities) of Attachment U (Calculation and Adjustment of Net Energy Potential) are fully qualified to serve as Independent AF Evaluator. By mutual agreement between the Parties in writing, a name or names may be added to or removed from the OEPR Consultants List at any time. In no event shall there be less than three (3) names on the OEPR Consultants List.
- (c) Participation of Parties. Promptly following the issuance of a Submission Notice as provided in Section 4(a) (Appointment of Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator), Seller and Company shall provide the Independent AF Evaluator which such data as they consider to be material to the resolution of the disputed issue(s). Seller and Company shall also provide such additional data and information as the Independent AF Evaluator may

reasonably request. The Parties shall assist the Independent AF Evaluator throughout the process of resolving such dispute, including making key personnel and records available to the Independent AF Evaluator, but neither Party shall be entitled to participate in any meetings with personnel of the other Party or review of the other Party's records. However, the Independent AF Evaluator will have the right to conduct meetings, hearing or oral arguments in which both Parties are represented.

- (d) Written Decision of Independent AF Evaluator. The terms of engagement with the Independent AF Evaluator shall require the Independent AF Evaluator to issue its written decision resolving the disputed issues submitted to it within the applicable time period set forth below, which time periods are subject to any tolling that may be applicable pursuant to Section 4(e) (Sequence to Resolving Interrelated Disagreements) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator):
- (a) 30 Days as measured from the issuance of the Submission Notice; or (b) such other time period as the Parties may agree in writing. Unless otherwise agreed by the Parties in writing:
 - (i) for a MPC Disagreement, the written decision of the Independent AF Evaluator shall set forth the Measured Power Curve for the WTG in question;
 - (ii) for a Performance Metric Disagreement concerning the Modified Pooled OMC Equipment Availability Factor, the written decision of the Independent AF Evaluator shall set forth (aa) for the calendar month in question, the correct values for equation used in calculations under Section 1 (Modified Pooled OMC Equipment Availability Factor) of Attachment Q (Calculation of Certain Metrics) of this Agreement as determined by such Independent AF Evaluator if any such values were in dispute and (bb) for the LD Period ending with the calendar month in question, the Modified Pooled OMC Equipment Availability Factor for such LD Period as determined by such Independent AF Evaluator if such Modified Pooled OMC Equipment Availability Factor was in dispute;

- (iii) for a Performance Metric Disagreement concerning the Performance Factor, the written decision of the Independent AF Evaluator shall set forth (aa) the correct values of the equation to be used in the calculation under Section 2 (Performance Index) of Attachment Q (Calculation of Certain Metrics) that include such calendar month if any such values were in dispute, (bb) if a PI Test was conducted during the month in question, the correct data points from such PI Test to be used in the calculation of PI under Section 2.6(a) (Calculation of Performance Index) of this Agreement for the PI Assessment Periods that include the month preceding the month covered by the Monthly Report in question if any such data points were in dispute, and (cc) for the PI Assessment Period ending with the calendar month in question, the Performance Index if such Performance Index was in dispute;
- (iv) for a Performance Metric Disagreement concerning the BESS Capacity Ratio or the RTE Ratio, the written decision of the Independent AF Evaluator shall set forth the BESS Capacity Ratio and/or the RTE Ratio (as applicable) for the BESS Measurement Period ending with the calendar month in question;
- (v) for a Performance Metric Disagreement concerning the BESS Annual Equivalent Availability Factor, the written decision of the Independent AF Evaluator shall set forth (aa) the correct values to be used for AH, EPDH, EUDH and PH under Attachment X (BESS Annual Equivalent Availability Factor) for the calendar month in question if any such values were in dispute and (bb) the BESS Annual Equivalent Availability Factor for the BESS Measurement Period ending with the calendar month in question if such BESS Annual Equivalent Availability Factor was in dispute;
- (vi) for a Performance Metric Disagreement concerning the BESS Annual Equivalent Forced Outage Factor, the written decision of the Independent AF Evaluator shall set forth (aa) the correct values for FOH and EUDH under Attachment Y (BESS Annual Equivalent Forced Outage Factor) for the calendar

month in question if any such values were in dispute and (bb) the BESS Annual Equivalent Forced Outage Factor for the BESS Measurement Period ending with the calendar month in question if such BESS Annual Equivalent Forced Outage Factor was in dispute; and

- (vii) for a BOP Benchmark Disagreement, the written decision shall: (aa) confirm that the BOP Benchmark derived by the Company was reasonably derived and state that such percentage constitutes the BOP Benchmark; or (bb) confirm the Company's conclusion that it is unable to reasonably derive a BOP Benchmark and state that **97%** is the BOP Benchmark; or (cc) disagree with the Company's conclusion that it is unable to reasonably derive a BOP Benchmark, state the percentage that is the best-supported BOP Benchmark, and state that such percentage constitutes the BOP Benchmark.

(e) Sequence for Resolving Interrelated Disagreements.

- (i) If an MPC Disagreement is unresolved at the time a Monthly Report Disagreement is submitted to an Independent AF Evaluator pursuant to Section 4(a) (Appointment of Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator), and the resolution of such MPC Disagreement is necessary to the resolution of such Monthly Report Disagreement, the time period for an Independent AF Evaluator to issue its written decision resolving such Monthly Report Disagreement shall be tolled until the resolution of such MPC Disagreement pursuant to either Section 3(b) (Submission of MPC Disagreement to Independent AF Evaluator) or Section 4(d) (Written Decision of Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator).
- (ii) If at the time a Performance Metric Disagreement is submitted to an Independent AF Evaluator pursuant to Section 4(a) (Appointment of Independent AF Evaluator) of this Attachment T

(Monthly Reporting and Dispute Resolution by Independent AF Evaluator) there are one or more other unresolved Performance Metric Disagreements concerning the same Performance Metric and the same LD Period that are pending before a different Independent AF Evaluator, and the resolution of such other Performance Metric Disagreement(s) is necessary to the resolution of the Performance Metric Disagreement that has been newly submitted to a new Independent AF Evaluator as aforesaid, the time period for such new Independent AF Evaluator to issue its written decision resolving such newly submitted Performance Metric Disagreement shall be tolled until such pending Performance Metric Disagreement(s) have been resolved. For avoidance of doubt, it is the intent of the Parties that disagreements over performance ratio data and calculations for a given calendar month or a given BESS Measurement Period shall (i) not be subject to resolution twice and (ii) once resolved, shall not be reopened.

- (f) Final, Conclusive and Binding. The Parties acknowledge the inherent uncertainty in calculating the Performance Metrics, and hereby assume the risk of such uncertainty and waive any right to dispute the qualification of the person or entity appointed as the Independent AF Evaluator pursuant to Section 4(a) (Appointment of Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) and/or the appropriateness of the methodology used by Independent AF Evaluator in resolving such Performance Metric Disagreements. Without limitation to the generality of the preceding sentence, the decision of the Independent AF Evaluator as to each Performance Metric Disagreement submitted to an Independent AF Evaluator shall be final, conclusive and binding upon Company and Seller and shall not be subject to further dispute under Article 28 (Dispute Resolution) of the Agreement.

5. Periodic Review of Method of Calculating and Reporting Performance Metric. At least once per Contract Year, Company shall review the method of calculating and reporting Performance Metric under this Agreement to

determine if other variables should be incorporated into such calculations. Any revisions to the Performance Metric calculations in this Agreement shall be mutually agreed to by both Seller and Company.

6. Future Changes in Reporting Requirements. Seller shall reasonably cooperate with any Company requested revisions to the Monthly Report to include additional data that may be necessary from time to time to enable Company to comply with any new reporting requirements directed by the PUC or otherwise imposed under applicable Laws.

ATTACHMENT U
CALCULATION AND ADJUSTMENT OF NET ENERGY POTENTIAL

1. Net Energy Potential.

(a) Net Energy Potential and the Intent of the Parties.

The essence of this Agreement is that Company is paying to Seller a Lump Sum Payment in exchange for Company's right to dispatch, subject to Renewable Resource Variability, the Facility's Net Energy Potential. Under this Agreement, "Net Energy Potential": (i) constitutes an estimated single number with a P-Value of 95 for annual Net Energy that could be produced by the Facility based on the estimated long-term monthly and annual total of such production over a period of ten years; (ii) is subject to adjustment from time to time as provided in this Attachment U (Calculation and Adjustment of Net Energy Potential); and (iii) as so adjusted, provides a basis for calculating and adjusting the Lump Sum Payment, as provided in Section 3 (Calculation of Lump Sum Payment) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement. It is the intent of the Parties that the estimate of Net Energy Potential, as calculated and adjusted as foresaid, should reflect the following risk allocation between the Parties under this Agreement:

(i) Seller has assumed the risk of downward adjustment to the Net Energy Potential (and hence the Lump Sum Payment) to account for any of the following circumstances:

(aa) if the Renewable Resource Baseline (as estimated on the basis of the typical meteorological year as derived from the Site's measured meteorological data) is lower than Seller had assumed when it submitted its RFP Proposal;

(bb) if the as-built design and construction of the Facility is not as efficient in generating electrical energy and delivering such electric energy to the Point of

Interconnection as Seller had assumed when it submitted its RFP Proposal; and

- (cc) if the Facility's level of operational efficiency is below the standard of comparable facilities;
- (ii) Company has assumed the risk of the following (i.e., the following are to be disregarded for purposes of estimating Net Energy Potential (and hence the Lump Sum Payment)):
 - (aa) Renewable Resource Variability; and
 - (bb) the possibility that, at any given moment, Company does not need to dispatch any or all of the electric energy that the Facility is then capable of generating and delivering to the Point of Interconnection.

The foregoing is not intended as an exhaustive list of the risks assumed by either Party under this Agreement or as a limitation on the circumstances that an OEPR Evaluator, in its professional judgment, may decide to take into account in preparing its OEPR under Section 4(e) (Terms of Engagement) of this Attachment U (Calculation and Adjustment of Net Energy Potential).

- (b) NEP RFP Projection. In its RFP Proposal, the Seller projected that the Facility would have a Net Energy Potential (as defined in this Agreement) of [REDACTED] **[Note - insert NEP from RFP proposal]** MWh, and Company relied on Seller's NEP RFP Projection in deciding to contract with Seller in lieu of other developers. Among the fundamentals of the bargain evidenced in this Agreement is that there will be consequences to Seller if (i) the IE Energy Assessment does not support the NEP RFP Projection and/or (ii) the operational performance of the Facility indicates a Net Energy Potential that is below the applicable thresholds set forth in this Attachment U (Calculation and Adjustment of Net Energy Potential).
- (c) NEP IE Estimate and Company-Designated NEP Estimate. Prior to the closing of the construction financing for the Facility but in no event later than the Commercial Operations Date, the Seller shall provide Company with

a copy of the IE Energy Assessment Report. In addition, Seller shall obtain from the administrative agent of the Facility Lender and provide to Company, at financial close of the construction debt financing, a confirmation letter confirming to Company that the IE Energy Assessment Report provided by Seller to Company is the final energy assessment prepared for the Facility Lender as part of the Facility Lender's due diligence leading up to the Facility Lender's legally binding commitment (subject to certain conditions precedent) to provide a specific amount of financing for the Project as evidenced by the Facility Lender's execution of the Financing Documents. If the IE Energy Assessment Report fails to provide a NEP IE Estimate that is consistent with the requirements of this Agreement in all material respects, or if the aforementioned confirmation letter is not provided, Company shall have the option, exercisable by written notice to Seller issued no later than 30 Days, or such longer period as the Parties may agree in writing, following the first to occur of Company's receipt of (i) the IE Energy Assessment Report or (ii) notice that Company will not be provided with a copy of the IE Energy Assessment Report, to designate such Company-Designated NEP Estimate as Company, in its sole discretion, determines to be reasonable in light of the information then available to Company. In connection with Company's decision as to whether to designate a Company-Designated NEP Estimate, Company shall have the right to require Seller to pay for an energy assessment to be performed by an independent engineer selected by Company. In such case, the aforesaid 30-Day period for Company's decision to designate a Company-Designated NEP Estimate shall be tolled for the time necessary to prepare such assessment. If Company fails, within the aforesaid 30-Day period as such period may be tolled as provided in the preceding sentence, to designate a Company-Designated NEP Estimate, the NEP RFP Projection shall constitute the First NEP Benchmark, unless the Parties agree in writing on a lower First NEP Benchmark.

- (d) NEP IE Estimate, Liquidated Damages and Seller's Null and Void Right. If the NEP IE Estimate is higher than the NEP RFP Projection, the NEP RFP Projection shall constitute the First NEP Benchmark. In any other case, Seller shall have the option to declare this

Agreement null and void by written notice to Company as follows:

- (i) if (aa) the NEP IE Estimate is lower than the NEP RFP Projection and (bb) Seller issues its null and void notice to Company not later than 30 Days after issuance of the IE Energy Assessment Report; or
- (ii) if (aa) Company exercises its right to designate a Company-Designated NEP Estimate under Section 1(c) (NEP IE Estimate and Company-Designated NEP Estimate) of this Attachment U (Calculation and Adjustment of Net Energy Potential), (bb) such Company-Designated NEP Estimate is lower than the NEP RFP Projection, and (cc) Seller issues its null and void notice to Company not later than 30 Days after Company's notice of the Company-Designated NEP Estimate.

If Seller fails to declare this Agreement null and void under the conditions set forth in either clause (i) or clause (ii) above, then: (x) the NEP IE Estimate or the Company-Designated NEP Estimate, as applicable, shall thereafter constitute the First NEP Benchmark and (y) Seller shall, within five (5) Business Days following the expiration of the applicable 30-Day period for the issuance of Seller's null and void notice, pay liquidated damages equal to \$10 for every MWh by which the NEP RFP Projection exceeds the First NEP Benchmark for the initial Contract Year.

- 2. Initial OEPR. Following the Initial NEP Verification Date, the Initial OEPR shall be prepared pursuant to the process set forth in Section 4 (Preparation of OEPR) of this Attachment U (Calculation and Adjustment of Net Energy Potential) and the Initial NEP OEPR Estimate shall be as set forth in or derived from the Initial OEPR, as more fully set forth in Section 4(e) (Terms of Engagement) of this Attachment U (Calculation and Adjustment of Net Energy Potential). If the Initial NEP OEPR Estimate differs from the First NEP Benchmark, the Lump Sum Payment shall be recalculated and adjusted as provided in Section 3.ii (Lump Sum Payment During Second Benchmark Period) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement.

3. Subsequent OEPRs.

- (a) Required Subsequent OEPR. If Seller makes any changes to the Facility that involve (i) replacing any step-up transformer(s) or (ii) making any other changes (e.g., changing the characteristics of the Facility equipment or the specifications used in the IRS) that Company reasonably determines require an updated IRS, then Seller shall also be required to have a subsequent OEPR prepared as of the first Day of the calendar month following the second anniversary of the date such change to the Facility was completed.
- (b) Voluntary Subsequent OEPR. Without limitation to the generality of Section 3(a) (Required Subsequent OEPR) of this Attachment U (Calculation and Adjustment of Net Energy Potential), if the Seller makes any changes to the Facility (e.g., replacing original equipment) that does not trigger a required Subsequent OEPR but which changes Seller has reasonable grounds to believe will improve the Facility's Net Energy Potential, Seller shall have a one-time option, exercisable by written notice to Company issued not less than 120 Days prior to the Applicable NEP Verification Date, of having a subsequent OEPR prepared as of a date no sooner than 24 months following completion of the then most recent OEPR.
- (c) Subsequent OEPR and Adjustment to Lump Sum Payment. If the Subsequent NEP OEPR Estimate differs from the Most Recent Prior NEP Benchmark, the Lump Sum Payment shall be recalculated and adjusted as provided in Section 3.iii (Lump Sum Payment Following Second Benchmark Period) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement.

4. Preparation of OEPR. The following provisions apply to the Initial OEPR and any Subsequent OEPR:

- (a) Selection of OEPR Evaluator. No later than 90 Days prior to the Applicable NEP Verification Date, Company and Seller shall select, in accordance with the terms of this Section 4(a) (Selection of OEPR Evaluator), an independent engineering firm from the firms listed on the OEPR Consultants List (the "OEPR Evaluator") to prepare an operational energy production report

("OEPR"). Each party shall select the names of two (2) firms from the OEPR Consultants List. If there is mutual agreement on one or both of the named firms, then the Seller shall select one of the named firms to serve as the OEPR Evaluator. If there is no agreement on any of the named firms, then Seller shall select one of the firms named by the Company.

- (b) Eligibility for Appointment as OEPR Evaluator. Both Parties agree that the engineering firms listed in Section 4(j) of this Attachment U (Calculation and Adjustment of Net Energy Potential) are fully qualified to prepare the OEPR. By mutual agreement between the Parties in writing, a name or names may be added to or removed from the OEPR Consultants List at any time. In no event shall there be less than three (3) names on the OEPR Consultants List.
- (c) OEPR Period of Record. It is the intent of the Parties that the OEPR shall be prepared using measured meteorological and production data from the OEPR Period of Record. However, although the OEPR Period of Record is a twelve-month period, the Parties acknowledge that, in certain circumstances (e.g., Force Majeure), there may not be twelve months of data available for the OEPR Period of Record. In such case, (i) it is the intent of the Parties that the OEPR be prepared using such measured meteorological and production data that is available from the OEPR Period of Record and (ii) Parties may, by written agreement, direct the OEPR Evaluator to use such additional data outside of the OEPR Period of Record as the Parties may agree. The preceding sentence does not constitute a limitation on the professional judgment of the OEPR Evaluator as to the appropriateness of using measured meteorological and/or production from outside of the OEPR Period of Record.
- (d) Participation of Parties. Promptly following the Applicable NEP Verification Date, Seller and Company shall provide the OEPR Evaluator with such data from the OEPR Period of Record as they consider to be material to the preparation of the OEPR. Seller and Company shall also provide such additional data and information as the OEPR Evaluator may reasonably request. The Parties shall assist the OEPR Evaluator

throughout the process of preparing the OEPR, including making key personnel and records available to the OEPR Evaluator, but neither Party shall be entitled to participate in any meetings with personnel of the other Party or review of the other Party's records. However, the OEPR Evaluator will have the right to conduct meetings, hearings or oral arguments in which both Parties are represented. Seller and Company shall have forty-five (45) Days from issuance of the draft OEPR Report to review and provide feedback to the OEPR Evaluator on such report.

- (e) Terms of Engagement. Upon selection of the OEPR Evaluator, as set forth in this Attachment U (Calculation and Adjustment of Net Energy Potential), the Seller shall retain and contract with the OEPR Evaluator in accordance with the terms of this Attachment U (Calculation and Adjustment of Net Energy Potential). The OEPR Evaluator's scope of work and expected deliverables for all OEPRs must be acceptable to Company and shall, among other things, require the OEPR Evaluator to provide (i) an estimated single number with a P-Value of 95 for annual Net Energy that could be produced by the Facility based on the estimated long-term monthly and annual total of such production over a period of ten years; (ii) a BOP Benchmark Metric for purposes of allowing the Parties to evaluate the BOP Efficiency Ratio as provided in Section 2.7(b) (Determination of BOP Benchmark) of this Agreement; and (iii) any additional information that may be reasonably required by a Party with respect to the methodology used by the OEPR Evaluator to reach its conclusion. The provisions of this Attachment U (Calculation and Adjustment of Net Energy Potential) do not impose a limit on the OEPR Evaluator's professional judgment as to what other estimates (if any) to include in the OEPR. Without limiting the professional judgment of the OEPR Evaluator in estimating the Net Energy Potential and the BOP Benchmark Metric, the following is a general description of how the Parties anticipate that the OEPR Evaluator will proceed:

The purpose of an OEPR is to implement the intent of the Parties as set forth in Section 1(a) (Net Energy Potential and the Intent of the Parties) of this Attachment U

(Calculation and Adjustment of Net Energy Potential) by evaluating (i) whether, when the Renewable Resource Baseline (as estimated by the OEPR Evaluator on the basis of the typical meteorological year as derived from the Site's measured meteorological data) is present and the Facility is in Full Dispatch, the Facility is capable of doing what the Parties expected the Facility to do: i.e., generating and delivering to the Point of Interconnection electric energy in an amount consistent with the then applicable Net Energy Potential of the Facility (i.e., the estimate of Net Energy Potential then being used to calculate the monthly Lump Sum Payment pursuant to Section 3 (Calculation of Lump Sum Payment) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS to this Agreement); and (ii) if the Facility is not doing what the parties expected in this regard, identifying a new estimated single number with a P-Value of 95 for annual Net Energy that could be generated and delivered by the Facility based on the estimated long-term monthly and annual total of such production over a period of the next ten years.

At a high level, the analysis relies on reported Actual Output (i.e., energy delivered to the Point of Interconnection) during the OEPR Period of Record and the total reported Actual Generation and the WTGs (i.e., energy production measured at the WTGs) during the OEPR Period of Record to estimate Facility performance over a future evaluation period of ten years. The data from the OEPR Period of Record are first quality screened and evaluated. One-time events are assessed and removed from the record where appropriate. Values for potential energy are then calculated from the reported Actual Generation and the WTGs by adjusting for 100% availability and undispached energy. Suitable long-term

reference data sets are then identified by analyzing the reference for Density-Adjusted Wind Speeds and the normalized values for potential energy production of the WTGs over the OEPR Period of Record. Relationships between selected long-term reference wind speed data sets and normalized values for potential energy production of the WTGs are used to calculate long-term values for such on a monthly and annual basis. Finally, estimates of future Facility availability (taking into account anticipated maintenance) and losses (such as system degradation and BOP losses) are applied in order to calculate the Net Energy Potential. For this purpose, no reductions are made for future estimates of energy that Company may choose not to dispatch. If a copy of the IE Energy Assessment Report is available to the OEPR Evaluator, the OEPR Evaluator should review such Report before commencing preparation of the OEPR and evaluate whether it is appropriate for the OEPR Evaluator to take into account any of the work reflected in the IE Energy Assessment Report.

- (f) Timeline and Fees. The terms of engagement with the OEPR Evaluator shall require the OEPR Evaluator to issue an OEPR that shall include a NEP OEPR Estimate and a BOP Benchmark Metric within 30 Days following the NEP Applicable Verification Date ("First OEPR"). The Parties shall each pay fifty percent (50%) of the fees and expenses charged by the OEPR Evaluator in connection with the Initial OEPR. For the Initial OEPR, the OEPR Evaluator's fees and costs must be acceptable to Company. Seller shall pay all of the fees and expenses charged by the OEPR Evaluator in connection with any Subsequent OEPR. Seller shall also pay for any reasonable internal fees and costs incurred by the Company as a result of its participation in the process set forth in Section 4(d) (Participation of Parties) of this Attachment U (Calculation and Adjustment of Net Energy Potential).
- (g) Review of the First OEPR Evaluator Report. In the event Company or Seller does not agree with the NEP OEPR Estimate or BOP Benchmark Metric determined by

the First OEPR Evaluator, Seller or Company may, within 30 Days of issuance of the First OEPR, engage, at its own cost, a different expert evaluator from the OEPR Consultants List (the "Second OEPR Evaluator") to prepare a second OEPR that shall include a NEP OEPR Estimate or BOP Benchmark Metric, as applicable ("Second OEPR"). The terms of engagement with the Second OEPR Evaluator shall require the Second OEPR Evaluator to issue the Second OEPR within 60 Days following the date of its appointment. In the event the NEP OEPR Estimates or BOP Benchmark Metric, as applicable, provided by the First OEPR Evaluator and the Second OEPR Evaluator are different then, within ten (10) Days of the issuance of the Second OEPR, the Parties shall, with the two evaluators, confer in an attempt to mutually agree upon a NEP OEPR Estimate or BOP Benchmark Metric, as applicable ("OEPR Conference").

- (h) Review of the Second OEPR Evaluator Report. If the Parties are unable to agree upon an NEP OEPR Estimate or BOP Benchmark Metric, as applicable, within 30 Days of the OEPR Conference, then within ten (10) Days thereafter the First OEPR Evaluator and Second OEPR Evaluator shall, by mutual agreement, select a third firm from the OEPR Consultants List to act as an independent OEPR Evaluator ("Third OEPR Evaluator"). The Third OEPR Evaluator shall not be a person from the same entity as the First OEPR Evaluator or the Second OEPR Evaluator. The Parties shall direct the Third OEPR Evaluator to review the First OEPR and Second OEPR and select one as the final and binding NEP OEPR Estimate and/or BOP Benchmark Metric, as applicable ("Third OEPR"). The Third OEPR Evaluator shall complete its review and selection of the NEP OEPR Estimate within thirty (30) Days following his or her retention. If the Third OEPR Evaluator selects the First OEPR, then the Party requesting the Second OEPR shall pay for the cost of the Third OEPR. If the Third OEPR Evaluator selects the Second OEPR, then the Parties shall each pay fifty percent (50%) of the fees and expenses charged by the Third OEPR Evaluator in connection with the Third OEPR.
- (i) Final, Binding and Conclusive. The Parties acknowledge the inherent uncertainty in estimating the Net Energy Potential and BOP Benchmark Metric and

hereby assume the risk of such uncertainty and waive any right to dispute any of the qualification of the person or entity appointed as the OEPR Evaluator pursuant to Section 4(a) (Selection of OEPR Evaluator) and Section 4(b) (Eligibility for Appointment as OEPR Evaluator) of this Attachment U (Calculation and Adjustment of Net Energy Potential) of this Agreement, the appropriateness of the methodology used by OEPR Evaluator in preparing the OEPRs, the NEP OEPR Estimate and/or the BOP Benchmark Metric. Without limitation to the generality of the preceding sentence, the determination of the NEP OEPR Estimate and BOP Benchmark Metric in the First OEPR, Second OEPR (if applicable), or final decision of the Third OEPR Evaluator (if applicable) shall be final, conclusive and binding upon Company and Seller and shall not be subject to further dispute under Article 28 (Dispute Resolution) of the Agreement; provided that, nothing in this Section 4(i) (Final, Binding and Conclusive) of this Attachment U (Calculation and Adjustment of Net Energy Potential) shall preclude Seller from engaging an OEPR Evaluator to issue a Subsequent OEPR as allowed pursuant to Section 3 (Subsequent OEPRs) of this Attachment U (Calculation and Adjustment of Net Energy Potential).

- (j) Acceptable Persons and Entities. The OEPR Evaluator and Second OEPR Evaluator shall be selected from the following engineering firms listed below, subject to such additions or deletions effectuated by the Parties as provided in Section 4(b) (Eligibility for Appointment as Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement and Section 4(b) (Eligibility for Appointment as OEPR Evaluator) of this Attachment U (Calculation and Adjustment of Net Energy Potential):

DNV GL

UL

Black & Veatch

Leidos Engineering

Attachment V
SUMMARY OF MAINTENANCE AND INSPECTION PERFORMED
IN PRIOR CALENDAR YEAR

(See Article 5)

DATE WORK ORDER SUBMITTED: 06/28/96
WO#: 11451
EQUIPMENT #: 1CCF-TNK-1
EQUIPMENT DESCRIPTION: AMMONIA STORAGE TANK 1
PROBLEM DESCRIPTION: PURCHASE EMERGENCY ADAPTER FITTINGS FOR
UNLOADING GASPRO TANKS TO STORAGE TANK

WORK PERFORMED: PURCHASED THE NEW ADAPTERS AND VERIFIED THEIR
OPERATION.

COMPLETION DATE: 06/28/96
WORK ORDER COMPLETED BY: AA

-----END OF CURRENT WORK ORDER-----

DATE WORK ORDER SUBMITTED: 05/19/96
WO#: 11136
EQUIPMENT #: 1WSA-BV-12
EQUIPMENT DESCRIPTION: MAKE-UP PI ISOLATION
PROGRAM DESCRIPTION: 'D' MAKE-UP PUMP PI ISOLATION FITTING LEAKING ON
SPOOL SIDE

WORK PERFORMED: REMOVED AND REPLACED FITTINGS AND FLANGES WITH
STAINLESS STEEL. THIS WORK WAS DONE DURING PUMP OVERHAUL ON WO 1374. JH

COMPLETION DATE: 06/28/96
WORK ORDER COMPLETED BY: BB

-----END OF CURRENT WORK ORDER-----

ATTACHMENT W
BESS TESTS

Prior to achieving Commercial Operations and in each BESS Measurement Period, unless waived by Company, Seller shall demonstrate that the BESS satisfies the following:

Maintains output provided by the Company through a control setpoint, as measured at the Point of Interconnection, and is able to continuously dispatch the full BESS Contract Capacity ("BESS Capacity Test").

Demonstrates the charging/discharging requisite to satisfy the performance standard set forth in Section 3(o) (Round Trip Efficiency) of Attachment B (Facility Owned by Seller) ("RTE Test").

The RTE Test requires measurement of Charging Energy at the Point of Interconnection (MWh from the grid) from BESS 0% State of Charge to bring the BESS to a 100% State of Charge, followed by measurement at the Point of Interconnection of the MWh delivered to the grid to bring the BESS to a 0% State of Charge. The RTE Test will be conducted concurrently with the BESS Capacity Test.

The BESS Capacity Test can only be performed when the BESS is at the lower of: (i) its maximum State of Charge or (ii) 100% State of Charge prior to the start of the BESS Capacity Test and during the BESS Capacity Test the Company Dispatch allows for continuous dispatch of the BESS to 0% State of Charge with energy delivered to the Point of Interconnection.

For the purposes of evaluating the BESS Capacity Test, the "BESS Capacity Ratio" shall be equal to the number, expressed as a percentage, equal to the total MWh delivered to the Point of Interconnection during the BESS Capacity Test, divided by the BESS Contract Capacity. Further, the BESS Capacity Test will be deemed to be "passed" or "satisfied" to the extent the BESS Capacity Ratio is not less than **100%** (the "BESS Capacity Performance Metric").

For the purposes of evaluating the RTE Test, the RTE Ratio shall be equal to the number, expressed as a percentage, equal to the total MWh delivered to the Point of Interconnection during the BESS Capacity Test, divided by the "Charging Energy" measured at the Point of Interconnection. For purposes of the RTE Test, the

charging cycle shall begin when the BESS is at a 0% State of Charge prior to the commencement of the BESS Capacity Test and the Charging Energy is the amount of energy imported from the grid, as measured at the Point of Interconnection, that brings the BESS to a 100% State of Charge. The formula is $RTE = \text{MWh discharge} / \text{MWh charge}$. The RTE Test will be deemed to have been "passed" or "satisfied" to the extent the RTE is not less than the performance standard (the "RTE Performance Metric") set forth in Section 3(o) (Round Trip Efficiency of Attachment B (Facility Owned by Seller)).

Except for the BESS Capacity Test conducted prior to Commercial Operations, Seller shall, in lieu of conducting a BESS Capacity Test, be permitted to demonstrate satisfaction of the BESS Capacity Performance Metric by reference to the operational data reflecting the net output of the BESS from the Point of Interconnection for such BESS Measurement Period.

Except for the RTE Test conducted prior to Commercial Operations, Seller shall, in lieu of conducting a RTE Test, be permitted to demonstrate satisfaction of the RTE Performance Metric by reference to the operational data reflecting the charging/discharging of the BESS from the Point of Interconnection during such BESS Measurement Period.

Any BESS Capacity Test or RTE Test (each a "BESS Test" and collectively, the "BESS Tests"), other than where the BESS Capacity Performance Metric or RTE Performance Metric, as applicable, is demonstrated by reference to operational data as provided below, shall be performed at a time reasonably requested by the Company in its sole discretion. For purposes of the preceding sentence, the WTGs may be shutdown to ensure there are no restrictions or limitations imposed that would lower the maximum output of the BESS, provided that any such shutdown of the WTGs would be considered Reserve Shutdown Hours, which are Active Hours for the purpose of calculation of the Modified Pooled OMC Equipment Availability Factor pursuant to Section 1 (Calculation of the Modified Pooled OMC Equipment Availability Factor) of Attachment Q (Calculation of Certain Metrics). See Exhibit Q.1. Within a BESS Measurement Period, Seller shall be permitted up to a total of, three (3) BESS Tests to demonstrate satisfaction of the BESS Capacity Performance Metric and the RTE Performance Metric, for such BESS Measurement Period, unless additional such tests are authorized by Company. Company shall provide notice to Seller no less than three (3) Business Days prior to conducting a BESS Test.

At any time prior to conducting the third BESS Capacity Test noticed by Company for a BESS Measurement Period, Seller may demonstrate satisfaction of the BESS Capacity Performance Metric by reference to operational data reflecting the net output of the BESS from the Point of Interconnection for such BESS Measurement Period. If, during a BESS Measurement Period, Seller both fails to pass a BESS Capacity Test noticed by Company and fails to demonstrate satisfaction of the BESS Capacity Performance Metric by reference to operational data for such BESS Measurement Period, the BESS shall nevertheless be deemed to have satisfied the BESS Capacity Performance Metric for the applicable BESS Measurement Period if either (i) Company failed to notice at least three BESS Capacity Tests during such BESS Measurement Period, or (ii) Seller was unable to perform at least two (2) such noticed BESS Capacity Tests during such BESS Measurement Period due to (a) conditions on the Company System other than Seller-Attributable Non-Generation or (b) an act or omission by Company.

At any time prior to conducting the third RTE Test noticed by Company for a BESS Measurement Period, Seller may demonstrate satisfaction of the RTE Performance Metric by reference to operational data reflecting charging/discharging of the BESS from the Point of Interconnection during such BESS Measurement Period. If, during a BESS Measurement Period, Seller both fails to pass a RTE Test noticed by Company and fails to demonstrate satisfaction of the RTE Performance Metric by reference to operational data for such BESS Measurement Period, the BESS shall nevertheless be deemed to have satisfied the RTE Performance Metric for the applicable BESS Measurement Period if either (i) Company failed to notice at least three RTE Tests during such BESS Measurement Period, or (ii) Seller was unable to perform at least two (2) such noticed RTE Tests during such BESS Measurement Period due to (a) conditions on the Company System other than Seller-Attributable Non-Generation or (b) an act or omission by Company.

Company shall have the right to attend, observe and receive the results of all BESS Tests. Seller shall provide to Company the results of each BESS Test (including time stamped graphs of system performance based in operational data or test data) no later than ten (10) Business Days after the performance of such BESS Test.

ATTACHMENT X
BESS ANNUAL EQUIVALENT AVAILABILITY FACTOR

To the extent the Commercial Operations Date occurs on a date other than the first day of a BESS Measurement Period, the period between the Commercial Operations Date and the first day of the next BESS Measurement Period if any, shall be ignored for purposes of this BESS Availability Test.

For the purposes of calculating the BESS Annual Equivalent Availability Factor for the first three (3) full BESS Measurement Periods in the first Contract Year, the calculation will assume that the BESS is one hundred percent (100%) available for the remaining hours of the Contract Year.

"BESS Annual Equivalent Availability Factor" shall be calculated as follows:

$$\begin{array}{l} \text{BESS Annual} \\ \text{Equivalent} \\ \text{Availability} \\ \text{Factor} \end{array} = 100\% \times \frac{AH-EPDH-EUDH}{PH}$$

Where:

PH is period hours (8760 hours; except leap year is 8784) minus ExcludedTime.

Available Hours (AH) is the number of hours that the BESS is not on Outage. It is sum of all Service Hours (SH) + Reserve Shutdown Hours (RSH).

An "Outage" exists whenever the entire BESS is offline and unable to charge or discharge electric energy and is not in Reserve Shutdown state.

Service Hours (SH) is the number of hours during the LD Period the BESS is online and (i) charging from the WTGs or (ii) discharging electric energy to the Company System.

Reserve Shutdown Hours (RSH) is the number of hours the BESS is available but not charging or discharging

electric energy or is offline for reasons other than Seller-Attributable Non-Generation.

EPDH is the equivalent planned derated hours, including Planned Derations (PD) and Maintenance Derations (D4). A Planned Deration is when the BESS experiences a Deration scheduled well in advance and for a predetermined duration. A Maintenance Deration is a Deration that can be deferred beyond the end of the next weekend (Sunday at midnight or before Sunday turns into Monday) but requires a reduction in capacity before the next Planned Deration (PD). Each individual Deration is transformed into equivalent full outage hour(s) by multiplying the actual duration of the Deration (hours) by (i) the size of the reduction (MW) divided by (ii) Maximum Rated Output. These equivalent hour(s) are then summed.

EUDH is the equivalent unplanned derated hours. An Unplanned Deration (Forced Derating) occurs when the BESS experiences a Deration that requires a reduction in availability before the end of the nearest following weekend. Unplanned Derations include only those due to Seller-Attributable Non-Generation or those by Company pursuant to Section 8.3 (Company Rights of Dispatch). Each individual Unplanned Deration is transformed into equivalent full outage hour(s) by multiplying the actual duration of the Deration (hours) by (i) the size of the reduction (MW) divided by (ii) the Maximum Rated Output. These equivalent hour(s) are then summed.

A "Deration" exists when, due to Seller-Attributable Non-Generation, the BESS is available but at less than full capacity. Each individual Deration is transformed into equivalent full outage hour(s) by multiplying the actual duration of the derating (hours) by the size of the reduction (MW) and dividing by the Maximum Rated Output. These equivalent hour(s) are then summed. For the avoidance of doubt, if the BESS is in an Outage it cannot also be in a Deration.

ExcludedTime is unavailability as a result of the entire BESS or a portion of the BESS being unavailable due to Force Majeure. The hours and/or equivalent hours of ExcludedTime shall not be added to Available Hours and shall be subtracted from Period Hours. Each

event that counts as ExcludedTime is transformed into equivalent full outage hour(s) by multiplying the actual duration of the event by the size of the reduction (MW) and dividing by Maximum Rated Output. These hour(s) are then summed.

The effect of Force Majeure is taken into account in calculating the BESS Annual Equivalent Availability Factor over a 12 calendar month period as follows: When such 12 month period contains a month during which the BESS or a portion of the BESS is unavailable due to Force Majeure, then such month shall be excluded from the 12 month period and the calculation period shall be extended back in time to include the next previous month during which there was no such unavailability of the BESS or a portion thereof due to Force Majeure.

The following examples are provided as illustrative examples only:

Example A: BESS System was continuously available, with no maintenance or Unplanned (Forced) Derations. In this case AH = 8760, EPDH and EUDH = 0 hours

$$\text{BESS EAF} = 100\% \times \frac{8,760-0}{8,760} = 100\%$$

Example B: Maintenance Deration Hours = 168 hours

Equivalent Unplanned (Forced) Derated Hours = 100 hours

$$\text{AH} = 8,760 - 168 = 8,592$$

$$\text{BESS EAF} = 100\% \times \frac{8,592-100}{8,760} = 96.9\%$$

ATTACHMENT Y
BESS ANNUAL EQUIVALENT FORCED OUTAGE FACTOR

$$EFOF = 100\% \times \frac{(FOH + EUDH)}{8760}$$

Where:

Equivalent Unplanned (Forced) Derated Hours (EUDH) is the equivalent unplanned derated hours. Each (Unplanned Forced) Deration of the BESS is transformed into equivalent full outage hour(s). This is calculated by multiplying the actual duration of the Deration (hours) by (i) the size of the reduction (MW) divided by (ii) the Maximum Rated Output. These equivalent hour(s) are then summed for the BESS Measurement Period and added to the sum of the EUDH for the immediately preceding three (3) full BESS Measurement Periods.

- Hours of Deration x Size of Reduction)/Maximum Rated Output

Forced Outage Hours (FOH) = Sum of all hours experienced during Forced Outages during the applicable BESS Measurement Period and the sum of all hours experienced during Forced Outages during the immediately preceding three (3) full BESS Measurement Periods, in each case caused by Seller-Attributable Non-Generation.

Unplanned (Forced) Derating: A Deration that requires a reduction in capacity of the BESS before the end of the nearest following weekend.

Unplanned (Forced) Outage: An outage that requires removal of the entire BESS from service before the end of the nearest following weekend that is not planned.

EXAMPLE CALCULATION:

Assume a 50 MW BESS that for the BESS Measurement Period in question was completely out of service for 50 hours. For the BESS Measurement Period in question, it also had the following deratings:

Duration of Derating	MW Size Reduction
100 Hours	25 MW
20 Hours	20 MW
50 Hours	5 MW

During the three preceding BESS Measurement Periods, the BESS had a total of 150 Forced Outage Hours and a total of 100 Equivalent Forced Derated Hours.

FOH = 50 hours + 150 hours = 200 hours

EUDH = ((100x25)/50)+((20x20)/50)+((50x5)/50))+100 = 163 hours

$$EFOF = 100\% \times \frac{(200 + 163)}{8760} = 4.1\%$$