Model

Power Purchase Agreement
For
Renewable Dispatchable Generation
(Wind + BESS)

November 27, 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 Maui Electric Company, Limited. The terms and conditions that may be offered by Maui Electric Company, Limited, Moloka‘i Division, 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 Maui Electric Company, Limited, 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 Moloka‘i, 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 ______________, Moloka‘i, 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

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; (vi) the RTE Performance Metric shall be used to evaluate the storage efficiency of the BESS; and (vii) 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 [DRAFTING NOTE: Subject to removal per Section 2.12 drafting note]. 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 2.12 (Fast Frequency Response Performance Metric) [DRAFTING NOTE: Subject to removal per Section 2.12 drafting note] 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:

<table>
<thead>
<tr>
<th>Modified Pooled OMC Equipment Availability Factor</th>
<th>Amount of Liquidated Damages Per Calendar Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>96.9% and below</td>
<td>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.</td>
</tr>
</tbody>
</table>

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

Model RDG PPA (Wind+BESS)
Maui Electric Company, Limited, Moloka'i Division
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:

<table>
<thead>
<tr>
<th>Tier</th>
<th>Facility PI</th>
<th>Amount of Liquidated Damages Per Calendar Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier 1</td>
<td>97.0% &gt; PI &gt; or equal to 90.0%</td>
<td>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</td>
</tr>
<tr>
<td>Tier 2</td>
<td>90.0% &gt; PI &gt; or equal to 80.0%</td>
<td>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</td>
</tr>
<tr>
<td>Tier 3</td>
<td>Below 80.0%</td>
<td>For each one-tenth of one percent (0.001) by which the Performance Index falls below 80.0%</td>
</tr>
</tbody>
</table>
(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:

\[
\text{BOP Efficiency Ratio} = \frac{\text{Actual Output (at POI) for such Contract Year}}{\text{Actual Generation at WTGs for such Contract Year}}
\]
(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 and 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 of the BESS Measurement Period in question:
<table>
<thead>
<tr>
<th>BESS Capacity Ratio</th>
<th>Liquidated Damage Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier 1</td>
<td>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</td>
</tr>
<tr>
<td>95.0% - 99.9%</td>
<td></td>
</tr>
<tr>
<td>Tier 2</td>
<td>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</td>
</tr>
<tr>
<td>85.0% - 94.9%</td>
<td></td>
</tr>
<tr>
<td>Tier 3</td>
<td>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</td>
</tr>
<tr>
<td>75.0% - 84.9%</td>
<td></td>
</tr>
<tr>
<td>Tier 4</td>
<td>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</td>
</tr>
<tr>
<td>60.0% - 74.9%</td>
<td></td>
</tr>
</tbody>
</table>
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 = \[ \left( (1 - 0.950) \times 1 \right) + \left( (0.950 - 0.850) \times 1.5 \right) + \left( (0.850 - 0.750) \times 2 \right) + \left( (0.750 - 0.65) \times 2.5 \right) \] x 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:

<table>
<thead>
<tr>
<th>BESS Annual Equivalent Availability Factor</th>
<th>Liquidated Damage Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier 1</td>
<td>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</td>
</tr>
<tr>
<td>85.0% - 96.9%</td>
<td></td>
</tr>
<tr>
<td>Tier 2</td>
<td>For each one-tenth of one percent (0.001) by which the BESS Annual Equivalent Availability Factor falls 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</td>
</tr>
<tr>
<td>80.0% - 84.9%</td>
<td></td>
</tr>
</tbody>
</table>

Model RDG PPA (Wind+BESS)  
Maui Electric Company, Limited, Moloka'i Division
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
incurred 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:

<table>
<thead>
<tr>
<th>BESS Annual Equivalent Forced Outage Factor</th>
<th>Liquidated Damage Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.0% - 4.0%</td>
<td>-0-</td>
</tr>
<tr>
<td>4.1% - 6.9%</td>
<td>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</td>
</tr>
<tr>
<td>7.0% and above</td>
<td>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</td>
</tr>
</tbody>
</table>

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:

\[
\begin{align*}
4.1\% - 4.0\% &= 0.1\% \\
0.1\%/0.1 &= 1 \\
$1,000,000 \times 0.002 &= $2,000 \\
$2,000 \times 1 &= $2,000
\end{align*}
\]

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:

\[(PM - RTE Ratio) \times 100 > 2%\]

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"): 

Model RDG PPA (Wind+BESS)
Maui Electric Company, Limited, Moloka'i Division
(i) The time between a step change in frequency and the response is no more than 1.3 times the target reaction time;

(ii) The resource achieves at least 63% of the new steady state active power output within the rise time;

(iii) The resource achieves at least 70% of the new steady state active power target within the settling time;

(v) Overshoot does not exceed 5% of the final steady state active power; and

(vi) The new steady-state active power output is within the settling band.

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. In accordance with Section 8(v) (Data Collection) of Attachment B (Facility Owned by Seller), Seller shall provide such high resolution data from the Facility requested by Company to assist in the review. 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.

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) [SUBJECT TO REMOVAL PER SECTION 2.12 DRAFTING NOTE], 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, expect 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 except to the extent that Company has requested and Seller has agreed, in their sole discretion, to exceed the Allowed Capacity. Where Company has not requested Seller to exceed the Allowed Capacity, Seller shall take all necessary affirmative action to limit Actual Output of the Facility 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
null
(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 one (1) 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.
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 PV System Equivalent Availability Factor for the LD Period, (b) the Measured Performance Ratio for the MPR Assessment Period, (c) any of the BESS Capacity Ratio, RTE 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

[DRAFTING NOTE: TO THE EXTENT A DEVELOPER INTENDS TO SITE ITS PROJECT ON A COMPANY-OWNED SITE, APPROPRIATED REVISIONS SHALL BE MADE TO THIS AGREEMENT, INCLUDING THIS ARTICLE 11, TO REFERENCE THE APPLICABLE TERMS OF ATTACHMENT Z.]

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

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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 with 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).

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(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 $_____ 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 ÷ 90 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) (BEES 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 the ownership, operation and/or maintenance of the Company-Owned Interconnection Facilities following the Transfer Date); 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) the ownership, operation and/or maintenance of the Company-Owned Interconnection Facilities following the Transfer Date, 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.

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(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 if 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 Hawai‘i-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 after the 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 $15,000, 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 CFR 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

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Maui Electric Company, Limited, Moloka'i Division

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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 on Moloka‘i (totaling 4.0% as of the Execution Date) would include an additional 4.1666% 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.
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.

MAUI ELECTRIC COMPANY, LIMITED

By__________________________________
Name:
Its:

By__________________________________
Name:
Its:

("Company")

____________________________________

By__________________________________
Name:
Its:

By__________________________________
Name:
Its:

("Seller")
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), Section 2.10 (BESS Annual Equivalent Forced Outage Factor; Liquidated Damages), and Section 2.11(a) (RTE Test and 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 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 Model RDG PPA (Wind+BESS)
Maui Electric Company, Limited, Moloka'i Division

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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 [___] 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": 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.

"LDT": Shall have the meaning set forth in Section 2.11(a) (RTE Test and Liquidated Damages).

"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" shall be the 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.

"MTT": 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.


"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 Model RDG PPA (Wind+BESS) Maui Electric Company, Limited, Moloka‘i Division
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 Model RDG PPA (Wind+BESS) Maui Electric Company, Limited, Moloka'i Division

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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 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 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 Cure Period": Shall have the meaning set forth in Section 2.11(b) (RTE Test Termination Rights).

"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 Representative;

(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(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.

Model RDG PPA (Wind+BESS)
Maui Electric Company, Limited, Moloka'i Division

SCHEDULE OF DEFINED TERMS-37
"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": $ ___ per ___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]

<table>
<thead>
<tr>
<th>kW</th>
<th>kVAR Consumed</th>
<th>kVAR Produced</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full load</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Startup</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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
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 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-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) Modeling. Seller shall provide the models as set forth in Exhibit B-1.
(iv) 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
- Generating and/or Battery Energy Storage System ("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
The Facility shall comply with the following:

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 and relaying. 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 also 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’s communications and 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 by Company to install its communications cabinet, where Seller and Company cables will interface. At Company’s request, Seller shall provide an acceptable demarcation cabinet on its side of the fence where Seller and Company wiring will connect.

C. Seller shall ensure that the Seller-Owned Interconnection Facilities have a locatable cabinet for switching station relaying equipment. Seller shall select and install relaying equipment acceptable to Company. At Company’s request, Seller shall provide an acceptable demarcation cabinet on its side of the fence where Seller and Company wiring will connect.
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 (if required). The settings shall be consistent with the requirements for over/under frequency and voltage ride-through. Seller shall install protective relays that operate a lockout relay, which in turn will trip the main circuit breaker and not allow it to be reclosed without reset.

D. [RESERVED]

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.

(iv) Interface with Company's Telemetry and Control, or designated communications and control interface, to provide the active power control requirements of this Agreement. More than one interface may be required if Facility energy components, such as a BESS and variable
generation resource are controlled separately by the Company (as in grid-charging BESS).

(v) Interface with Company's Telemetry and Control, or designated communications and control interface, for the Company to specify control system modes of operation and parameters, for remotely configurable parameters and operating states required under this Agreement.

(vi) For Variable Energy Facilities: Interface with Company's Telemetry and Control, or designated communications and control interface, to provide telemetry of equipment 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.

(vii) Provision for Loss of Telemetry and 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 5 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 and real power export or import as directed by the Company System Operator.

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's will be treated by Company as confidential.

H. Available Power Production

(i) Variable Energy Systems. 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.

(ii) Variable Energy Systems Paired with Storage Operated through a Single Active
Power Control Interface. For variable energy systems paired with storage operated through a single active power control interface (i.e., charging indirectly controlled through dispatch), Seller's available power production considering equipment and resource availability and state of charge of the storage (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. Telemetry will be provided to indicate state of charge, including available estimated duration at the current dispatch given state of charge and forecast production.

(iii) Storage Directly Controlled by the Company. Seller's available power production considering state of charge (Power Possible) will be supplied as an accurate representation of the amount of maximum and minimum (negative) available active power at the Point of Interconnection and the duration available at the current dispatch. If the Facility allows for allocation of capacity to different modes of operation (i.e., reservation of capacity for regulation or contingency response), then the available capacity in each allocated region shall be reported individually and controlled separately through separately designated dispatch or active power control interface.

I. For variable resources where Power Possible is derived, in part or in whole, from a measured available variable energy source such as solar or wind: 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.
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. Follow up actions to resolve the discrepancy will be as provided in Section 1(j) (Demonstration of Facility) of this Attachment B (Facility Owned by Seller).

J. 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, SODAR and irradiance monitors) and AC and DC source lines for such equipment as may be required depending on the Facility resource type and location. 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.

K. 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 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.

(f) **Maintenance Plan.** Seller shall maintain Seller-Owned Interconnection Facilities in accordance with Good Engineering and Operating Practices.

(g) **Active Power Control Interface.** [COMPANY TO REVISE THIS SECTION BASED ON SPECIFICS OF THE PROJECT.]

(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 detailed design will be tailored to the specific resource type and configuration to achieve the functional requirements of the Facility.

The Active Power Control Interface will be used to control the net real power export (or import, as applicable) from the Facility for load following, system balancing, energy arbitrage, and/or supplemental frequency control as required under this Attachment B (Facility Owned by Seller).

For variable resources paired with storage: The implementation of the Active Power Control Interface will allow the Company System Operator to control the net real power export (or import, as applicable) 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. The Facility will maintain the power level specified by the Company through the variable resource and BESS available energy, subject to the availability of resource and BESS State of Charge.

For facilities with grid charging storage, the Active Power Control interface may also direct the charging/discharging of energy from the BESS.

The Facility real power output (or import, if storage charging is enabled) will automatically adjust to a change in frequency in accordance with the frequency response requirements provided in this Attachment B (Facility Owned by Seller).

(ii) Company shall review and provide prior written approval of the design for the Active Power Control Interface to ensure compatibility with Company's centralized control systems and use of Facility available energy and storage capabilities. To ensure such continued compatibility, Seller shall not materially change the approved design without Company's prior review and written approval. This will include design description and parameters for the Seller's control system(s), which determine provision of net real power from the variable
resource System (i.e., wind or PV) and/or the BESS storage, and charging of the BESS storage, in response to the Active Power Control signal or signals.

(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) or raise/lower controls and will be established by the Company prior to final design approval.

(iv) The Active Power Control Interface shall also include provision for feedback points from the Facility indicating active power target in MW for the Active Power Control signal(s). The Facility shall provide the MW target feedback to the Company SCADA system immediately upon receiving the respective control signal from the Company.

(v) Seller shall provide to the telemetry interface analogs for the gross production of the energy resource(s) at the Facility (for example, DC or AC MW production of the Variable Resource generator(s), depending on design; gross DC MW of the BESS, etc.) Seller shall also provide the total net AC MW production at the Point of Interconnection.

(vi) The Active Power Control Interface shall provide for remote control of the real-power output of the Facility by the Company at all times. If the Active Power Control Interface is unavailable or disabled, the Facility may not export electric energy to Company and the Facility shall be deemed to be in Seller-Attributable Non-Generation status, unless the Company, in its sole discretion, agrees on an alternate means of dispatch. If Seller fails to provide such remote control capability (whether temporarily or throughout the Term), 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 capability is not provided and the Facility shall be deemed to be in Seller-Attributable Non-Generation status for such periods.

(vii) The rate at which the Facility changes net real power in response to the active power control shall not be less than the greater of 2 MW per minute or 10% of the Facility capacity per minute, and shall make available through agreed parameters, such faster ramp as the installed equipment can support. The Facility's Active Power Control Interface will be used by Company to control the rate at which electric energy is changed to achieve the active power limit for load-following and regulation. The Facility will respond to the active power control request immediately with an echo of the set point and measurable change within the 4 second control cycle.

(viii) The Facility shall accept the following controls related to active power and frequency response to or from the Company centralized control system:

A. Power Reference Setpoint from Company (based on the input to the Facility, from the Active Power Control Interface): The Facility output shall match this setting from the Variable Resource and/or BESS so long as it can be supported by the variable resource and/or BESS State of Charge (Power Possible does not change). This net output should be accurate within +/- 0.1 MW under normal frequency conditions. This setpoint will be modified as appropriate in the controls by the appropriate frequency response consistent with Section 1(g)(xi) (Active Power – Frequency Response (DROOP)), Section 1(g)(xii) (Dynamic Active Power – Frequency Performance), and [FOR FACILITIES WITH STORAGE] Section 1(g)(xiii) (Alternate Active Power / Frequency Response Modes) of this Attachment B (Facility Owned by Seller).

B. For variable energy resources: The Facility shall include Variable Resource Enable/Disable control. When "Disable" is selected, the
Facility shall ramp down, shutdown, and leave offline variable resource generators. When "Enable" is selected, the Facility variable resource generators can start up, ramp up, and remain in normal operations subject to Company active power dispatch.

C. From Company: Frequency Response Mode (DROOP, FFR, isochronous) state (where alternate modes of operation are required).

D. From Seller:

- [For Facilities with a BESS and where required]: Capacity allocation to each mode of operation where ability to allocate capacity to different modes of operation is required (e.g., to allocate a portion of capacity to fast frequency response) and telemetered data and controls necessary to determine state of charge and gross MW and Mvar contribution, etc., operationally required for each segmented use.

- Power Possible (Available maximum capacity): See above, instantaneous limit for available energy, represents max level the Facility can produce under present resource, BESS State of Charge (if applicable) and equipment conditions. This is used as upper limit for Company Dispatch.

- For variable energy resources, maximum level the variable generation resources can produce under present variable resource and equipment conditions.

- Minimum Sustained Limit: Minimum output level the Facility can be reduced to continuously without delay (ecmn). For projects with BESS: If BESS charging from the grid is permitted, and charging capacity is available, this will be a negative value.

- Minimum Transient Limit (for frequency response, regulation) (lfcmn). For projects with BESS: If BESS charging from the grid is
permitted, and charging capacity is available, this will be a negative value.

- Maximum Dispatchable Ramp Rate: Controlled ramp rate available for controlled changes in output.

- For projects with a BESS, Seller shall also provide the following:
  - BESS potential (BESS State of Charge and projected number of hours at present dispatch, minimum dispatch, and maximum dispatch).
  - Frequency Response Mode (DROOP, FFR, isochronous) state (where alternate modes of operation are required).
  - Capacity allocation to each mode of operation (to allow FFR and Droop allocation).

(ix) Seller shall not override Company's active power controls without first obtaining specific approval to do so from the Company System Operator unless there is a system emergency. Disabling of the remote Active Power Control shall initiate telemetry notification to the Company.

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

**Active Power Communications between Company and Seller**

Company will receive and send Set-Point and related data through the communications interface in accordance with Company standards. The data points covered under this Agreement, as described below, may overlap with data requirements described elsewhere.

**Data Points to be sent from Seller to Company via SCADA**

The following data points will be transmitted via SCADA from Seller to Company and represent Facility...
level data [Note: May be modified based on resource type and Facility requirements]:

<table>
<thead>
<tr>
<th>Description</th>
<th>Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Set-Point (echo)</td>
<td>KW</td>
</tr>
<tr>
<td>Power demand</td>
<td>KW</td>
</tr>
<tr>
<td>Actual power</td>
<td>KW</td>
</tr>
<tr>
<td>Power Possible</td>
<td>KW</td>
</tr>
<tr>
<td>Actual reactive power</td>
<td>Kvars</td>
</tr>
<tr>
<td>Average Voltage</td>
<td>Kv</td>
</tr>
<tr>
<td>Variable Generation potential</td>
<td>KW</td>
</tr>
<tr>
<td>[Wind only] Number of turbines online and running</td>
<td>Integer</td>
</tr>
<tr>
<td>BESS State of Charge</td>
<td>Pct</td>
</tr>
<tr>
<td>[PV only] Inverters online</td>
<td>Integer</td>
</tr>
<tr>
<td>Facility duration at current output</td>
<td>HRS</td>
</tr>
<tr>
<td>Status</td>
<td>Remote/Local</td>
</tr>
<tr>
<td>[For facilities with alternate modes of frequency response] Indication of Frequency Response Mode</td>
<td>Integer FFR, Droop, ISOCH</td>
</tr>
</tbody>
</table>

Response times and limitations of Facility in regards to Active Power Control

The following protocols outline the expectations for responding to the Set-Point.

Frequency of Changes. Company may send a new Set-Point to the Facility at up to the control cycle (between 0.5 and 4 seconds).

Range of Set-Point. The range of set point values can be between 0% and 100% of Power Possible. For projects offering grid-charging...
storage, negative set-point values may be required.

The response time of the Facility to commanded active and reactive power setpoints provided by the Company System Operator shall be within specified limits (to be determined by the IRS). Reaction time is defined as the time interval between the moment of receiving external control setpoints for active and reactive power from the Company System Operator and the moment when the Facility active and reactive power reach the setpoint (as measured at the POI).

**Backup Communications**

In the event of an Active Power Communications failure, Company and Seller shall communicate via telephone, or other method mutually agreeable between the Parties, in order to correct the failure

(xi) **Active Power - Frequency Response (DROOP).**

The Facility shall provide a primary frequency response with a frequency droop characteristic reacting to system frequency at the Point of Interconnection in both the overfrequency and underfrequency directions except as limited by the minimum and maximum available capacity and energy potential at the time of the event including BESS state of charge. This response must be timely and sustained rather than injected for a short period and then withdrawn. For over-frequency events, response may include absorption through charging (as applicable under the terms of this Agreement). Seller shall provide minimum operational limits for each online resource and the Facility for primary frequency response.

Frequency will be calculated over a period of time (e.g., three to six cycles, or other period as specified by Company), and filtered to take control action on the fundamental frequency component of the calculated signal. Calculated frequency may not be susceptible to spikes caused by phase jumps on the Company system.
The active power-frequency control system, and overall response of the inverter-based resource (plant), must meet the following performance aspects (see figure below):

The active power-frequency control system shall have an adjustable proportional droop characteristic with a default value of \(4\%\) percent. The droop setting shall permit a setting from 0.1% to 10%. This setting shall be changed upon Company's written request as necessary for grid droop response coordination. The droop setting shall be tunable and may be specified during commissioning. The droop shall be a permanent value based on \(P_{\text{max}}\) (maximum nominal active power output of the plant) and \(P_{\text{min}}\) (typically 0 for an inverter based resource). This keeps the proportional droop constant across the full range of operation. The curve for an inverter-based BESS may include the negative active power quadrant of this curve. The droop response must include the capability to respond in both the upward (underfrequency) and downward (overfrequency) directions. Frequency droop will be based on the difference between maximum nameplate active power output (\(P_{\text{max}}\)) and zero output (\(P_{\text{min}}\)) such that the \(4\%\) percent droop line is always constant for a resource.

Seller shall make commercially reasonable efforts to provide frequency response without a deadband, but in any case, not to exceed \(\pm 0.0166\) Hz. If the active power-frequency control system has a deadband, it shall be a nonstep deadband that is adjustable between 0 Hz and the full frequency range of the droop characteristic with a default value not to exceed \(\pm 0.036\) Hz. (Nonstep deadband is where the change in active power output starts from zero deviation on either side of the deadband.) (Frequency deadband is the range of frequencies in which the unit does not change active power output.)

Inverter-based resources may consider a small hysteresis characteristic where linear droop meets any deadband to reduce dithering of inverter output when operating near the edges of the deadband. The hysteresis range may not exceed \(\pm 0.005\) Hz on
either side of the deadband. If measurement resolution is not sufficient to measure this frequency, hysteresis may not be used.

Active Power - Frequency Control Characteristic

Nominal System Frequency is 60.00 Hz.

The closed-loop dynamic response of the active power-frequency control system of the overall inverter-based resources, as measured at the POI must have the capability to meet or exceed the performance specified in below. Seller shall ensure that the models and parameters for the resources and control equipment are consistent with
those provided during the IRS process and that any updates have been provided to the Company reflecting currently implemented settings and configuration.

(xii) Dynamic Active Power-Frequency Performance.

For a step change in frequency at the point of measure of the inverter-based resource [NOTE - MAY BE ADJUSTED AS THE RESULT OF IRS]:

Reaction time: The time between a step change in frequency and the time when the resource active power output begins responding to the change shall be less than 500 Ms, or as otherwise specified by Company.¹

Rise time: The time when the resource has reached 90% of the new steady-state (target) active power output shall be less than 4 seconds, or as otherwise specified by Company.²

Settling Time: Time in which the resource has entered into, and remains within, the settling band of the new steady-state active power (target) output shall be less than 10 seconds, or as otherwise specified by Company.

Overshoot: Percentage of the rated active power output that the resource can exceed while reaching the settling band shall be less than 5% or as otherwise specified by Company.³

Settling Band: Percentage of rated active power output that the resource should settle to within the settling time shall be less than 2.5%.

When operating in parallel with the Company System, the Facility shall operate with its primary frequency response control in automatic operation and in accordance with Company directions. Notification of changes in the status of the frequency response controls and, where applicable,

¹ Time between step change in frequency and the time to 10 percent of new steady-state value can be used as a proxy for determining this time.
² Percentage based on final (expected) settling value.
³ Percentage based on final (expected) settling value.
mode of operation must be provided to the Company System Operator immediately through SCADA telemetry indication.

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 export based on frequency deadband and frequency droop settings specified by the Company.

The Facility frequency response control shall increase the net real power export above the Power Reference Setpoint set under Section 1(g)(viii) of this Attachment B (Facility Owned by Seller) or further decrease the net real power export from the Power Reference Limit in its operations in accordance with the frequency response settings.

The Facility frequency response control shall be in continuous operation unless directed otherwise by the Company.

(xiii) **[FOR FACILITIES WITH STORAGE]**. Alternate Active Power/ Frequency Response Modes. The Facility will provide the capability to supply isochronous or fast frequency response modes of operation, in addition to normal droop, which can be set remotely or locally. The control design shall allow for a bumpless transfer between modes of operation.

A. Fast Frequency Response (FFR): This mode of operation will permit the Facility to respond to system frequency disturbances with a fast charge/discharge response in accordance with the fast frequency response droop settings. In this mode of operation, the Facility frequency response is configured to provide fast frequency response, as an alternative setting to the normal steady-state frequency response. When in this mode of operation, the frequency droop characteristics are configured to charge or discharge with a different set of parameters to allow for a faster and larger proportional charge and discharge in response to frequency changes outside of the configurable deadband. The initial parameter
settings will be specified by Company following the IRS, and additional tuning and adjustment of configurable parameters may be required based on review of response to actual system events. When in FFR mode, when system frequency is within the fast frequency response deadband, the Facility will operate to maintain a percentage state of charge, which is configurable on Company request (i.e., 50%), managed at a charging/discharging rate also specified by Company.

(1) When in FFR mode the active power-frequency control system shall have an adjustable FFR proportional droop characteristic with a default value of [1%] percent. The FFR droop setting shall permit a setting from 0.1% to 5%. This setting shall be changed upon Company’s written request as necessary for fast frequency response coordination. The FFR droop shall be a permanent value based on Pmax (maximum nominal active power output of the plant) and Pmin (typically 0 for an inverter-based resource). This keeps the proportional droop constant across the full range of operation. The curve for an inverter-based BESS may include the negative active power quadrant of this curve. The droop response must include the capability to respond in both the upward (underfrequency) and downward (overfrequency) directions. Frequency droop will be based on the difference between maximum nameplate active power output (Pmax) and zero output (Pmin) such that the [1%] percent droop line is always constant for a resource.

(2) When in FFR mode the active power-frequency control system shall have an adjustable frequency deadband with a default value of 0.3 Hz. The deadband setting shall permit a setting from 0.1 Hz to 1 Hz. This setting shall be changed upon Company’s written request as
necessary for fast frequency response coordination. The deadband setting shall be tunable and may be specified during commissioning. It shall be a nonstep deadband such that the change in active power output starts from zero deviation on either side of the deadband. (Frequency deadband is the range of frequencies in which the unit does not change active power output.)

(3) FFR-1 Performance Requirements – Expected FFR Active Power-Frequency Performance. For a step change in frequency at the point of measure of the FFR resource:

Reaction time: The time between a step change in frequency and the time when the resource active power output begins responding to the change shall be less than 50 milliseconds, or as otherwise specified by Company.4

Rise time: The time when the resource has reached 90% of the new steady-state (target) active power output shall be less than 0.133 seconds, or as otherwise specified by Company.5

Settling Time: Time in which the resource has entered into, and remains within, the settling band of the new steady-state active power (target) output shall be less than 500 milliseconds, or as otherwise specified by Company.

Overshoot: Percentage of the rated active power output that the resource can exceed while reaching the settling band shall be less than 5% or as otherwise specified by Company.6

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4 Time between step change in frequency and the time to 10 percent of new steady-state value can be used as a proxy for determining this time.
5 Percentage based on final (expected) settling value.
6 Percentage based on final (expected) settling value.
Settling Band: Percentage of rated active power output that the resource should settle to within the settling time shall be less than 2.5%.

B. Isochronous / Black Start: The Facility will be capable of operating in a zero droop (isochronous) mode of operation. When in this mode of operation, the frequency droop characteristic will be configured as needed to keep system frequency at a target. In a black start configuration, the target shall be 60 Hz. If isochronous is specified while in operation, the target shall be initialized to the grid frequency and the target increased or decreased from the Company System through the control interface.

(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 (as applicable) have been fully commissioned.
- 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 Energy Equipment. In the event that all or any portion of the Facility’s energy equipment is not 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 are consistent with the results that would have been attained if all of the equipment 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 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(b)(iii)(I), 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 the 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 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 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 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(w) (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 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 and Return to Service.** Under no circumstances shall Seller, when separated from the Company System for any reason, including tripping during disturbances or due to equipment failure, reclose into the Company System without first obtaining specific approval to do so from the Company System Operator. Ramp rates, behavior and mode of operation upon return to service shall conform to verbal instructions from the System Operator or Active Power control from Company. Following “system black” conditions, the Facility shall not attempt to automatically reconnect to the grid (unless directed by the Company System Operator) so as to not interfere with blackstart procedures.

(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 export energy 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 or power factor specified by the Company System Operator to the extent allowed by the Facility reactive power capabilities as defined in Section 3(b) (Reactive Power Characteristics) of this Attachment B (Facility Owned by Seller).

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

(i) The Facility must deliver power up to the Allowed Capacity (MW) at a power factor between 95%
lagging and 95% leading to the Company System as illustrated in the [generator capability] curve(s) attached to this Agreement as Exhibit B-2, which represents the Facility Composite (Generator and Energy Storage Capability Curve(s)). Facilities with a BESS with grid charging can operate with negative active power. These facilities shall provide automatic voltage control within their reactive capability while acting as a load (charging, negative active power generation). The automatic voltage control aspects of a BESS shall be seamless across the transition from acting as a generating resource to acting as a load. The Facility must be capable of automatically adjusting reactive control to maintain the bus voltage at the Point of Interconnection to meet the scheduled voltage set point target specified by the Company System Operator and be capable of supplying reactive power at the leading/lagging 0.95 power factor at all active power outputs down to zero active power. The voltage target will be specified remotely by the Company System Operator through the SCADA/EMS. The Facility's voltage set point target must reflect the Company voltage set point target controlled from the SCADA/EMS, without delay. The Facility should not normally operate on a fixed var or fixed power factor unless agreed by Company. The voltage setpoint target and present Facility minimum and maximum reactive power limits based on the Facility Composite capability curve shall be provided to the Company EMS through Company's Telemetry and Control.

(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 changes. The response requirements are differentiated for large and small signal disturbance performance characteristics. Small signal disturbances are those that reflect normal variations under non-disturbance conditions, the continuous operation range for voltage ride through: 0.80 pu ≤ V ≤ 1.00 pu at the point of interconnection. Large disturbance is where the voltage at the point of
interconnection falls outside the continuous operating range.

(iii) For small signal disturbances, reaction time between the step change in voltage and the reactive power change shall be less than 500 msec (no intentional time delay). 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. The percentage of rated reactive power output that the resource can exceed while reaching the settling band shall be less than five percent (5%).

(iv) Large disturbances: Large disturbances are characterized by voltage falling outside of the continuous operating range. The Facility shall adhere to the following characteristics for large disturbances:

The response of each generating resource over its full operating range and for all expected grid conditions should be stable. The dynamic performance of each resource should be tuned to provide this stable response. Company will work with Seller to ensure during the interconnection process that each resource supports Company System reliability and provides a stable transient response to grid events. [Note - The performance specifications described here may need to be modified based on studies performed for specific interconnections to provide a stable response.]

Inverter-based resources shall operate in closed loop automatic voltage control at all times to support voltage regulation and voltage stability. Either the individual inverters or the plant-level closed loop automatic voltage controller must operate with a relatively fast response characteristic to mitigate steady-state voltage issues from causing dynamic voltage collapse. The plant-level controller may send voltage or reactive power set point changes to the individual inverters relatively fast, or the
inverters will respond locally (depending on control architecture).

For a large disturbance step in voltage, measured at the inverter terminals, where voltage falls outside the continuous operating range, the positive sequence component of the inverter reactive current response must meet the performance specifications set forth below. These parameters may be adjusted following additional study and/or operational testing and performance.

Reaction time: Time between the step change in voltage and when the resource reactive power output begins responding to the change. The reaction time shall be less than 16 msec.

Rise time: Time between a step change in control signal input and when the reactive power output changes by 90 percent of its final value. The rise time shall be less than 100 msec.

Overshoot: Percentage of rated reactive current output that the resource can exceed when reaching the settling band. Overshoot will be determined following the IRS such that any overshoot in reactive power response does not cause Company System voltages to exceed acceptable voltage limits. The magnitude of the dynamic response may be requested to be reduced based on stability studies or actual operational data review.

If the Facility does not operate in accordance with Section 3(b) 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 supplemental reactive power equipment or additional controls modifications, at Seller's expense).

(c) Ramp Rates.

(i) Seller shall ensure that the ramp rate of the Facility is less than 100 KW a minute for all conditions other than those under control of the Company System Operator and/or those due to desired...
frequency response, including start up, depletion of storage charge and resource, locally controlled startup and shut down.

(d) **Ride-Through.**

Ride-Through requires that the resource continues to inject current within the "No Trip" zone of the voltage and frequency ride-through requirements. Unless approved during the Interconnection Requirements Study analysis, resources should not use "momentary cessation" within the ride-through regions for any of the ride-through requirements in this Attachment B (Facility Owned by Seller). In the "may trip" regions, the Facility shall initiate trip for over/under voltage and frequency conditions only as required for Facility equipment operating limits to avoid damage. Any such limits of operation should be conveyed to the Company and represented in the provided models.

(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). For alarm conditions the Facility shall not disconnect from the Company System unless the Facility's equipment is at risk of damage. This is necessary in order to coordinate with the existing Company System. [**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.**]:

- $0.88 \, \text{pu} \leq V \leq 1.10 \, \text{pu}$ 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.
System if the voltage remains in this range for more than 10 seconds.

0.15 pu ≤ V < 0.50 pu The Facility may initiate disconnection from the Company System if voltage remains in this range for more than 2 seconds.

0.00 pu ≤ V < 0.15 pu The Facility may initiate disconnection from the Company System if the voltage remains in this range for more than 0.16 seconds.

Protective Undervoltage Relaying (27) shall be set to alarm only to meet the above ride-through requirements, and shall not initiate a disconnect from the Company System unless Seller reasonably determines based upon Good Engineering and Operating Practices that the Facility's equipment is at risk of damage. This is necessary in order to coordinate with the existing Company System.

Seller shall have sufficient capacity to fulfill the above mentioned requirements to ride-through subsequent events 300 cycles or more apart, between which the voltage at the POI recovers above 0.80 pu. [THE ACTUAL RIDE-THROUGH TIMES WILL BE DETERMINED BY COMPANY IN CONNECTION WITH THE IRS]

(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). For alarm conditions the Facility should not disconnect from the Company System unless the Facility's equipment is at risk of damage. This is necessary in order to coordinate with the existing Company System. [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.):

\[ 0.80 \text{ pu} \leq V \leq 1.10 \text{ pu} \]

The Facility remains connected to the Company System and in continuous operation.

\[ 1.10 \text{ pu} < V \leq 1.20 \text{ pu} \]

The Facility remains connected to the Company System and in continuous operation no less than 30 seconds; the duration of the event is measured from the point at which the voltage increases at or above 1.10 pu and ends when voltage is at or below 1.10 pu.

\[ V > 1.20 \text{ pu} \]

The Facility remains connected to the Company System and in continuous operation for as long as possible as allowed by the equipment operational limitations.

Protective Overvoltage Relaying (59) shall be set to alarm only to meet the above ride-through requirements, and shall not initiate a disconnect from the Company System unless Seller reasonably determines based upon Good Engineering and Operating Practices that the Facility's equipment is at risk of damage. This is necessary in order to coordinate with the existing Company System.

\( (g) \) Transient Stability Ride-Through.

In all modes, the Facility shall be designed such that the transient stability of Company System is maintained for normally cleared and secondarily cleared faults. The Facility will be required to remain connected through anticipated rates of change of frequency [TO BE PROVIDED UPON COMPLETION OF IRS].

\( (h) \) [RESERVED]

\( (i) \) Underfrequency ride-through.

Model RDG PPA
Maui Electric Company, Limited, Moloka'i Division
The Facility shall meet the following underfrequency ride-through requirements during an underfrequency disturbance, and export of power shall continue with output adjusted as appropriate for Facility droop response consistent with Section 1(g)(xi) (Active Power – Frequency Response (DROOP)), Section 1(g)(xii) (Dynamic Active Power – Frequency Performance), and [FOR FACILITIES WITH STORAGE] Section 1(g)(xiii) (Alternate Active Power / Frequency Response Modes) of this Attachment B (Facility Owned by Seller) ("f" is the Company System frequency at the Point of Interconnection):

57.0 Hz ≤ f ≤ 63.0 Hz  
The Facility remains connected to the Company System and in continuous operation.

50.0 Hz ≤ f < 57.0 Hz  
The Facility remains connected to the Company System and in continuous operation for at least twenty (20) seconds per event. The duration of the event is from the point at which the frequency is below 57 Hz and ends when the frequency is at or above 57 Hz. The Facility may initiate an alarm if frequency remains in this range for more than twenty (20) seconds.

f < 50.0 Hz  
The Facility remains connected to the Company System and in continuous operation for the duration allowed by the equipment operational limitations. The Facility may initiate an alarm immediately.

Protective Underfrequency Relaying (81U) shall be set to alarm only to meet the above ride-through requirements, and shall not initiate a disconnect from the Company System unless Seller reasonably determines based upon Good Engineering and Operating Practices that the Facility's equipment is at risk of damage. This is
necessary in order to coordinate with the existing Company System.

Any tripping on calculated frequency should be based on accurately calculated and filtered frequency measurement over a time frame of minimum six cycles, or other period as specified by the Company, and should not use an instantaneously calculated value.

(j) Overfrequency ride-through.

The Facility will behave as specified below for overfrequency conditions, and export of power shall continue with output adjusted as appropriate for Facility droop response consistent with Section 1(g)(xi) (Active Power - Frequency Response (DROOP)), Section 1(g)(xii) (Dynamic Active Power - Frequency Performance), and [FOR FACILITIES WITH STORAGE] Section 1(g)(xiii) (Alternate Active Power / Frequency Response Modes) ("f" is the Company System frequency at the Point of Interconnection):

\[
\begin{align*}
57.0 \; \text{Hz} & \leq f \leq 63.0 \; \text{Hz} & \text{The Facility remains connected to the Company System and in continuous operation.} \\
63.0 \; \text{Hz} \leq f \leq 65.0 \; \text{Hz} & \text{The Facility remains connected to the Company System for at least twenty (20) seconds. After twenty (20) seconds, the Facility may initiate an alarm and the Facility remains connected and producing power for the duration allowed by the equipment operational limitations. The duration of condition is from the point at which the frequency is above 63.0 Hz and ends when the frequency is at or below 63.0 Hz.} \\
f > 65.0 \; \text{Hz} & \text{The Facility may initiate disconnection from the Company immediately.}
\end{align*}
\]
Protective Overfrequency Relaying (81O) shall be set to alarm only to meet the above ride-through requirements, and shall not initiate a disconnect from the Company System unless Seller reasonably determines based upon Good Engineering and Operating Practices that the Facility's equipment is at risk of damage. This is necessary in order to coordinate with the existing Company System.

Any tripping on calculated frequency should be based on accurately calculated and filtered frequency measurement over a time frame of minimum six cycles, or other period as specified by the Company, and should not use an instantaneously calculated value.

(k) Successive Faults.

If the resource necessitates tripping to protect from the cumulative effects of those successive faults, in a period of time to ensure safety and equipment integrity, the constraint and time periods should be provided for inclusion in the interconnection study. For all cases, at a minimum, the ride-through requirements shall be met for two ride-through events within two seconds to allow for the Company's transmission automatic reclosing attempt. [Note - this requirement may be modified based on the results of the IRS.]

(l) Rate of Change of Frequency ("ROCOF")

The inverter-based resources in the Facility shall not use rate-of-change-of-frequency protection unless an equipment limitation exists that requires the inverter to trip on high ROCOF. Any ROCOF tripping must be approved by Company.

(m) Phase Angle Shift Ride-Through.

The Facility equipment shall ride through phase angle shift of up to [ ] [Note – requirements will depend on Facility]. Inverter phase lock loop (PLL) loss of synchronism shall not cause the inverter to trip or enter momentary cessation within the voltage and frequency ride-through region. Inverters must be capable of riding through temporary loss of synchronism, and regain synchronism, without causing a trip or momentary cessation of the resource.
(n) **DC Protection.**

If the Facility requires DC reverse current protection, such protection must be coordinated with the inverter equipment module ratings and set to operate for short circuits on the DC side. DC reverse current protection shall not operate for transient overvoltage or for AC-side faults.

(o) **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".

(p) **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.

(q) **Grid Forming Capabilities.**

[NOTE APPLICABILITY BASED ON RESOURCE TYPE AND DESIGN, FOR INVERTER BASED RESOURCES] 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. While in grid forming mode, the inverters will support grid operation, consistent with tariff requirements, as a continuous 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 and operate autonomously if a grid reference is unavailable, and should be able to share active and reactive power burden with other voltage sources without impacts on system stability.
(i) Seller shall operate the Facility in grid forming mode only as directed by the Company System Operator, in its sole discretion. The Facility shall be capable of enabling and disabling grid forming mode remotely from the Company System Operator. Such mode of operation shall be indicated to the Company System Operator through telemetry.

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

(iii) The Facility shall transition seamlessly from grid forming mode to grid following mode and vice versa while under load without ceasing current output in accordance with tunable system state parameters (frequency/voltage) and/or under the direction of the Company System Operator.

(r) Black Start Capability.

[NOTE - APPLICABILITY BASED ON RESOURCE TYPE AND DESIGN, FOR INVERTER BASED RESOURCES] [For synchronous machines, require capability to operate in isochronous control and black start.] The BESS storage shall be capable of grid forming inverter capability so it can generate its own AC waveform at the designated POI rather than relying on a grid voltage to synchronize and maintain frequency. Further, inverter-based resources shall ensure they have sufficient energy storage to maintain power injection to the grid during system restoration (i.e., have power available when and if called upon). [TO BE SPECIFIED DURING THE IRS.] Inverter based facilities shall be capable of support as a black start cranking path to start synchronous generators for restoration.

The Facility shall have sufficient short-term over-current capability to supply inrush currents during energizing of transformers and distribution feeders and starting auxiliary motors of conventional power plants. Other inrush-current mitigating solutions can be accepted as well.

The Facility for black start shall be configured to provide a ground reference for a black start path during the black
start procedure (avoid energizing delta-delta transformer connected paths, use switchable grounding transformers or use wye-grounded transformers with dedicated black start units).

(s) **Provision of Synthetic Inertia.** \[TO BE DETERMINED BASED ON IRS.\]

(t) **Generator Step-Up Transformer Impedance.**

The generator step-up transformer impedance shall be between [__] percent and [__] percent, inclusive, on transformer OA rating. \[NOTE: THESE VALUES WILL BE BASED ON THE RESULTS OF THE IRS.\]

(u) **Control Systems and Auxiliary Equipment.**

The power source for control systems and auxiliary equipment required for normal operation of the Facility shall be designed to be immune from system transients in accordance with the Public Utilities Commission of the State of Hawai‘i tariff for Maui Electric Company, Ltd. Rule No. 2, Character of Service (Revised Sheet No. 5, effective Oct. 20, 1991) and Section 3.2(A)(6) (Facility Protection and Control Equipment) to meet the performance during under/over voltage and under/over frequency conditions pursuant to 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).

(v) **Frequency Response.**

Seller shall comply with the requirements of Section 1(g)(xi) (Frequency Response (DROOP)), Section 1(g)(xii) (Dynamic Active Power - Frequency Performance), and [FOR FACILITIES WITH STORAGE] Section 1(g)(xiii) (Alternate Active Power / Frequency Response Modes) of this Attachment B (Facility Owned by Seller).

(w) **Round Trip Efficiency.** The round trip efficiency of the BESS as measured at the POI shall be not less than [_____] percent ([__]%). \[ND: The percentage for round trip efficiency shall be taken from Seller’s RFP\]

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 the purposes of this Section 4 (Maintenance of Seller-Owned Interconnection Facilities), a "Disconnection Event" is the removal of 80% of capacity or more from Company System and/or disconnection of the Facility from the Company's System (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 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). 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, 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 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. The 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 Article 28 (Dispute Resolution) of this Agreement.


(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 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 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...
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 Maui Electric Company, Limited ("Maui Electric"), and (ii) Maui 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 Maui 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.


(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)
(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 Maui Electric Company, Limited ("Maui Electric"), and (ii) Maui 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 Maui 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, inverter 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, [as appropriate to Facility resource type(s) and use of storage] 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) and the coordinates (latitude and longitude) of generating equipment:

   Solar PV: elevation (above ground), orientation angle and direction (north-east-south-west plane) of arrays/concentrators.

   Wind Generators: coordinates (latitude and longitude) and height above ground of each wind turbine hub.

B. **Location** (latitude and longitude) and elevation (above ground) of each MMT / MMS 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 or each field measurement device located on such MMS.

C. For solar resource inverters: Inverter type, power rating, array configuration to inverters and DC rating of the Facility at the following standard test conditions: irradiance of 1000 W/m², air mass 1.5, and cell temperature 25° C.

D. Solar generation technology employed at the Facility with temperature dependence, mounting and module type.

E. Wind generation technology employed at the Facility with representative power curve(s).

F. BESS technology and related auxiliary equipment, location and type.
(ii) Meteorological and Production Data.

A. Seller shall install and maintain a minimum of one MMS for facilities with a Contract Capacity of less than 5 MW and a coverage area of not more than one square kilometer.

B. Placement of each MMS should account for the microclimate of the area and Facility coverage area and shall be oriented with respect to the primary wind direction.

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. Seller shall arrange for a dedicated distribution voltage 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 the field measuring devices at the MMSs. 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 MMSs as needed by the Facility.

(iii) Units and Accuracy:

A. [For PV] The Table below shows minimum required solar irradiance measurements for various types of solar generation technology. [DRAFTING NOTE: This value may not be derived.]

<table>
<thead>
<tr>
<th>Solar Technology</th>
<th>Direct Normal Irradiance</th>
<th>Global Irradiance (GHI)</th>
<th>Plane of Array Irradiance (POA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flat Plate</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

Model RDG PPA
Maui Electric Company, Limited, Moloka‘i Division

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B. 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 (PV)**

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Data Source</th>
<th>Unit</th>
<th>Range</th>
<th>Accuracy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Global Horizontal Irradiance at MMS</td>
<td>Pyranometer or equivalent</td>
<td>W/m²</td>
<td>0 to 1500 W/m²</td>
<td>Secondary standard per ISO 9060 or &lt;= 3% from 100 W/m² to 1500 W/m² if using a PV Reference Cell</td>
</tr>
<tr>
<td>Plane of Array Irradiance on same axis as array</td>
<td>Pyranometer or equivalent</td>
<td>W/m²</td>
<td>0 to 1500 W/m²</td>
<td>Secondary standard per ISO 9060 or &lt;= 3% from 100 W/m² to 1500 W/m² if using a PV Reference Cell</td>
</tr>
<tr>
<td>Back of Panel temperature at array height</td>
<td>Temperature probe</td>
<td>ºC</td>
<td>-20 to +50 ºC</td>
<td>+/-1 ºC</td>
</tr>
<tr>
<td>Power production of Facility</td>
<td>Measured at POI</td>
<td>KW</td>
<td>Up to Capacity</td>
<td>+/-1 KW</td>
</tr>
<tr>
<td>Inverters Available*</td>
<td>Seller’s system</td>
<td>digital</td>
<td>Up to the number installed inverters</td>
<td></td>
</tr>
<tr>
<td>Ratio of inverters online/number of inverters</td>
<td>%</td>
<td></td>
<td>0 to 100%</td>
<td></td>
</tr>
<tr>
<td>Power Possible*</td>
<td>Seller's Model</td>
<td>KW</td>
<td>0 to Allowed Capacity</td>
<td>+/-1 KW</td>
</tr>
</tbody>
</table>
### Table of Units and Accuracy of Meteorological and Production Data (Wind)

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Data Source</th>
<th>Unit</th>
<th>Range</th>
<th>Accuracy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wind speed at MMT (hub height)</td>
<td>Cup or sonic anemometer</td>
<td>Mph</td>
<td>0 to 134 mph</td>
<td>+/-1 mph</td>
</tr>
<tr>
<td>Wind direction at MMT (hub height)</td>
<td>Vane, sonic device or equivalent</td>
<td>Degrees (from True North)</td>
<td>360°</td>
<td>+/-5°</td>
</tr>
<tr>
<td>Ambient air temperature at MMT (hub height)</td>
<td>Temperature probe</td>
<td>°C</td>
<td>-20 to +50 °C</td>
<td>+/-1 °C</td>
</tr>
<tr>
<td>Ambient air pressure at MMT (hub height)</td>
<td>Piezoresistive transducer, barometer or equivalent</td>
<td>Mbar</td>
<td>150 to 1150 mbar (0 to +50°C)</td>
<td>+/-60 mbar</td>
</tr>
<tr>
<td>Power production of Facility</td>
<td>Measured at POI</td>
<td>KW</td>
<td></td>
<td>+/- 10 KW</td>
</tr>
<tr>
<td>Power Possible</td>
<td>Seller’s Model</td>
<td>KW</td>
<td>0 to 120% of Allowed Capacity</td>
<td>+/10 KW</td>
</tr>
</tbody>
</table>

(iv) Status of Generating Equipment: For each inverter, or wind turbine, Seller shall 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 inverter is available or unavailable, and on or offline.

(v) Data Collection.

[NOTE COMPANY TO UPDATE REQUIREMENTS; WILL BE SPECIFIC TO FACILITY EQUIPMENT AND RESOURCE TYPE]

A. High Resolution Data: Seller shall install and make available to the Company time stamped and sequential data recordings for all inverter-based resources (and all generating resources) to perform event analysis and verify Facility performance during steady state and transient disturbance events. This will include a time-synchronized phasor measurement unit at the Facility, and access
to multiple sources to provide sufficient clarity as to any abnormal response or behavior within the Facility, including Facility control settings and static values, SCADA data, sequence of events recording (SER) data, dynamic disturbance recorder (DDR) data, and inverter fault codes and inverter-level dynamic recordings. This data will be used to review the Facility response to system dynamics, such as the frequency response (normal droop and FFR), reactive response, etc.

B. Plant Data: [Note: specific requirements below are representative of variable energy resources and will be tailored to the Facility resource type(s) and geographic arrangement]

Seller shall install at least three (3) meteorological tower(s), spaced so as to provide the data points set forth below for the entire Facility. At least two months prior to the Commercial Operation Date, Seller shall deliver to Company a report showing (i) manufacturer, model and year of all energy equipment (panels, inverters, energy storage devices, turbine generators), and meteorological instrumentation, and (ii) the latitude and longitude of the center of the energy equipment (i.e., solar panels for every inverter, wind turbines) and every meteorological tower. Beginning upon COD, Seller shall transmit and provide to Company the real-time data set forth below, refreshed as frequently as allowed by the SCADA system, not to exceed sixty (60) second intervals:

- Three (3) data points from each inverter or wind turbine:
  - Inverter/turbine generation (MW)
  - Inverter/turbine availability
  - Inverter/turbine on/offline status

- Two (2) data points from each meteorological tower (solar resources):
  - Global horizontal solar irradiance (instantaneous solar intensity, full sky)
o Plane of array solar irradiance (instantaneous solar intensity at the current angle of the PV array)

- Five data points from each Meteorological Tower (wind resources):
  o Wind Speed ** (mps)
  o Wind Direction** (degrees relative to true north)
  o Temperature (Celsius)
  o Pressure (mb)
  o Air Density (kg/m3)

In addition to the other requirements for data collection, if required by Company, a Facility with wind turbines shall install, maintain and operate at least one meteorological tower that is installed at hub height and is placed upstream of the prevailing wind path to provide meteorological data through a means agreed by the Company. The data stream from this meteorological tower to the Company's System must be reliable and include battery back-up at the meteorological tower and a local source of electricity to power the data collection and communication from the Facility to Company during transmission outages.

Seller shall provide a map and key for each inverter or wind turbine sufficient to allow Company to correlate the data received through Company's data historian system to each individual resource.

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 unless alternate designs are approved by the
Company. 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 Energy Storage System. The operating parameters of the BESS for facilities with paired storage shall be as follows:

(i) For facilities with variable energy and paired storage: The BESS shall directly charge storage from the variable resource when the Company Active Power Dispatch is for less than the available resource energy.

(ii) 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 ITC RECAPTURE IS NOT APPLICABLE TO THE BESS]

(iii) The BESS will not be required to discharge more energy than available relative to the available state of charge.

(iv) For storage used primarily for energy shifting, the BESS shall be designed for an average annual use of 365 cycle(s) (a cycle is a discharge equal to the BESS Contract Capacity, and sufficient charging to return the BESS to 100% State of Charge).

(v) For contingency storage, the BESS storage technology shall be procured based on required charging/discharging duty for the provision of disturbance frequency response. This response will require fast response outside of a specified
frequency deadband, in accordance with specified
droop and time parameters. (Historical frequency
data for 2 second data resolution samples will be
provided to bidders.) (Assumptions and associated
restrictions on charging/discharging duty to be
supplied by bidders.

10. Operating Committee and Operating Procedures.

Company and Seller shall each appoint one representative and
one alternate representative to act as the operating
committee in matters relating to the Parties' performance
obligations under this Agreement and to develop operating
arrangements for the generation, delivery and receipt of
renewable energy from the Facility.

The operating committee may develop mutually agreeable
written operating procedures consistent with the requirements
of this Agreement, to address matters such as day-to-day
communications; key personnel; operations-center interface;
metering, telemetering, telecommunications, and data
acquisition procedures; operations and maintenance scheduling
and reporting; reports; operations log; testing procedures;
and such other matters as may be mutually agreed upon by the
operating committee.

The operating committee shall review the requirements for
Active Power Control, the data collection and telemetry, and
control system parameters from time to time after the date
hereof and may agree on modifications thereto to the extent
necessary or convenient for operation of the Facility in
accordance with this Agreement.

The operating committee shall have authority to act in all
technical and day-to-day operational matters relating to
performance of this Agreement and to attempt to resolve
potential disputes, provided, however, that except as
explicitly provided herein, the operating committee shall
have no authority to amend or waive any provision of this
Agreement.
1. Steady State and Dynamic Model Requirements and As-built Data to be provided by Seller. The expected steady state power flow and dynamic models will be provided by the Seller during the interconnection study process in the format compatible with the analytical tools used by the Company. Depending upon Facility design, different representations may be required for steady state and dynamic simulations. Seller will work with Company to derive a complex equivalent model if it is required to meet interconnection study needs. The as-built data and models will be provided by Seller immediately upon commissioning with sufficient information to demonstrate that the as-built parameters match the model. Any changes to plant settings that affect its response and impact to the Company System are required to be studied prior to those changes taking effect. The modeling will include all necessary control settings such that the correct capabilities, flags, and settings can be represented in a base case. Where such parameters are settable according to this Agreement, the initial models will be configured with parameters mutually agreed with Company for the interconnection study analysis. This includes, but is not limited to:

- Plant Type: A description of the resource type (e.g., storage, solar PV or wind power resource) used as a flag to ensure that the inverter-based resource is accurately represented in the base case, where applicable.

- Active and Reactive Capability: The overall plant "composite capability curve" shall be provided by Seller for performance purposes. That same curve will be used for accurately modeling the P-Q capability in power flow studies.

- Plant-Level Voltage Control Settings: Information on the plant voltage control mode to ensure correct voltage control flags and set points are set accordingly in the software tools.

- The voltage control set point at the POI is provided by the Company. Seller shall provide a description of the coordination of any plant-level shunt compensation.
(static or dynamic) to ensure it can be accurately represented in the power flow base case.

The models provided by Seller should accurately reflect the contractual requirements established under this Agreement.

2. **Positive Sequence Stability Modeling.** Seller shall provide a positive sequence stability model representation which provides sufficient detailed modeling for necessary reliability studies, as specified by Company. [Note - language to be revised based on proposed Facility.] For example, the following are typical requirements for plants with inverter equipment:

   • **Inverter-Level Controller Model:** This represents the overall control of the inverter as an energy or generating resource.

   • **Electrical Control Model:** This represents the detailed electrical controls of the resource, including large disturbance behavior.

   • **Plant-Level Controller Model:** This represents control of multiple individual inverters and/or generators within the plant.

3. **Short Circuit Modeling.** Seller will provide appropriate and accurate models to Company to support short circuit studies. [Company to specify requirements based on specific Facility]

4. **Electromagnetic Transient Modeling.** Company will require an electromagnetic transient ("EMT") model for the Facility. Seller shall provide Company with an EMT model for the IRS and an updated EMT model after the Facility has been commissioned. These models are in addition to the positive sequence stability models required for interconnection-wide modeling purposes. In addition, Seller shall provide Company with evidence that the expected (and commissioned) EMT model reasonably matches the positive sequence dynamic models provided. This should include a benchmarking report provided by the inverter OEM.

5. **Facility Electrical Models.** Seller shall provide electrical models of all inverters and of the entire Facility to the Company System Operator and its designated contractors. The following forms of electrical models shall be provided:
• Electromagnetic transient model in PSCAD format.

• Transient stability model in PSS/E format.

• Impedance characteristics of the inverter for both current source and voltage source modes to identify potential stability and control interaction issues in project planning stage.

The accuracy of the inverter models provided shall be validated by the Seller or the inverter manufacturer. The inverter models shall be capable of accurately simulating operation in grid following (conventional) mode and in grid forming mode and shall accurately simulate inverter responses to AC power system faults and frequency events.
EXHIBIT B-2
GENERATOR AND ENERGY STORAGE CAPABILITY CURVE(S)
Nous avons dû réviser le document pour refléter les résultats. 

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:

\[ RR = MW_t - MW_{t-30} \]

Where:

\( RR \) = Ramp Rate, may be calculated once every scan

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

\( MW_t \) = 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 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 ___ 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 ___ 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 theAcceptance 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.**

   (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.


(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.


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.


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.
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.

Model RDG PPA (Wind+BESS)
Maul Electric Company, Limited, Moloka'i Division

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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 __________________________ a Hawai‘i corporation

By __________________________

Its __________________________

"Transferor"

By __________________________

Its __________________________

"Transferee"
SCHEDULE H-1
DESCRIPTION OF
TANGIBLE PERSONAL PROPERTY AND FIXTURES

Model RDG PPA (Wind+BESS)
Maui Electric Company, Limited, Moloka'i Division

H-4
SCHEDULE H-2
DESCRIPTION OF INTANGIBLE PERSONAL PROPERTY

Model RDG PPA (Wind+BESS)
Maui Electric Company, Limited, Moloka‘i Division
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

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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"
STATE OF HAWAI‘I
) 
CITY AND COUNTY OF HONOLULU 
) SS:

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.

Signature: ______________________________
(Official Stamp or Seal)
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

Model RDG PPA (Wind+BESS)
Maui Electric Company, Limited (Moloka‘i Division)
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.

Signature: ______________________________

(Official Stamp or Seal)

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

(Official Stamp or Seal)

Signature of Notary Date of Notarization and Certification Statement

Printed Name of Notary

Model RDG PPA (Wind+BESS)
Maul Electric Company, Limited, Moloka‘i Division
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 \((1/12^{th})\) 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 \((1/12^{th})\) 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 \((1/12^{th})\) 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:

\[
\text{Monetary Amount of Downward Adjustment} = (\text{MLSP} \times \frac{1}{10}) \times \frac{15}{31}
\]

where:

\text{MLSP} = \text{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 to [$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
GUARANTEED PROJECT MILESTONES

[For Developer Interconnection Build]

<table>
<thead>
<tr>
<th>Guaranteed Project Milestone Date</th>
<th>Description of Each Guaranteed Project Milestone</th>
</tr>
</thead>
<tbody>
<tr>
<td>[SPECIFY DATE CERTAIN]</td>
<td>Construction Financing Milestone: 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 (&quot;Construction Financing Closing Milestone&quot;).</td>
</tr>
<tr>
<td>[SPECIFY DATE CERTAIN]</td>
<td>Permit Application Filing Milestone: 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</td>
</tr>
<tr>
<td>[SPECIFY DATE CERTAIN]</td>
<td>Guaranteed Commercial Operations Date.</td>
</tr>
</tbody>
</table>
**ATTACHMENT K-1**  
**SELLER'S CONDITIONS PRECEDENT AND COMPANY MILESTONES**  
**[For Developer Interconnection Build]**

<table>
<thead>
<tr>
<th>Seller's Conditions Precedent Date</th>
<th>Description of Each of Seller's Conditions Precedent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Seller shall make payment to Company of the amount required under Section 3(b)(ii) of Attachment G (Company-Owned Interconnection Facilities)</td>
</tr>
<tr>
<td></td>
<td>Seller shall provide Company a right of entry for the Company-Owned Interconnection Facilities site(s).</td>
</tr>
<tr>
<td></td>
<td>Seller shall make payment to Company of the amount required under Section 3(b)(iii) of Attachment G (Company-Owned Interconnection Facilities)</td>
</tr>
<tr>
<td></td>
<td>Seller's engineering, procurement and construction (&quot;EPC&quot;) contractor shall obtain grading permit.</td>
</tr>
<tr>
<td>No later than three (3) months prior to the commencement of the Acceptance Test</td>
<td>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.</td>
</tr>
<tr>
<td>No later than</td>
<td>Seller shall provide station service power, if applicable, as required by Company.</td>
</tr>
</tbody>
</table>

Model RDG PPA (Wind+BESS)  
Maui Electric Company, Limited, Moloka‘i Division  
K-2
<table>
<thead>
<tr>
<th>three (3) months prior to the commencement of the Acceptance Test</th>
<th>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.</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>[specify date] (&quot;Test Ready Deadline&quot;)</td>
<td>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 Section 2 (f)(ii) of Attachment G (Company-Owned Interconnection Facilities) and Seller is otherwise ready to conduct the Acceptance Test.</td>
</tr>
<tr>
<td>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.</td>
<td></td>
</tr>
</tbody>
</table>
### COMPANY MILESTONES

If Seller satisfies the foregoing Seller's Conditions Precedent, the following Company Milestones shall apply:

<table>
<thead>
<tr>
<th>Company Milestone Date</th>
<th>Description of Each Company Milestone</th>
</tr>
</thead>
<tbody>
<tr>
<td>[___] Business Days following the Test Ready Deadline</td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td>Energization of Company-Owned Interconnection Facilities, provision of back-feed power to support commissioning.</td>
</tr>
</tbody>
</table>
ATTACHMENT L
REPORTING MILESTONES

[For Developer Interconnection Build]

<table>
<thead>
<tr>
<th>Reporting Milestone Date</th>
<th>Description of Each Reporting Milestone</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Date]</td>
<td>Seller shall provide Company with a redacted copy of the executed Facility equipment, engineering, procurement and construction (&quot;EPC&quot;) or other general contractor agreements. Under no circumstances shall redactions conceal information that is necessary for Company to verify its rights under the Agreement.</td>
</tr>
<tr>
<td>[Date]</td>
<td>Seller shall provide Company with redacted copies of executed purchase orders/contracts for the delivery of Facility WTGs.</td>
</tr>
<tr>
<td>[Date]</td>
<td>Building Permit: Seller or Seller's EPC contractor shall obtain building permit.</td>
</tr>
<tr>
<td>[Date]</td>
<td>Construction Start Date (defined as the start of civil work on Site).</td>
</tr>
<tr>
<td>[Date]</td>
<td>Seller shall have laid the foundation for all Facility buildings, generating facilities and step-up transformer facilities.</td>
</tr>
<tr>
<td>[Date]</td>
<td>All WTGs for the Facility shall have been installed at the Site.</td>
</tr>
<tr>
<td>[Date]</td>
<td>The step-up transformer shall have been installed at the Site.</td>
</tr>
</tbody>
</table>

Model RDG PPA (Wind+BESS)
Maui Electric Company, Limited, Moloka'i Division
[Bank Letterhead]

[Date]


[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, Maui Electric Company, Limited ("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 Maui Electric Company, Limited and [(ii) the amount of the
draft accompanying this certification is due and owing to 
Maui Electric Company, Limited under the terms of the 
Power Purchase Agreement dated as of [_______], between 
[____________], and Maui Electric Company, Limited][{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:
________________________________________
________________________________________
________________________________________
________________________________________

and to

________________________________________
________________________________________
________________________________________
________________________________________

* 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]
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 shall include, but not be limited to, the following:

1. **Interconnection.**
   
   (A) A visual inspection of all Interconnection equipment and verification of as-built drawings.

   (B) Phase rotation testing to verify proper phase connections.

   (C) Based on manufacturer’s specification, test the local operation of the Facility’s generator breaker(s) and inter-tie breaker(s), and other breaker(s) which connect the Facility equipment to Company System – must open and close locally using the local controls 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.

   (D) 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.

(E) All 69 kV breaker disconnects and other high voltage switches will be inspected to ensure they are properly aligned and operated manually or automatically (if designed).

(F) Step-Up Transformer Enclosure(s) inspections – The Step-Up Transformer Enclosure(s) 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 Step-Up Transformer Enclosure(s) may be tested to make sure there is adequate grounding of equipment.

(G) 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.

(H) 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 69 kV breakers, if any, open as they are designed to open. (Back up relay testing)

(I) Metering section inspection; verification of metering PTs, CTs, and cabinet and the installation of the two Company meters.

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.

(C) Verification of dial-up telephone connection for 69 kV metering cabinet.
3. **Drawings, Documentation and Equipment Warranties.**

   The items below are required components of the Acceptance Test and must be satisfied for successful completion of this Test.

   (A) Electronic and three (3) hard copies of all Switchyard construction drawings, specifications, calibrations, and settings including as-built drawings.

   (B) Equipment operating and maintenance manuals, spare parts lists, commissioning notes, as-built equipment settings, and other information related to the switchyard equipment.

   (C) Contractor construction warranties and equipment warranties.

   (D) Phase rotation testing to verify proper phase connections.

   (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) 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 RESULTS OF THE IRS]

a. The Acceptance Test for the Facility will be conducted, following installation of the Facility. The Acceptance Test procedures will be in accordance with criteria set forth herein. The Acceptance Test shall be performed in accordance with Good Engineering and Operating Practices and demonstrate to Company’s satisfaction that the Facility and the interconnection portion of the Facility, including Company-Owned Interconnection Facilities, have met the provisions of Article 8 (Company Dispatch) and Section 3 (Performance Standards) of Attachment B (Facility Owned by Seller).

b. Acceptance Test procedures will be developed by Company for the Seller's review at least sixty (60) Days in advance of performing the tests based on the date provided by Company.

c. The procedures will include, but not be limited to, demonstration of the functional requirements of the Facility defined in Article 8 (Company Dispatch) and Section 3 (Performance Standards) of Attachment B (Facility Owned by Seller) such as, but not limited to:

i. Interconnection equipment and communications to support remote monitoring of the Facility and control of Facility breakers

ii. Droop characteristic and change of frequency control / response modes (if applicable)

iii. Real power delivery under remote Company Dispatch, Active Power Dispatch. For facilities with directly controlled storage, the storage will be operated to perform at least two full charging/discharging cycles.

iv. Accurate provision of limits for Minimum and Maximum Dispatch (Power Possible, Minimum load capability)

v. Ramp rates for controlled actions

vi. Control of Facility breakers

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vii. Voltage regulation

vii. Grid forming and Black start (if applicable)

viii. BESS Capacity Test and demonstration of the round trip efficiency of the BESS, each as described in Attachment W (Capacity Tests)

d. Testing of primary and redundant communications between Company System Operator and Facility Operator

e. The actual dynamic response of the Facility equipment will be confirmed to allow Company transient stability model to reflect the as-left conditions of the unit. During the commissioning the following will be required:

i. A final review by Company engineers of the equipment installed to control the operation and protect the plant will be needed upon installation and prior to the start of commercial operation.

ii. The review will include off-line tuning and testing results of the excitation and governor control and/or control system and the IEEE block diagram utilized for the PSS/E dynamics program.

iii. During the commissioning of the actual Facility, equipment system testing will be conducted to ensure that similar, well damped, expected responses will be produced by the facility. The as-left parameters obtained from real and reactive local response tuning will be determined for use in the Company planning model. The Seller will provide an estimate of the earliest date for the Acceptance Test at least ninety (90) Days before the date.

f. The Acceptance Test procedures for the Facility will be mutually agreed upon between Seller and Company prior to conducting the test.

g. When the Facility is ready for the Acceptance Test, Seller shall notify Company at least seven (7) Days prior to the test and shall coordinate with Company. Seller shall perform and Company shall monitor such test no earlier than seven (7) Days from Company’s receipt of such notice.
h. The Control Acceptance Test is to be successfully completed prior to the Commercial Operation Date.

Examples of the type of tests conducted to meet the aforementioned objectives may include, but are not limited to 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 at the appropriate ramp rate limiting 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 Power Characteristics) of Attachment B (Facility Owned by Seller) to this Agreement.

4. Frequency Response 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, and appropriately modifies the Company issued Dispatch Setpoint. If different modes of frequency response are provided, each mode is tested (i.e.; isochronous, fast frequency response, active power droop response).

5. 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. [If DTT required for the Project]
6. Round trip efficiency test, as described in Attachment W (Capacity Tests), to verify that the round trip efficiency of the BESS is not less than [_____] percent ([___]%). [ND: The round trip efficiency percentage will be taken from ________________].

7. BESS 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 for variable facilities, the monitoring test shall end when one of the following criteria is met:

A. For variable energy resources, Facility's gross power production is greater than 85% of its Allowed Capacity, for at least four (4) hours in any continuous 24-hour CSAT period.

B. For solar facilities, the recorded renewable energy resource at the Facility is above 600 W/m² for at least eight (8) hours in any continuous 48-hour CSAT period.

C. For wind facilities, the recorded wind speed is sufficient for turbines to operate for at least 8 hours in any continuous 48-hour CSAT period.

D. 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 the 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 according to the criteria set forth in the testing procedures. Certain requirements, such as disturbance ride-through requirements, cannot be adequately tested without actual grid disturbances. These requirements will be confirmed following a grid event based on operational data, which may be after the completion of the Acceptance Test. The Parties understand and agree that a successful completion of the test does not constitute 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, in particular, as required in Article 8 (Company Dispatch) and the Performance Standards in Section 3 (Performance Standards) of Attachment B (Facility Owned 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.


(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.
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 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 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
\[
\text{OutageHrs} = (FTH + MTH + PTH) \\
\text{DeratedHrs} = (EFDTH + EMDTH + EPDTH) \\
\text{OMCHrs} = (oFTH + oMTH + oPTH) \\
\text{DeratedOMCHrs} = (oEFDTH + oEMDTH + oEPDTH)
\]

\[
\text{PXEEAF} = \frac{\sum [ACTH - (\text{OutageHrs} + \text{DeratedHrs}) + (\text{OMCHrs} + \text{DeratedOMCHrs})]}{\sum ACTH} \times 100
\]

Modified Pooled OMC Equipment Equivalent Availability Factor (MPXEEAF)

\[
\text{MPXEEAF} = \frac{[\text{ACTH} - \text{ExcludedTime}) - (\text{OutageHrs} + \text{OMCHrs})]}{\text{ACTH} - \text{ExcludedTime}} \times 100
\]

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 (EDPTH) 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.

Excluded Time: 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:

<table>
<thead>
<tr>
<th></th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
<th>H</th>
</tr>
</thead>
<tbody>
<tr>
<td>TID</td>
<td>ACTH</td>
<td>FTH</td>
<td>MTH</td>
<td>PTH</td>
<td>OFTH</td>
<td>OMTH</td>
<td>OPTH</td>
<td></td>
</tr>
<tr>
<td>Turbine1</td>
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<td>5.05</td>
<td>6.20</td>
<td>3.75</td>
<td>4.00</td>
<td>4.25</td>
<td>3.05</td>
<td></td>
</tr>
<tr>
<td>Turbine2</td>
<td>100.00</td>
<td>5.05</td>
<td>6.15</td>
<td>3.75</td>
<td>4.00</td>
<td>4.25</td>
<td>3.05</td>
<td></td>
</tr>
<tr>
<td>Turbine3</td>
<td>100.00</td>
<td>5.05</td>
<td>6.20</td>
<td>3.75</td>
<td>4.00</td>
<td>4.25</td>
<td>3.05</td>
<td></td>
</tr>
<tr>
<td>SUM</td>
<td>300.00</td>
<td>15.15</td>
<td>18.55</td>
<td>11.25</td>
<td>12.00</td>
<td>12.75</td>
<td>9.15</td>
<td></td>
</tr>
</tbody>
</table>

\[
\frac{[B - (C+D+E) + (F+G+H)]}{B} \times 100
\]

MPXEEAF

96.3

2. **Performance Index.**

\[
P_{\text{Facility}} = \sum_{i=1}^{N} \frac{\text{Actual Generation}_{WTG_i} \times MWh}{\text{Expected Generation}_{WTG_i} \times (1 - 0.001 \times (\text{Applicable Contract Year} - 1)) \times MWh}
\]

**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, oMPTH, 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.

Model RDG PPA (Wind+BESS)
Maui Electric Company, Limited, Moloka'i Division
Q-3
Example: The following is an example of a Performance Index Calculation and is included for illustrative purposes only:

<table>
<thead>
<tr>
<th></th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
<th>H</th>
</tr>
</thead>
<tbody>
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<td></td>
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<td></td>
<td>(B - (C+D+E+F+G))</td>
</tr>
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<td>(B - (C+D+E+F+G))</td>
</tr>
<tr>
<td>TID</td>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Turbine1</td>
<td></td>
<td>945.00</td>
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<td>15.00</td>
<td>20.00</td>
<td>10.00</td>
<td>10.00</td>
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<td>66.00</td>
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<td>3,071.00</td>
</tr>
</tbody>
</table>

\[
\frac{H6}{H13} \cdot 100 \\
\text{Performance Index} \\
95.7
\]

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:

\[
v_n = \frac{V_{obs} \left( \frac{\rho_{calc}}{\rho_0} \right)^{1/3}}{B_{obs} \sqrt{R_0 * T_{obs}}}
\]

where:

- \( V_n \) = Density-Adjusted Wind Speed [m/s];
- \( V_{obs} \) = Measured Wind Speed (10-minute averaged) [m/s]
- \( \rho_0 \) = 1.225 kg/m³
- \( \rho_{calc} \) = Calculated Air Density (10-minute averaged) [kg/m³]
- \( B_{obs} \) = 
- \( R_0 \) = 
- \( T_{obs} \) = 

Model RDG PPA (Wind+BESS)
Maui Electric Company, Limited, Moloka‘i Division
\[ B_{\text{obs}} = \text{Measured Ambient Air Pressure (10-minute averaged)} \ [\text{Pa}] \]
\[ R_0 = \text{specific gas constant for dry air (287.057 J/kg*K)} \]
\[ T_{\text{K,obs}} = \text{Measured Ambient Air Temperature (10-minute averaged)} \ [\text{K}] \]

For unit conversion purposes:

\[ 1 \text{ Pa} = 0.01 \text{ mbar} \]

\[ T_{\text{Kelvin}} = T_{\text{Celsius}} + 273.15 \]

The foregoing formulae are based on the formulae found at Section 8.1 of IEC 61400-12-1.


- 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 ERSĐT, EFĐT, EMDT, EPĐT, oEFĐT, oMDT, oEPĐT, 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/m\(^3\) 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).
Model RDG PPA (Wind+BESS)
Maui Electric Company, Limited, Moloka'i Division

Information Available – IA
[Period Turbine Hours - ACTH]

Operative – IAO
[Available]

Non-Operative – IANO
[Unavailable]

Non-Generating – IANG
[Available Non-Generating]

Generating – IAG
[Contract Turbine Hours – CTH]

Partial Performance – IAGFP

Out of Environmental Specification – IANGEN
[RUTH]

Calm Winds – IANGEN-CW

Other

Reserve Shutdown – RSTH

Reserve Shutdown – RSTP

Environmental Derate

Performance Index
Periods of Interest:
CTH minus ERSDTH, oEFDTH, oEMPTh, oEPDTH, Environmental Derate
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 Maui Electric Company, Limited, 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.

<table>
<thead>
<tr>
<th>Milestone Date</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Specified in the Agreement completion date</td>
<td>expected</td>
</tr>
<tr>
<td>Construction Specified in the Agreement current completion date</td>
<td>on schedule, delayed due to [specify reason]</td>
</tr>
</tbody>
</table>

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.
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:

**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.

**Agency / Approval**

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).

<table>
<thead>
<tr>
<th>Activity</th>
<th>Completion Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>/</strong>/____ (expected / actual)</td>
</tr>
<tr>
<td></td>
<td><strong>/</strong>/____ (expected / actual)</td>
</tr>
</tbody>
</table>

### 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).

<table>
<thead>
<tr>
<th>Activity</th>
<th>Completion Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>/</strong>/____ (expected / actual)</td>
</tr>
<tr>
<td></td>
<td><strong>/</strong>/____ (expected / actual)</td>
</tr>
</tbody>
</table>

### 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.

<table>
<thead>
<tr>
<th>Name of EPC Contractor / Subcontractor</th>
<th>Activity</th>
<th>Completion Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td><strong>/</strong>/____</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(expected / actual)</td>
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<tr>
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<td></td>
<td><strong>/</strong>/____</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(expected / actual)</td>
</tr>
</tbody>
</table>

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:

<table>
<thead>
<tr>
<th>Equipment Description</th>
<th>Manufacturer</th>
<th>Delivery Date (indicate whether expected or actual)</th>
<th>Installation Date (indicate whether expected or actual)</th>
</tr>
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<td></td>
<td></td>
<td><strong>/</strong>/____ (expected / actual)</td>
<td><strong>/</strong>/____ (expected / actual)</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>/</strong>/____ (expected / actual)</td>
<td><strong>/</strong>/____ (expected / actual)</td>
</tr>
</tbody>
</table>

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
--- | --- | ---

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
--- | --- | ---

12.2 Interconnection activities recently performed

Model RDG PPA (Wind+BESS)
Maul Electric Company, Limited, Moloka'i Division

S-11
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.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Name of EPC Contractor / Subcontractor</th>
<th>Completion Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td><strong>/</strong>/____</td>
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<tr>
<td></td>
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<td>(expected / actual)</td>
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<td><strong>/</strong>/____</td>
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<tr>
<td></td>
<td></td>
<td>(expected / actual)</td>
</tr>
</tbody>
</table>

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:_____________________________________
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).

<table>
<thead>
<tr>
<th>TID</th>
<th>ACTH</th>
<th>FTH</th>
<th>MTH</th>
<th>PTH</th>
<th>OFTH</th>
<th>OMTH</th>
<th>OPTH</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turbine1</td>
<td></td>
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<td></td>
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<tr>
<td>Turbine2</td>
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<tr>
<td>Turbine3</td>
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</tbody>
</table>

Enter the Actual Generation (MWh) for each WTG and state during the reporting period (to 2 decimal places).

<table>
<thead>
<tr>
<th>TID</th>
<th>CTH</th>
<th>ERSDTTH</th>
<th>OEFDTTH</th>
<th>OEMPTH</th>
<th>OEPDTH</th>
<th>Env. Derate</th>
</tr>
</thead>
</table>

Model RDG PPA (Wind+BESS)  
Maui Electric Company, Limited, Moloka'i Division  
T-1
Enter the Expected Generation (MWh) for each WTG and state during the reporting period (to 2 decimal places).

<table>
<thead>
<tr>
<th>TID</th>
<th>CTH</th>
<th>ERSDTH</th>
<th>OEFDTH</th>
<th>OEMPTH</th>
<th>OEPDTH</th>
<th>Env. Derate</th>
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</thead>
<tbody>
<tr>
<td>Turbine1</td>
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<td>Turbine2</td>
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<td>Turbine3</td>
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</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Date/Time Start</th>
<th>Date/Time End</th>
<th>Total MWh delivered to the POI (A)</th>
<th>BESS Contract Capacity (MWh) (B)</th>
<th>BESS Capacity Ratio 100% x (A/B)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Date/Time Start</th>
<th>Date/Time End</th>
<th>Total MWh delivered to the POI during Capacity Test (A)</th>
<th>Charging Energy measured at POI (MWh) (B)</th>
<th>RTE Ratio 100% x (A ÷ B)</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

Model RDG PPA (Wind+BESS)
Maui Electric Company, Limited, Moloka'i Division
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.

<table>
<thead>
<tr>
<th>Date/Time Start (A)</th>
<th>Date/Time End (B)</th>
<th>Duration (hrs) (C) = (B-A)</th>
<th>Size of Reduction (MW) (D)</th>
<th>Maximum Rated Output (MW) (E)</th>
<th>Equivalent Hours (hrs) (C x D)/E</th>
</tr>
</thead>
<tbody>
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</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Date/Time Start (A)</th>
<th>Date/Time End (B)</th>
<th>Duration (hrs) (B-A)</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Date/Time Start (A)</th>
<th>Date/Time End (B)</th>
<th>Duration (hrs) (C) = (B-A)</th>
<th>Size of Reduction (MW) (D)</th>
<th>Maximum Rated Output (MW) (E)</th>
<th>Equivalent Hours (hrs) (C x D)/E</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Date/Time Start (A)</th>
<th>Date/Time End (B)</th>
<th>Duration (hrs) (C) = (B-A)</th>
<th>Size of Reduction (MW) (D)</th>
<th>Maximum Rated Output (MW) (E)</th>
<th>Equivalent Hours (hrs) (C x D)/E</th>
</tr>
</thead>
<tbody>
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</table>

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, EDPH, EUDH, and Period Hours for the last four (4) reporting periods as calculated above.

<table>
<thead>
<tr>
<th>AH (A)</th>
<th>EDPH (B)</th>
<th>EUDH (C)</th>
<th>PH (D)</th>
<th>BESS Annual Equivalent Availability Factor 100% x (A – B – C)/D</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
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</tr>
</tbody>
</table>

Model RDG PPA (Wind+BESS)
Maui Electric Company, Limited, Moloka'i Division
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.

<table>
<thead>
<tr>
<th>Date/Time Start</th>
<th>Date/Time End</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A)</td>
<td>(B)</td>
<td>(hrs)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(B-A)</td>
</tr>
</tbody>
</table>

...  

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.

<table>
<thead>
<tr>
<th>FOH</th>
<th>EUDH</th>
<th>BESS Annual Equivalent Forced Outage Factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A)</td>
<td>(B)</td>
<td>100% x (A + B)/8760</td>
</tr>
</tbody>
</table>

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 RTE 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 it 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.


(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.


(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.

(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 Model RDG PPA (Wind+BESS) Maui Electric Company, Limited, Moloka'i Division
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 [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 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 by less than three 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 undispatched 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
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(w) (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.
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 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(w) (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 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:

\[
\text{BESS Annual Equivalent Availability Factor} = 100\% \times \frac{AH - EPDH - EUDH}{PH}
\]

Where:
PH is period hours (8760 hours; except leap year is 8784) minus ExcludedTime.

Available Hours (AH) is the number of hours that the 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 Excluded Time 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

$$\text{BESS EAF} = 100\% \times \frac{8760-0}{8760} = 100\%$$

**Example B:** Maintenance Deration Hours = 168 hours

Equivalent Unplanned (Forced) Derated Hours = 100 hours

$AH = 8,760 - 168 = 8,592$

$$\text{BESS EAF} = 100\% \times \frac{8,592-100}{8,760} = 96.9\%$$
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 $\times$ 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:

<table>
<thead>
<tr>
<th>Duration of Derating</th>
<th>MW Size Reduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>100 Hours</td>
<td>25 MW</td>
</tr>
<tr>
<td>20 Hours</td>
<td>20 MW</td>
</tr>
<tr>
<td>50 Hours</td>
<td>5 MW</td>
</tr>
</tbody>
</table>
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.

\[
\text{FOH} = 50 \text{ hours} + 150 \text{ hours} = 200 \text{ hours} \\
\text{EUDH} = \left( \frac{100 \times 25}{50} \right) + \left( \frac{20 \times 20}{50} \right) + \left( \frac{50 \times 5}{50} \right) + 100 = 163 \text{ hours}
\]

\[
\text{EFOF} = 100\% \times \frac{200 + 163}{8760} = 4.1\%
\]

Model RDG PPA (Wind+BESS)
Maui Electric Company, Limited, Moloka'i Division
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 Z.1 (Site Plan) to this Attachment Z (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 Attachment Z (Company-Owned Site).
Exhibit Z.1 (Site Plan) to this Attachment Z (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 Z (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.


(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 Z (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 Z (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 Z (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 Z (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 Z (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(1) (Confidentiality) of this Attachment Z (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 Z (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 Z (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 Z (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 Z (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 Z (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 Z (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 Z (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.

(l) 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.


(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 Agreement 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 shall be void. Any permitted assignee of Seller shall assume all obligations and liabilities of Seller under this Agreement. No transfer shall affect any obligations of Seller or rights of Company under this Agreement.

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 Z (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 Z (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 Z (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 Z (Company-Owned Site) or this Agreement, keep the contents of this Attachment Z (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 Z (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 Z 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, EVENTS OF DEFAULT, SCOPE OF INDEMNIFICATION AND DRAWS UPON DEVELOPMENT PERIOD SECURITY OR OPERATING PERIOD SECURITY WILL BE REVISED TO ACCOUNT FOR ATTACHMENT Z.
EXHIBIT Z.1

SITE PLAN

[TO BE DETERMINED]
Exhibit 2

Final RFP for the Island of Lānaʻi, excluding the draft of the RDG PPA for PV
REQUEST FOR PROPOSALS

FOR

VARIABLE RENEWABLE DISPATCHABLE GENERATION

PAIRED WITH ENERGY STORAGE

ISLAND OF LĀNAʻI

NOVEMBER 27, 2019

Docket No. 2019-0178
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Maui Electric Company, Ltd. (“Maui Electric” or the “Company”) seeks proposals for the supply of qualified variable renewable dispatchable generation paired with energy storage for the Maui Electric System on the island of Lānaʻi in accordance with this Request for Proposals (“RFP”)

The total amount of variable renewable dispatchable generation being solicited in this RFP is the capability to provide up to 20,800 megawatt hours (“MWh”) annually. However, this targeted amount will depend on the availability of the Lānaʻi Sustainability Research (“LSR”) and Mānele Bay Combined Heat and Power (“CHP”) facilities as further described in this RFP.

Affiliates of the Company may submit a proposal in response to this RFP subject to the requirements of this RFP. The Company may submit a sealed Proposal in response to this RFP (“Sealed SBO Proposal”) subject to the requirements of this RFP.

The Company is seeking Proposals for a photovoltaic (“PV”) project that is paired with an energy storage system in this RFP. The Company intends to contract for a single project through this RFP using its Model Renewable Dispatchable Generation Power Purchase Agreement (“RDG PPA”), which treats variable generation facilities as fully dispatchable. The Company has created a photovoltaic (“PV”) version of its RDG PPA attached as Appendix K to this RFP.

The successful Proposer will provide variable renewable dispatchable generation paired with energy storage to the Company pursuant to the terms of the RDG PPA, which will be subject to review and approval by the State of Hawai‘i Public Utilities Commission (“PUC”).

The Company will evaluate Proposals using the evaluation and selection process described in Chapter 4. The Company will evaluate and select a Proposal based on both price and non-price factors that impact the Company, its customers, and communities affected by the proposed Project.

All requirements necessary to submit a Proposal(s) are stated in this RFP. A description of the technical requirements for Proposers is included in the body of this RFP, Appendix B, and in the RDG PPA attached as Appendix K.

All capitalized terms used in this RFP shall have the meaning set forth in the glossary of defined terms attached as Appendix A. Capitalized terms that are not included in Appendix A shall have the meaning ascribed in this RFP.

1.1 Authority and Purpose of the Request for Proposals

1.1.1 This RFP is issued in response to Order No. 36776 issued on November 15, 2019 in Docket No. 2019-0178 as part of a procurement process established by the PUC.

1.1.2 This RFP is subject to Decision and Order (“D&O”) No. 23121 in Docket No. 03-0372 (To Investigate Competitive Bidding for New Generating Capacity in Hawai‘i), which sets forth the PUC’s Framework for Competitive Bidding (“Framework” or “Competitive Bidding Framework”).

1 The RDG PPA for PV is available on the Company’s RFP website and through the PowerAdvocate platform for the RFP.
1.1.3 Proposers should review the Hawaiian Electric Companies’ Power Supply Improvement Plans, filed in Docket No. 2014-0183 on December 23, 2016 (“PSIP Update Report: December 2016” or “PSIP”). Consistent with the PSIP, the primary purpose of this RFP is to obtain variable renewable energy and energy storage so that the Company can continue to transform Lānaʻi’s power supply portfolio from fossil fuel-based generation to renewable-based generation to meet Hawaiʻi’s 100% RPS requirement.

1.2 Scope of the RFP

1.2.1 The targeted amount of variable renewable dispatchable generation will be dependent on the availability of the LSR and CHP facilities. The following table identifies the different targeted amounts of variable renewable dispatchable generation that the Company will be seeking should it be determined that one or both of the LSR and CHP facilities be removed from service. The Company will work with Pūlama Lānaʻi, the owner of the LSR facility and contracting party for CHP, to determine the appropriate use of the LSR and CHP facilities based on the results of the RFP to ensure the optimal use of these assets and to determine if there is a potential to further reduce costs for the Company’s customers. This could include the removal of service of LSR and/or CHP or reducing the use of the facilities. The Company will consult with the Independent Observer as to the appropriate target amount based on the latest developments for the two projects at the time of the selection of the Final Award Group. In order to address this uncertainty in the targeted amount, Proposers are required to propose sizing variations for their Project that address each of the following four (4) possible variable renewable generation targets.

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<tr>
<th></th>
<th>CHP facility available</th>
<th>CHP facility not available</th>
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<tr>
<td>LSR facility available</td>
<td>Sizing Variation 1</td>
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<td>13,300 MWh annually</td>
<td>18,300 MWh annually</td>
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<tr>
<td>LSR facility not available</td>
<td>Sizing Variation 2</td>
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<tr>
<td></td>
<td>15,800 MWh annually</td>
<td>20,800 MWh annually</td>
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</table>

1.2.2 Projects submitted in response to this RFP must be PV combined with storage projects that are located on the Site specified in Section 3.11. No other generation technologies or project locations may be proposed.

1.2.3 Each Proposal submitted in response to this RFP must represent a Project that is capable of meeting the requirements of this RFP without having to rely on the completion or implementation of any other Project.

1.2.4 Projects must interconnect to the Company’s System at the Miki Basin switchyard (See, Section 3.11 of Attachment 2, Appendix F).
1.2.5 No single point of failure from the Facility shall result in a decrease in net electrical output greater than a nominal 3.3 MW AC. Additionally, in meeting this requirement, the Facility must be segmented in equally sized capacities (MW). Each segment must have its own point of interconnection into the Miki Basin switchyard that can be independently dispatched via the Company’s energy management system. Revisions would need to be made to the RDG PPA to account for multiple points of interconnection.

1.2.6 The contract for the project selected through this RFP shall use the RDG PPA, as described in Section 3.8. Under the RDG PPA, the Company will maintain exclusive rights to fully direct dispatch of the Facility, subject to availability of the resource and Section 1.2.8 below. The term of the PPA will be 20 years.

1.2.7 Proposals must be submitted with an energy storage component. The energy storage component can be charged during periods when full potential export of the generation Facility is not being dispatched by the Company and can be used to provide energy to the Company during other times that are beneficial to the system. The energy storage component must be sized to support the Facility’s Allowed Capacity (in MW) for four (4) continuous hours throughout the term of the PPA.

For example, for a 9.5 MW facility, the energy storage component must be able to store and discharge 38 MWh of energy in a cycle throughout the term of the PPA.

1.2.8 After the 5-year Investment Tax Credit (“ITC”) recapture period has lapsed, the energy storage component must be capable of being 100% charged from the grid at the direction of the Company. Energy storage components that are incapable of claiming the ITC must be capable of being 100% charged from the grid from the GCOD.

1.2.9 The amount of energy discharged from the energy storage component in a year will be limited to the energy storage contract capacity (in MWh) multiplied by the number of Days in that year.

1.2.10 Proposals must specify a Guaranteed Commercial Operations Date (“GCOD”) no later than December 31, 2023. Preference will be given to Proposals that specify an earlier GCOD during the non-price evaluation.

1.2.11 A Proposer’s GCOD set forth in its Proposal will be the GCOD in any resulting PPA if such Proposal is selected to the Final Award Group. Proposers will not be able to request a change in the GCOD set forth in their Proposals.

1.2.12 The selected Proposer will be responsible for all Project costs throughout the term of the PPA, including but not limited to Project development, completion of an Interconnection Requirements Study (“IRS”), the cost of conducting a greenhouse gas analysis, land leasing, permitting, financing, construction of the Facility and all Interconnection Facilities, and operations and maintenance (“O&M”).
1.2.13 The selected Proposer will be solely responsible for the decommissioning of the Project and the restoration of the Site upon the expiration of the PPA, as described in Attachment G, Section 7 of the RDG PPA.

1.2.14 The selected Proposer shall pursue all available applicable federal and state tax credits. Proposal pricing must be set to incorporate the benefit of such available federal tax credits. However, to mitigate the risk on Proposers due solely to potential changes to the state’s tax credit law before a selected project reaches commercial operations, Proposal pricing shall be set without including any state tax credits. If a Proposal is selected, the PPA for the project will require the Proposer to pursue the maximum available state tax credit and remit tax credit proceeds to the Company for customers’ benefit as described in Attachment J of the RDG PPA. The PPA will also provide that the Proposer will be responsible for payment of liquidated damages for failure to pursue the state tax credit.

1.2.15 Each Proposal submitted in response to this RFP must represent a Project that is capable of meeting the requirements of this RFP without having to rely on a proposed change in law, rule, or regulation.

1.3 Competitive Bidding Framework

Consistent with the Framework, this RFP outlines the Company’s requirements in relation to the resources being solicited and the procedures for conducting the RFP process. It also includes information and instructions to prospective Proposers participating in and responding to this RFP.

1.4 Role of the Independent Observer

1.4.1 Part III.C.1 of the Framework sets forth the circumstances under which an Independent Observer is required in a competitive bidding process. The PUC has retained an Independent Observer both to advise and monitor the process for this RFP. All phases of the RFP process will be subject to the Independent Observer’s oversight, and the Independent Observer will coordinate with PUC staff throughout the RFP process to ensure that the RFP is undertaken in a fair and unbiased manner. In particular, the Company will review and discuss with the Independent Observer decisions regarding the evaluation, disqualification, non-selection, and selection of Proposals.

1.4.2 The role of the Independent Observer, as described in the Framework, will include but is not limited to:

- Monitor all steps in the competitive bidding process
- Monitor communications (and communications protocols) with Proposers
- Monitor adherence to the Company’s Code of Conduct
- Submit comments and recommendations, if any, to the PUC concerning the RFP
- Review the Company’s Proposal evaluation methodology, models, criteria, and assumptions
- Review the Company’s evaluation of Proposals
- Advise the Company on its decision-making
- Participate in dispute resolution as set forth in Section 1.10
- Monitor contract negotiations with Proposers
- Report to the PUC on monitoring results during each stage of the competitive bidding process
- Provide an overall assessment of whether the goals of the RFP were achieved
- Monitor the ongoing discussions between Maui Electric and Pūlama Lāna‘i

1.4.3 The Independent Observer for this RFP is **Navigant Consulting, Inc.**

Navigant Consulting, Inc.
685 Third Avenue, 14th Floor
New York, NY 10017
Attn: Dia Dean Koujak

1.5 Communications Between the Company and Proposers – Code of Conduct Procedures Manual

1.5.1 Communications and other procedures under this RFP are governed by the “Code of Conduct Procedures Manual,” (also referred to as the “Procedures Manual”) developed by the Company as required by the Framework, and attached as Appendix C.

1.5.2 All pre-Proposal communication with prospective Proposers will be conducted via the Company’s RFP website, Electronic Procurement Platform, and/or electronic mail (“Email”) through the address specified in Section 1.6 (the “RFP Email Address”). Frequently asked questions submitted by prospective Proposers and the answers to those questions may be posted on the Company’s RFP website, or sent through either Email or the Electronic Procurement Platform to registered individuals. The Company reserves the right to respond only to comments and questions it deems are appropriate and relevant to the RFP. Proposers are advised to submit questions no later than fifteen Days before the Proposal Due Date (RFP Schedule in Section 3.1, Items 9 and 10). The Company will endeavor to respond to all questions no later than five Days before the Proposal Due Date.

1.5.3 After Proposals have been submitted, the Company may contact individual Proposers for purposes of clarifying their Proposal(s).

1.5.4 Any confidential information deemed by the Company, in its sole discretion, to be appropriate to share, will only be transmitted to the requesting party after receipt of a fully executed Mutual Confidentiality and Non-Disclosure Agreement (“NDA”). See Appendix E.

1.5.5 Except as expressly permitted and in the manner prescribed in the Procedures Manual, any unsolicited contact by a Proposer or prospective Proposer with personnel of the Company pertaining to this RFP is prohibited.
1.6 Company Contact for Proposals

The primary contact for this RFP is:

Dean Ono
Energy Contract Manager
Maui Electric Company, Limited
210 West Kamehameha Avenue
Kahului, Hawai‘i 96732

RFP Email Address: lanaicompetitivebidding@mauielectric.com

1.7 Proposal Submission Requirements

1.7.1 All Proposals must be prepared and submitted in accordance with the procedures and format specified in the RFP. Proposers are required to respond to all questions and provide all information requested in the RFP, as applicable, and only via the communication methods specified in the RFP.

1.7.2 Detailed requirements regarding the form, submission, organization and information for the Proposal are set forth in Chapter 3 and Appendix B.

1.7.3 In submitting a Proposal in response to this RFP, each Proposer certifies that the Proposal has been submitted in good faith and without fraud or collusion with any other unaffiliated person or entity. The Proposer shall acknowledge this in the Response Package submitted with its Proposal. Furthermore, in executing the NDA provided as Appendix E, the Proposer agrees on behalf of its Representatives (as defined in the NDA) that the Company’s negotiating positions will not be shared with other Proposers or their respective Representatives.

In addition, in submitting a Proposal, a Proposer will be required to provide Company with its legal counsel’s written certification in the form attached as Appendix B Attachment 1 certifying in relevant part that irrespective of any Proposer’s direction, waiver, or request to the contrary, that the attorney will not share a Proposer’s confidential information associated with such Proposer, including, but not limited to, such information such as a proposer’s or Company’s negotiating positions, with third parties unaffiliated with Proposer (by contract or organizational structure), including other proposers responding to the RFP. If legal counsel represents multiple unaffiliated Proposers whose Proposals are selected for the Final Award Group, such counsel will also be required to submit a similar certification at the conclusion of power purchase agreement negotiations that he or she has not shared a Proposer’s confidential information or the Company’s confidential information associated with such Proposer, including but not limited to, a Proposer’s or Company’s negotiating positions, with third parties unaffiliated with such proposer (by contract or organizational structure), including other Proposers responding to the RFP.
1.7.4 Proposals must be submitted by 2:00 pm Hawai‘i Standard Time (HST) on the Proposal Due Date shown in the RFP Schedule in Section 3.1. IPP and Affiliate proposals must be submitted via the Electronic Procurement Platform. No hard copies of these Proposals will be accepted by the Company. The Sealed SBO Proposal must be submitted in accordance with the instructions in Section 1.9.

It is the Proposer’s sole responsibility to ensure that complete and accurate information has been submitted on time and consistent with the instructions of this RFP. With this assurance, Company shall be entitled to rely upon the completeness and accuracy of every Proposal. Any errors identified by the Proposer or Company after the Proposal Due Date has passed may jeopardize further consideration and success of the Proposal. If an error or errors are later identified, Company, in consultation with the Independent Observer, may permit the error(s) to be corrected without revision to the Proposal, or may require Proposer to adhere to terms of the Proposal as submitted without correction. Additionally, and in Company’s sole discretion, if such error(s) would materially affect the Final Award Group, Company reserves the right, in consultation with the Independent Observer, to remove or disqualify a Proposal upon discovery of the material error(s). The Proposer of such Proposal shall bear the full responsibility for such error(s) and shall have no recourse against Company’s decision to address Proposal error(s), including removal or disqualification. The Energy Contract Manager, in consultation with the Independent Observer, will confirm that the sealed SBO Proposal is either delivered or postmarked by, and that any Affiliate Proposals are timestamped by, milestone (9) Sealed SBO Proposal and Affiliate Proposal Due Date in Section 3.1, Table 1. The PowerAdvocate Platform automatically closes to further submissions after milestone (10) IPP Proposal Due Date in Table 1.

1.8 Proposal Fee

1.8.1 IPP and Affiliate proposers are required to tender a non-refundable Proposal Fee of $5,000 for each Proposal submitted.

1.8.2 Proposers must submit four (4) sizing variations for their Project to address the different energy targets identified in Section 1.2.1. A separate Proposal Fee will not be assessed for these sizing variations. All unique information for each sizing variation of a Proposal, no matter how minor, must be clearly identified and separated by following the instructions in Appendix B Section 3.

1.8.3 The Proposal Fee must be in the form of a cashier’s check from a U.S.-chartered bank made payable to “Maui Electric Company, Ltd.” and must be delivered and received by the Company by 2:00 pm (HST) on the Proposal Due Date shown in the RFP Schedule in Section 3.1. The check should include a reference to the Proposal(s) for which the Proposal Fee is being provided. Proposers are strongly encouraged to utilize a delivery service method that provides proof of delivery to validate delivery date and time.

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2 Affiliate Proposals have additional submission requirements to the PUC specified in Section 1.9 below.
If the Proposal Fee is delivered by U.S. Postal Service (with registered, certified, receipt verification), the Proposer shall address it to:

Dean Ono  
Energy Contract Manager  
Maui Electric Company, Limited  
Mail Code KBY-IC  
PO Box 398  
Kahului, Hawai‘i 96733

If the Proposal Fee is delivered in person, or via an alternative registered, certified delivery service, the Proposer shall use the address specified in Section 1.6.

1.9 Procedures for the Self-Build or Affiliate Proposals

1.9.1 The Competitive Bidding Framework allows the Company the option to offer a Proposal in response to this RFP (“Self-Build Option” or “SBO”). Accordingly, the Company must follow certain requirements and procedures designed to safeguard against and address concerns associated with: (1) preferential treatment of the SBO or members, agents, or consultants of the Company formulating the SBO (the “Self-Build Team”); and (2) preferential access to proprietary information to the Self-Build Team. These requirements are specified in the Code of Conduct required under the Framework and implemented by certain rules and procedures found in the Procedures Manual submitted to the PUC in Docket No. 2017-0352 on July 10, 2019. A copy of the Procedures Manual is attached as Appendix C.

The Competitive Bidding Framework also allows Affiliates of the Company to submit Proposals to RFPs issued by the Company. All Sealed SBO Proposals and Affiliate Proposals are subject to the Company’s Code of Conduct and the Procedures Manual. Affiliates Proposals are also subject to any applicable Affiliate Transaction Requirements issued by the PUC in Decision and Order No. 35962 on December 19, 2018, and subsequently modified by Order No. 36112, issued on January 24, 2019, in Docket No. 2018-0065. Affiliates Proposals will be treated identically to an IPP proposal, except that they are due at the same time as the Sealed SBO Proposal.

The Independent Observer will monitor adherence to the Company’s Code of Conduct and the Procedures Manual.

1.9.2 Pursuant to the Framework and as set forth in the RFP Schedule, the Company will require that Affiliate Proposals be submitted electronically through the Electronic Procurement Platform and filed with the PUC in hard copy a minimum of one (1) Day before IPP Proposals are due. Affiliate Proposals will be uploaded into the Electronic Procurement Platform in the same manner IPP Proposals from other Proposers are uploaded. The Energy Contract Manager, in consultation with the Independent Observer, will confirm that the Affiliate Proposals are timestamped by Milestone (9) Sealed SBO Proposal and Affiliate Proposal Due Date in RFP Table 1.
1.9.3 This RFP will permit only one (1) Proposal from the Self-Build Team, which will be submitted under seal and evaluated only upon certain conditions identified in Chapter 4. The Sealed SBO Proposal will not be submitted through the Electronic Procurement Platform, but rather must be submitted to the Company in hard copy to the contact and address identified in Section 1.8.4. A hard copy of the Sealed SBO Proposal must also be filed confidentially with the PUC in hard copy and submitted to the Independent Observer to the contact and address identified in Section 1.4.3. Pursuant to the Framework and as set forth in the RFP Schedule, these hard copies must be delivered or postmarked by the date and time identified in Milestone (10) Sealed SBO Proposal and Affiliate Proposal Due Date in RFP Table 1.

Detailed requirements for a Sealed SBO Proposal can be found in Appendix G. These requirements are intended to provide a level playing field between the Sealed SBO Proposal and third-party Proposals. Except where specifically noted, the Sealed SBO Proposal must adhere to the same price and non-price Proposal requirements as required of all Proposers, as well as certain PPA requirements, such as milestones and liquidated damages, as described in Appendix G. In addition to its Sealed SBO Proposal, the Self-Build Team will be required to submit Appendix G Attachment 1, Self-Build Option Team Certification Form, acknowledging it has followed the rules and requirements of the RFP to the best of its ability and has not engaged in any collusive actions or received any preferential treatment or information providing an impermissible competitive advantage to the Self-Build Team over other proposers responding to this RFP, as well as adherence to PPA terms and milestones required of all proposers and the SBO’s proposed cost protection measures.

The cost recovery methods between a regulated utility Sealed SBO Proposal and IPP Proposals are fundamentally different due to the business environments they operate in. As a result, the Company has instituted a process to compare the two types of proposals for the evaluation of the price related criteria on a ‘like’ basis through comparative analysis.

At the core of a Sealed SBO Proposal are its total project capital cost and any associated annual operations and maintenance (“O&M”) costs. If the Sealed SBO Proposal is evaluated, its capital costs and O&M costs will be used in a revenue requirement calculation to determine the estimated revenues needed from ratepayers which would allow the Company to recover the total cost of the project. The SBO revenue requirements are then used in a levelized price calculation to determine a Levelized Energy Price (“LEP”) ($/MWh).

The Company, in conjunction with the Independent Observer, may also conduct a risk assessment of the Sealed SBO Proposal to ensure an appropriate level of customer cost protection measures are included in such Proposal.

3 Sealed SBO Proposals will be required to provide a table identifying project costs by year. These capital costs should be all inclusive, including but not limited to costs associated with equipment, Engineering, Procurement, and Construction (EPC), interconnection, overhead, and Allowance for Funds Used During Construction (AFUDC).
The SBO will be permitted to submit a shared savings mechanism with its Proposal to share in any cost savings between the amount of cost bid in the Sealed SBO Proposal and the actual cost to construct the Project. If the Sealed SBO Proposal is selected to the Final Award Group, the proposed shared savings mechanism will need to be approved by the PUC. Submission of a shared savings mechanism is not required and will not be considered in the evaluation of the Sealed SBO Proposal.

1.10 Dispute Resolution Process

1.10.1 If disputes arise under the RFP, the provisions of Section 1.10 and the dispute resolution process established in the Framework will control. See Part V of the Framework.

1.10.2 Proposers who challenge or contest any aspect of the RFP process must first attempt to resolve their concerns with the Company and the Independent Observer (“Initial Meeting”). The Independent Observer will seek to work cooperatively with the parties to resolve any disputes or pending issues and may offer to mediate the Initial Meeting to resolve disputes prior to such issues being presented to the PUC.

1.10.3 Any and all disputes arising out of or relating to the RFP which remain unresolved for a period of twenty (20) Days after the Initial Meeting takes place may, upon the agreement of the Proposer and the Company, be submitted to confidential mediation in Honolulu, Hawai‘i, pursuant to and in accordance with the Mediation Rules, Procedures, and Protocols of Dispute Prevention Resolution, Inc. (“DPR”) (or its successor) or, in its absence, the American Arbitration Association then in effect (“Mediation”). The Mediation will be administered by DPR. If the parties agree to submit the dispute to Mediation, the Proposer and the Company 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 Mediation costs and attorneys’ fees.

1.10.4 If settlement of the dispute is not reached within sixty (60) Days after commencement of the Mediation, or if after the Initial Meeting, the parties do not agree to submit any unresolved disputes to Mediation, then as provided in the Framework, the Proposer may submit the dispute to the PUC in accordance with the Framework.

1.10.5 In accordance with the Framework, the PUC will serve as the arbiter of last resort for any disputes relating to this RFP involving Proposers. The PUC will use an informal expedited dispute resolution process to resolve the dispute within thirty (30) Days, as described in Parts III.B.8 and V of the Framework. There will be no right to hearing or appeal from this informal expedited dispute resolution process.

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4 The informal expedited dispute resolution process does not apply to PUC review of contracts that result from the RFP. See Decision and Order No. 23121 at 34-35. Further, the informal expedited dispute resolution process does not apply to the Framework’s process relating to issuance of a draft and final RFP, and/or to the PUC approval of the RFP because: (1) the Framework (and the RFP) set forth specific processes whereby interested parties may provide input through the submission of comments; and (2) the Framework’s dispute resolution process applies to “Bidders” and there are no “Bidders” at this stage in the RFP process.
1.10.6 If any Proposer initiates a dispute resolution process for any dispute or claim arising under or relating to this RFP, other than that permitted by the Framework and Section 1.10 (e.g., a court proceeding), then such Proposer shall be responsible for any and all attorneys’ fees and costs that may be incurred by the Company or the PUC in order to resolve such claim.

1.11 No Protest or Appeal

Subject to Section 1.10, no Proposer or other person will have the right to protest or appeal any award of a Project made by the Company.

By submitting a Proposal in response to the RFP, the Proposer expressly agrees to the terms and conditions set forth in this RFP.

1.12 Modification or Cancellation of the Solicitation Process

1.12.1 Unless otherwise expressly prohibited, the Company may, at any time up to the final execution of an RDG PPA, as may be applicable, in consultation with the Independent Observer, postpone, withdraw, and/or cancel any requirement, term, or condition of this RFP, including deferral of the award or negotiation of any contract, and/or cancellation of the award all together, all of which will be without any liability to the Company.

1.12.2 The Company may modify this RFP subject to requirements of the Framework, whereby the modified RFP will be reviewed by the Independent Observer and submitted to the PUC thirty (30) Days prior to its issuance, unless the PUC directs otherwise. See Framework Part IV.B.10. The Company will follow the same procedure with regard to any potential postponement, withdrawal, or cancellation of the RFP or any portion thereof.

1.13 Community Outreach

The Company held a community meeting on Lāna‘i to explain the RFP process and the Company’s intent to procure a PV with storage project on the island of Lāna‘i. At the community meeting, the Company solicited feedback from the community of Lāna‘i regarding the RFP process and planned procurement. The Company has provided the comments received at the meeting in Appendix J. Proposers are encouraged to review such comments and take such comments into account when developing Proposals in response to this RFP.

Chapter 2: Resource Needs and Requirements

2.1 Performance Standards

Proposals must meet the attributes set forth in this RFP and the requirements of the RDG PPA. This RFP and the RDG PPA set forth the minimum requirements that all Proposals must satisfy to be eligible for consideration in this RFP. Additional Performance Standards may be required based on the results of the IRS.
Facilities must be able to operate in grid-forming mode when directed by the Company as defined in the RDG PPA.

Black start capability is preferred. Proposals will need to identify\(^5\) any incremental costs to enable their facility to be black start capable, if not already enabled.

The functionality and characteristics of the storage must be maintained throughout the term of the PPA. To be clear, Proposers may not propose any degradation for either capacity or efficiency in their Proposals.

2.2 Distribution System Information

The Company has performed a preliminary evaluation of the Distribution System which indicates that a PV project of the requested size is able to be supported at the Miki Basin switchyard. A detailed IRS will be required to assess whether additional system mitigation measures will be required to integrate any specific project selected through this RFP. Per Section 3.11 and Appendix E, projects must interconnect to the Miki Basin switchyard. The estimated configuration of the interconnection is provided in Appendix H. Any questions regarding the interconnection may be directed to the RFP Email Address in Section 1.6.

2.3 Interconnection to the Company System

2.3.1 The Interconnection Facilities include both: (1) Seller-Owned Interconnection Facilities; and (2) Company-Owned Interconnection Facilities.

2.3.2 All Proposals must include a description of the Proposer’s plan to transmit power from the Facility to the Company System. The proposed Interconnection Facilities must be compatible with the Company System. In the design, Projects must adequately consider Company requirements to address impacts on the performance and reliability of the Company System.

2.3.2.1 In addition to the Performance Standards and findings of the IRS, the design of the Interconnection Facilities, including power rating, Point(s) of Interconnection with the Company System, and scheme of interconnection, must meet Company standards. The Company will provide its construction standards and procedures to the Proposer (Engineer, Procure, Construct Specifications for Hawaiian Electric Power Lines and Substations) if requested via the RFP Email Address in Section 1.6 and upon the execution of an NDA as specified in Section 3.12.1. These specifications are intended to illustrate the scope of work typically required to administer and perform the design and construction of a Maui Electric substation and power line.

\(^5\) If black start is not already enabled for the Proposal, any additional costs necessary to enable black start will be identified in the submission instructions defined in Appendix B.
2.3.2.2 Interconnection Facilities must be designed such that, with the addition of the Facility, the Company System can meet all relevant Distribution Planning Criteria\(^6\) and any amendments thereto.

2.3.3 Tariff Rule No. 19, a copy of which is attached as Appendix I, establishes provisions for Interconnection and Transmission Upgrades. While the Lāna‘i System does not have a traditional Transmission System, the tariff provisions are intended to simplify the rules regarding who pays for, installs, owns, and operates interconnection facilities in the context of competitive bidding. Proposers will be required to build the Company-Owned Interconnection Facilities, including any potential line extensions, except for any work in the Company’s existing energized facilities and the final tap. Construction of Company-Owned Interconnection Facilities by the Proposer must comply with industry standards, laws, rules, and licensing requirements, as well as the Company’s specific construction standards and procedures that the Company will provide upon request. (See Section 2.3.1.) Attachment A of Appendix I is provided to illustrate certain defined terms in Appendix I and does not represent the Company’s design requirements. The design of all Interconnection Facilities will be subject to the requirements outlined in Section 2.3.2.1.

2.3.4 The Proposer shall be responsible for all costs required to interconnect a Project to the Company System, including all Seller-Owned Interconnection Facilities and Company-Owned Interconnection Facilities.

2.3.5 Proposers are required to include in their pricing proposal all costs for interconnection and distribution equipment expected to be required between their Facility and their proposed Point of Interconnection. Appendix H includes information related to Company-Owned Interconnection Facilities and costs that may be helpful to Proposers.

The selected Proposer shall be responsible for the actual final costs of all Seller-Owned Interconnection Facilities and Company-Owned Interconnection Facilities, whether or not such costs exceed the costs set forth in a Proposer’s Proposal. No adjustments will be allowed to the proposed price in a Proposal if actual costs for Interconnection Facilities exceed the amounts proposed.

2.3.6 Proposers are required to include in their pricing proposal all costs for distribution-level service interconnection for station power.

2.3.7 All Projects will be screened for general readiness to comply with the requirements for interconnection. The selected Proposal will be subject to further study in the form of an IRS. The IRS process is further described in Section 5.1. The results of the completed IRS, as well as any mitigation measures identified, will be incorporated into the terms and conditions of a final executed PPA.

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\(^6\) MECO – Criteria for Distribution Substation and Feeder Planning.
Chapter 3: Instructions to Proposers

3.1 Schedule for the Proposal Process

Table 1 sets forth the schedule for the proposal process (the “RFP Schedule”). The Company reserves the right to revise the RFP Schedule as necessary. Changes to the RFP Schedule prior to the RFP Proposal Due Date will be posted to the RFP website. Changes to the RFP Schedule after the Proposal Due Date will be communicated via email or via the Electronic Procurement Platform to the Proposers.

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Schedule Dates</th>
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<tbody>
<tr>
<td>(1) Draft RFP is filed</td>
<td>August 6, 2019</td>
</tr>
<tr>
<td>(2) PUC Opened Docket No. 2019-0178</td>
<td>August 29, 2019</td>
</tr>
<tr>
<td>(3) PUC Status Conference</td>
<td>September 5, 2019</td>
</tr>
<tr>
<td>(4) Consumer Advocate and Company Comments Filed</td>
<td>October 7, 2019</td>
</tr>
<tr>
<td>(5) Commission’s Order Approving Draft RFP, with Modifications</td>
<td>November 15, 2019</td>
</tr>
<tr>
<td>(6) Company’s submission of Final RFP</td>
<td>November 27, 2019</td>
</tr>
<tr>
<td>(7) Final RFP is Issued and Opened in Power Advocate</td>
<td>December 2, 2019</td>
</tr>
<tr>
<td>(8) Proposer’s Conference Webinar (posted to Company’s website)</td>
<td>December 9, 2019</td>
</tr>
<tr>
<td>(9) Sealed SBO Proposal and Affiliate Proposal Due Date</td>
<td>January 30, 2020 at 2:00 pm HST</td>
</tr>
<tr>
<td>(10) IPP Proposal Due Date</td>
<td>January 31, 2020 at 2:00 pm HST</td>
</tr>
<tr>
<td>(11) Selection of Final Award Group</td>
<td>March 31, 2020</td>
</tr>
<tr>
<td>(12) Contract Negotiations Start</td>
<td>April 7, 2020</td>
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</tbody>
</table>

3.2 Company RFP Website/Electronic Procurement Platform

3.2.1 The Company has established a website for general information to share with potential Proposers. The RFP website is located at the following link:

www.mauielectric.com/lanaicombativebidding

The Company will provide general notices, updates, schedules and other information on the RFP website throughout the process. Proposers should check the website frequently to stay abreast of any new developments. This website will also contain the link to the Electronic Procurement Platform employed by the Company for the receipt of Proposals.

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7 An SBO or Affiliate Proposal must also be filed in hard copy form with the PUC a minimum of one (1) Day before other Proposals are due.
“Sourcing Intelligence” developed by Power Advocate is the Electronic Procurement Platform that the Company has licensed and will utilize for this RFP. Proposers who do not already have an existing account with PowerAdvocate and who intend to submit a Proposal for this RFP will need to register as a “Supplier” with PowerAdvocate.

3.2.2 There are no license fees, costs, or usage fees to Proposers for the use of the Electronic Procurement Platform.

See Appendix D for user information on and screenshots of PowerAdvocate’s Sourcing Intelligence procurement platform.

3.3 Status Conference
The Commission held a status conference on September 5, 2019 to allow the Companies to propose plans for the draft Lānaʻi and Molokaʻi RFPs and to respond to questions from the Commission, the Consumer Advocate and stakeholders. The Companies’ presentation was made available on the Companies’ RFP Website. The Commission also solicited comments from stakeholders on the Companies’ Draft Lānaʻi and Molokaʻi RFPs on September 6, 2019 before releasing its Order No. 36776 approving the draft RFPs with modifications on November 15, 2019.

Following issuance of the RFP, the Company will also post a prerecorded webinar (“Proposer’s Conference Webinar”) for prospective Proposers to learn about the provisions and requirements of the Company’s final RFP. A link to the webinar will be posted on the Companies’ website.

Prospective Proposers may continue submitting written questions regarding the RFP to the RFP Email Address set forth in Section 1.6. The Company will endeavor to address all questions that will be helpful to prospective Proposers via a Q&A section on the RFP website.

Prospective Proposers should review the RFP Website’s Q&A section prior to submission of their Proposal. Duplicate questions will not be answered.

3.4 Preparation of Proposals

3.4.1 Each Proposer shall be solely responsible for reviewing the RFP (including all attachments and links) and for thoroughly investigating and informing itself with respect to all matters pertinent to this RFP, the Proposer’s Proposal, and the Proposer’s anticipated performance under the RDG PPA. It is the Proposer’s responsibility to ensure it understands all requirements of the RFP, to seek clarification if the RFP’s requirements or Company’s request is not clear, and to ask for any confirmation of receipt of submission of information. Under Section 1.7.4, the Proposer is solely responsible for all errors in its Proposal(s). The Company will not accept any explanation by a Proposer that it was incumbent on the Company to catch any error.

3.4.2 Proposers shall rely only on official information provided by the Company in this RFP when preparing their Proposal. The Company will rely only on the information included in the Proposals and additional information solicited by the Company to Proposers in the
format requested, to evaluate the Proposals received. Evaluation will be based on the stated information in this RFP and on information submitted by Proposers in response to this RFP. Proposal submissions should not reference previous RFP submissions for support. Proposers also should not assume that any previous RFP decisions/preferences will also pertain to this RFP.

3.4.3 Each Proposer shall be solely responsible for, and shall bear all of its costs incurred in the preparation of its Proposal and/or its participation in this RFP, including, but not limited to, all costs incurred with respect to the following: (1) review of the RFP documents; (2) meetings with the Company; (3) Site visits; (4) third-party consultant consultation; and (5) investigation and research relating to its Proposal and this RFP. The Company will not reimburse any Proposer for any such costs, including the selected Proposer.

3.4.4 Each Proposal must contain the full name and business address of the Proposer and must be signed by an authorized officer or agent\(^8\) of the Proposer.

3.5 Organization of the Proposal

The Proposal must be organized as specified in Appendix B. It is the Proposer’s responsibility to ensure the information requested in this RFP is submitted and contained within the defined Proposal sections as specified in Appendix B.

3.6 Proposal Limitations

Proposers expressly acknowledge that Proposals are submitted subject to the following limitations:

The RFP does not commit or require the Company to award a contract, pay any costs incurred by a Proposer in the preparation of a Proposal, or procure or contract for products or services of any kind whatsoever. The Company reserves the right, in consultation with the Independent Observer, to accept or reject, in whole or in part, any or all Proposals submitted in response to this RFP, to negotiate with any or all Proposers eligible to be selected for award, or to withdraw or modify this RFP in whole or in part at any time.

- The Company reserves the right, in consultation with the Independent Observer, to request additional information from any or all Proposers relating to their Proposals or to request that Proposers clarify the contents of their Proposals. Proposers who are not responsive to such information requests may be eliminated from further consideration upon consultation with the Independent Observer.

- The Company reserves the right, in consultation with the Independent Observer, to solicit additional Proposals from Proposers after reviewing the initial Proposals.

\(^8\) Proposer’s officer or agent must be authorized to sign the Proposal. Such authorization must be in writing and may be granted via Proposer’s organizational documents (i.e., Articles of Incorporation, Articles of Organization, By-laws, etc.), resolution, or similar documentation.
Other than as provided in this RFP, no Proposer will be allowed to alter its Proposal or add new information to a Proposal after the Proposal Due Date.

- All material submitted in response to this RFP will become the sole property of the Company, subject to the terms of the NDA.

### 3.7 Proposal Compliance and Bases for Disqualification

Proposers may be deemed non-responsive and/or Proposals may not be considered for reasons including, but not limited to, the following:

- Any unsolicited contact by a Proposer or prospective Proposer with personnel of the Company pertaining to this RFP as described in Section 1.5.5.
- Any illegal or undue attempts by or on behalf of the Proposer or others to influence the Proposal Review process.
- The Proposal does not meet one or more of the Eligibility Requirements specified in Section 4.2.
- The Proposal does not meet one or more of the Threshold Requirements specified in Section 4.3.
- The Proposal is deemed to be unacceptable through a fatal flaws analysis as described in Section 4.4.2.
- The Proposer does not respond to a Company request for additional information to clarify the contents of its Proposal within the timelines specified by the Company.
- The Proposal contains misrepresentations or errors.

### 3.8 Power Purchase Agreement

3.8.1 The Power Purchase Agreement for proposals selected under this RFP will be in the form of the RDG PPA, attached as Appendix K.

3.8.2 If selected, any Affiliate Proposer will be required to enter into the RDG PPA with the Company.

3.8.3 If selected, a Self-Build Proposer will not be required to enter into a PPA with the Company. However, the Sealed SBO Proposal will be held to the same performance metrics and milestones set forth in the RDG PPA to the same extent as all Proposers, as attested to in the SBO’s Appendix G, Attachment 1, Self-Build Option Certification submittal. If liquidated damages are assessed, they will be paid from shareholder funds and returned to customers through the Purchased Power Adjustment Clause (“PPAC”) or other appropriate rate adjustment mechanisms.
To retain the benefits of operational flexibility in a Company-owned facility, the Sealed SBO Proposal will be permitted to adjust operational requirements and performance metrics with the approval of the PUC. The process for adjustment would be similar to a negotiated amendment to a PPA with PUC approval.

3.8.4 In general, under the RDG PPA, payment to the Seller contains two parts: a Lump Sum Payment component to cover the fixed costs of the Project and a Price for Purchase of Electric Energy component ($/MWh component) to cover variable operations and maintenance costs (if applicable, depending on the resource). In return, the Seller shall guarantee minimum performance and availability metrics to ensure that the Facility is maintained and available for energy storage and dispatch, as well as provide an indication of the available energy in near real-time for the Company’s dispatch. Company shall not be obligated to accept, nor shall it be required to pay for test energy generated by the Facility during acceptance testing or other test conditions.

3.8.5 As described in Section 2.1, the Performance Standards identified in the RDG PPA establish the minimum requirements a Proposal must satisfy to be eligible for consideration in this RFP. A proposed Facility’s ability to meet these Performance Standards is both a Threshold Requirement and a Non-Price Related Criteria under Sections 4.3 and 4.4.2, respectively. As such, the Performance Standards included in the RDG PPA are non-negotiable. Proposers may propose modifications to other sections of the RDG PPA but are encouraged to accept such terms as written in order to expedite the overall RFP process and potential contract negotiations. As a component of their Proposals, Proposers who elect to propose modifications shall provide a Microsoft Word red-line version of the relevant document identifying specific proposed modifications to the model language that the Proposer is agreeable to, as well as a detailed explanation and supporting rationale for each modification.

3.8.5.1 General comments, drafting notes and footnotes such as “parties to discuss” are unacceptable and will be considered non-responsive. Proposed modifications to the RDG PPA will be evaluated as a non-price evaluation criterion as further described in Section 4.4.2. In order to facilitate this process, the Company will make available an electronic version of the model agreement on the RFP website and through the PowerAdvocate platform for the RFP. Any proposed modifications to the RDG PPA will be subject to negotiation between the Company and the Final Award Group. As stated above, since general comments, drafting notes, and footnotes without accompanying specific proposed language modifications are unacceptable and non-responsive, the Company will not negotiate provisions simply marked by such general comments, drafting notes, and footnotes.

3.8.6 Proposals that do not include specific proposed modifications to the attached RDG PPA will be deemed to have accepted the RDG PPA in its entirety.

3.9 Pricing Requirements

3.9.1 Proposers must submit pricing for each of their sizing variations associated with each Proposal. Proposers are responsible for understanding the terms of the RDG PPA.
Pricing cannot be specified as contingent upon other factors (e.g., changes to federal tax policy or receiving all Investment Tax Credits assumed).

3.9.2 Escalation in pricing over the term of the RDG PPA is prohibited.

3.9.3 Pricing information must only be identified within specified sections of the Proposal instructed by this RFP’s Appendix B Proposer’s Response Package (i.e., Proposal pricing information must be contained within defined Proposal sections of the Proposal submission). Pricing information contained anywhere else in a Proposal will not be considered during the evaluation process.

3.9.4 The Proposer’s Response Package must include the following prices for each Proposal (and sizing variation):

For IPP or Affiliate proposals:

- **Lump Sum Payment ($/year):** Payment amount for full dispatchability of the Facility. Payment will be made in monthly increments.

- **Price for Purchase of Electric Energy ($/MWh):** Payment for delivery of net energy sourced from the variable generation resource, if applicable. No Energy Payment will be provided for any energy delivery that is sourced originally from the grid (Company’s System).

- **Black Start ($):** If the Facility is not already black start enabled, the incremental cost required to enable black start.

For the Sealed SBO Proposal:

- **Total Project Capital Costs ($/year):** Total capital costs for the project (identified by year).

- **Annual O&M Costs ($/year):** Initial year operations and maintenance costs, annual escalation rate.

- **Annual Revenue Requirement ($/year):** Annual revenue requirements (ARR) calculated for each year.

- **Black Start ($):** If the Facility is not already black start enabled, the incremental cost required to enable black start.

Additional description and detail on the Total Project Capital Costs, Annual O&M Costs, and Annual Revenue Requirement for the Sealed SBO Proposal is located in Appendix G.

3.9.5 As identified in the Schedule of Defined Terms in the PPA under “BESS Allocated Portion of the Lump Sum Payment”, the allocated portion of the Lump Sum Payment
specified for energy storage for the Facility is 50% and shall be a non-negotiable percentage in the PPA.

3.10 Project Description

3.10.1 Proposals are required to provide a NEP RFP Projection for the Project. The NEP RFP Projection associated with the proposed Project represents the estimated annual net energy (in MWh) that could be produced by the Facility and delivered to the Point of Interconnection over a ten-year period with a probability of exceedance of 95%. The proposed Project’s energy storage component should not be factored into the NEP RFP Projection. Any losses that may be incurred from energy being stored and then discharged from the energy storage component or any energy that may be diverted to the energy storage component due to generation in excess of the Facility’s Allowed Capacity should not be factored into the NEP RFP Projection. The NEP RFP Projection should assume that all energy is being directly exported to the Lāna‘i System. The NEP RFP Projection will be used in the RFP evaluation process and therefore Proposers will be held to their provided value.  

3.10.2 Proposers must provide all information pertaining to the design, development, and construction of the Interconnection Facilities as specified in Appendix B.

3.10.3 Each Proposer must also agree to provide Project financial information, including proposed Project finance structure information specified in Appendix B. Such information will be used to evaluate Threshold Requirements and non-price criteria (e.g., Financial Viability of Proposer, Financial Strength and Financing Plan, State of Project Development and Schedule) set forth in Sections 4.3 and 4.4.2. Upon selection, the Final Award Group may be requested to provide further detailed cost information if requested by the PUC or the Consumer Advocate as part of the PPA approval process. If requested, such information would be provided to the PUC, Consumer Advocate, and Company pursuant to a protective order in the docket.

3.10.4 The Proposer agrees that no material changes or additions to the Facility from what is submitted in its Proposal will be made without the Proposer first having obtained prior written consent from the Company. Evaluation of all Proposals in this RFP is based on the information submitted in each Proposal at the Proposal Due Date. If any Proposer requests any Proposal information to be changed after that date, the Company, in consultation with the Independent Observer, and in consideration of whether the evaluation is affected, will determine whether the change is permitted.

9 If a PPA is executed between the Company and the selected Proposer, the NEP RFP Projection will be further evaluated at several steps throughout the process as set forth in the RDG PPA, and adjustments to the Lump Sum Payment will be made accordingly. Additionally, because the Company will rely on an accurate representation of the NEP RFP Projection in the RFP evaluation, a one-time liquidated damage as described in the RDG PPA will be assessed if the First NEP benchmark is less than the Proposer’s NEP RFP Projection. After the Facility has achieved commercial operations, the performance of the Facility will be assessed on a continuing basis against key metrics identified in the RDG PPA. See Article 2 and Attachment U of the RDG PPA.
3.11 Project Site

All proposals must be sited on a pre-determined Project Site owned by Pūlama Lānaʻi, referred to as the Pūlama Site. The available area is approximately fifty (50) acres and is located adjacent to Miki Road approximately a mile from the airport.

The selected Proposer will be required to execute a lease for the Pūlama Site coterminous with the term of the PPA with the landowner. A draft copy of the proposed form of lease is included as Attachment 2 to Appendix F. The terms of the lease will be negotiable with the landowner.

The Company has contracted with Fewell Geotechnical Engineering, Ltd and Cultural Services Hawaiʻi to perform preliminary investigations at the Pūlama Site and is willing to share the geotechnical and the archaeological field investigation reports ("Information") with interested Proposers. The Information will be available no later than December 6, 2019. Requests for copies of these reports must be sent to the RFP email address, and the reports will be made available to Proposers only after a Proposer’s submission of an executed NDA. More information regarding these reports and the Pūlama Site can be found in Appendix F of this RFP.

The Company, in conjunction with Pūlama Lānaʻi, is offering potential Proposers the opportunity to visit the Pūlama Site and the Company’s existing Miki Basin facility on December 18, 2019. Additional details and requirements for this site visit will be posted to the Company’s RFP website.

3.12 Confidentiality

3.12.1 Each prospective Proposer must submit an executed NDA (specific to the Lānaʻi Variable Renewable Dispatchable Generation Paired with Energy Storage RFP) in the form attached as Appendix E by the Proposal Due Date specified in the RFP Schedule in Section 3.1. The form of the NDA is not negotiable. Information designated as confidential by the Company will be provided on a limited basis, and only those prospective Proposers who have submitted an executed NDA will be considered. Proposers must clearly identify all confidential information in their Proposals. However, Proposers should designate as confidential only those portions of their Proposals that genuinely warrant confidential treatment. The Company discourages the practice of marking every page of a Proposal as confidential. The Company will make reasonable efforts to protect any such information that is clearly marked as confidential. Consistent with the terms of the NDA, the Company reserves the right to share any information, even if marked confidential, with its agents, contractors, or the Independent Observer for the purpose of evaluating the Proposal and facilitating potential contract negotiations.

3.12.2 Proposers, in submitting any Proposal(s) to Company in response to this RFP, certify that such Proposer has not shared its Proposal(s), or any part thereof, with any other Proposer of a Proposal(s) responsive to this RFP.
3.12.3 The Company will request that the PUC issue a Protective Order to protect confidential information provided by Proposers to the Company and to be filed in a proceeding before the PUC. A copy of the Protective Order, once issued by the PUC, will be provided to Proposers. Proposers should be aware that the Company may be required to share certain confidential information contained in Proposals with the PUC, State of Hawai‘i Department of Commerce and Consumer Affairs, Division of Consumer Advocacy, and the parties to any docket instituted by the PUC, provided that recipients of confidential information have first agreed in writing to abide by the terms of the Protective Order. Notwithstanding the foregoing, no Proposer will be provided with Proposals from any other Proposer, nor will Proposers be provided with any other information contained in such Proposals or provided by or with respect to any other Proposer.

3.13 Credit Requirements Under the PPA

3.13.1 The Proposer with whom the Company concludes PPA contract negotiations must post Development Period Security and Operating Period Security in the form of an irrevocable standby letter of credit from a bank chartered in the United States as required and set forth in Article 14 of the RDG PPA.

3.13.2 The Development Period Security and Operating Period Security identified in the RDG PPA are minimum requirements. Proposers shall not propose an amount lower than that set forth in the RDG PPA.

3.13.3 Each Proposer shall be required to provide a satisfactory irrevocable standby letter of credit in favor of the Company from a bank chartered in the United States to guarantee Proposer’s payment of interconnection costs for all Company-Owned Interconnection Facilities in excess of the Total Estimated Interconnection Costs and/or all relocation costs in excess of Total Estimated Relocation Costs that are payable to Company as required and set forth in Attachment G to the RDG PPA.

3.13.4 Proposers may be required to provide an irrevocable standby letter of credit in favor of the Company from a bank chartered in the United States in lieu of the required Source Code Escrow in an amount and as required and set forth in Attachment B to the RDG PPA.

Chapter 4: Evaluation Process and Evaluation Criteria

4.1 Proposal Evaluation and Selection Process

As set forth in Section 1.9.3 above, the Company’s Sealed SBO Proposal will only be unsealed and evaluated if certain conditions arise. In the absence of any one of these conditions, the Company will evaluate the other IPP and Affiliate Proposals received in response to this RFP in accordance with this Chapter 4 in determining the Final Award Group and will not open or evaluate the Sealed SBO Proposal. Should one of the following conditions arise, the Company’s Sealed SBO Proposal will be opened and evaluated in the same manner as described in this Chapter 4. These conditions are that:
(1) there are no IPP or Affiliate Proposals received in response to this RFP, (2) there are no Eligible Proposals that remain after reviewing the Eligibility and Threshold Requirements, (3) all Eligible Proposals fail to pass the fatal flaws analysis during the Non-Price criteria evaluation, or (4) all Eligible Proposals that pass the fatal flaws analysis do not provide a customer benefit in the form of a tangible rate reduction as determined through consultation with the Independent Observer. The Company’s Sealed SBO Proposal will need to meet the RFP’s Eligibility and Threshold Requirements, pass the fatal flaws analysis, and provide a customer benefit in the form of a tangible rate reduction, as determined through consultation with the Independent Observer, in order to be selected to the Final Award Group.

The Company will employ a multi-step evaluation process. Once the Proposals are received, the Proposals will be subject to a consistent and defined review, evaluation, and selection process. This Chapter provides a description of each step of the process, along with the requirements of Proposers at each step. Figure 1 sets forth the flowchart for the proposal evaluation and selection process.

Upon receipt of the Proposals, the Company will ensure that the Proposals meet the Eligibility Requirements, and if so, will review the Proposals to ensure that the Threshold Requirements have been met. The Company, in coordination with the Independent Observer will determine if a Proposer is allowed to cure any aspect of its Proposal or whether the Proposal would be eliminated based on failure to meet either Eligibility or Threshold Requirements. If a Proposer is provided the opportunity to cure any aspect of its Proposal, the Proposer shall be given three (3) business Days to cure from the date of notification to cure. Proposals that have successfully met the Eligibility and Threshold Requirements will then enter a price and non-price evaluation process ultimately ending in a Proposal being selected to the Final Award Group.

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10 As a general rule, if a Proposer does not include a requested document, inadvertently excludes minor information or provides inconsistencies in its information, it may be given a chance to cure such deficiency. If a Proposer fails to provide material required information in its Proposal and providing the Proposer an opportunity to cure is deemed by the Company, in consultation with the Independent Observer, as an unfair advantage to such Proposer, the Proposal could be classified as non-conforming and eliminated for failure to meet Eligibility Requirements.
4.2 Eligibility Requirements Assessment

Upon receipt of the Proposals, each Proposal will be reviewed to ensure that it meets the following Eligibility Requirements.

- The Proposal, including required uploaded files, must be received on time via the PowerAdvocate Platform.
- The Proposal Fee must be received on time on or before the Proposal Due Date.\(^\text{11}\)

\(^{11}\) Proposal Fees will not be required for the Sealed SBO Proposal
• The Proposal must not contain material omissions.
• The Proposal must be signed and certified by an officer or other authorized person of the Proposer.
• The Proposers must fully execute the agreements or other documents required pursuant to this RFP.
• The Proposer must provide a certificate of good standing from the State of Hawai‘i Department of Commerce and Consumer Affairs.
• The Proposer must provide federal and state tax clearance certificates for the Proposer.
• The Proposal must not be contingent upon changes to existing county, state, or federal laws or regulations.
• The Proposer must provide a certificate of good standing from the State of Hawai‘i Department of Commerce and Consumer Affairs.
• The Proposal must provide federal and state tax clearance certificates for the Proposer.
• The Proposal must not be contingent upon changes to existing county, state, or federal laws or regulations.
• The Proposal must be sited on the Pūlama Site.
• The Proposal must be for a PV project and must include an energy storage component.
• No single point of failure from the Facility shall result in a decrease in net electrical output greater than a nominal 3.3 MW AC. Additionally, in meeting this requirement, the Facility must be segmented in equally sized capacities (MW).
• The energy storage component must be able to be charged from the grid at the direction of the Company as described in Section 1.2.7.
• Proposals must specify a GCOD no later than December 31, 2023.

4.3 Threshold Requirement Assessment

Proposals that meet all the Eligibility Requirements will then be evaluated to determine compliance with the Threshold Requirements, which have been designed to screen out Proposals that are insufficiently developed, lack demonstrated technology, or will impose unacceptable execution risk for the Company. Proposers are responsible to provide explanations and supporting information demonstrating how and why they believe the Project they are proposing meets each of the Threshold Requirements. Proposals that fail to provide this information or meet a Threshold Requirement will be eliminated from further consideration upon concurrence with the Independent Observer. The Threshold Requirements for this RFP are the following:

• **Performance Standards:** The proposed Facility must be able to meet the performance attributes identified in this RFP and the Performance Standards identified in the RDG PPA. Proposals should include sufficient documentation to support the stated claim that the Facility will be able to meet the Performance Standards. The Proposal should include information required to make such a determination in an organized manner to ensure this evaluation can be completed within the evaluation review period.

• **Proven Technology:** This criterion is intended as a check to ensure that the technologies proposed are viable and can reasonably be relied upon to meet the objectives of this RFP. The Company will only consider Proposals utilizing technologies that have successfully reached commercial operations in commercial applications (i.e., a PPA) at the scale being proposed. Proposals should include any
supporting information for the Company to assess the commercial and financial maturity of the technologies being proposed.

- **Experience of the Proposer**: The Proposer, its affiliated companies, partners, and/or contractors and consultants on the Proposer’s Project team must have experience in financing, designing, constructing, interconnecting, owning, operating, and maintaining at least one (1) electricity generation project, including all components of the project (i.e., storage or other attributes), similar in size, scope, technology, and structure to the Project being proposed by Proposer. The Company will consider a Proposer to have reasonably met this Threshold Requirement if the Proposer can provide sufficient information in its Proposal’s RFP Appendix B Section 2.13 tables demonstrating that at least one member of the Proposer’s team (identified in the Proposal) has specific experience in each of the following categories: financing, designing, constructing, interconnecting, owning, operating, and maintaining projects similar to the Project being proposed.

- **Credit/Collateral Requirements**: Proposers shall agree to post Development Period Security and Operating Period Security as described in Section 3.13.

- **Viability of Proposer’s Financial Plan**: Proposers must provide a basic financial plan for the Project with details on the sources of debt and equity, capital structure, etc. Evidence must be provided of general support for Project financing.

- **Financial Compliance**: The proposed Project must not cause the Company to be subject to consolidation as set forth, in Financial Accounting Standards Board (“FASB”) Accounting Standards Codification Topic 810, Consolidation (“ASC 810”) as issued and amended from time to time by FASB. Proposers are required to state to the best of their knowledge, with supporting information to allow the Company to verify such conclusion, that the Proposal will not result in the Seller under the PPA being a Variable Interest Entity (“VIE”) and result in the Company being the primary beneficiary of the Seller that would trigger consolidation of the Seller’s finances on to the Company’s financial statements under FASB ASC 810. The Company will perform a preliminary consolidation assessment based on the Proposals received. The Company reserves the right to allow a Proposal to proceed through the evaluation process through selection of the Priority List and work with the Proposer on this issue prior to or during PPA negotiations.

- **Community Outreach**: Gaining community support is an important part of a Project’s viability and success. A comprehensive community outreach and communications plan (“Community Outreach Plan”) is an essential roadmap that guides a developer as they work with various communities and stakeholders to gain their support for a Project. Proposers must include a Community Outreach Plan that describes the Proposer’s commitment to work with the neighboring community and stakeholders and to provide them timely Project information during all phases of the Project. The Community Outreach Plan shall include, but not be limited to, the following information: Project description, community scoping (including stakeholders and community concerns), Project benefits, government approvals,
development process (including Project schedule), and a comprehensive communications plan.

4.4 Evaluation – Price and Non-Price Analysis

Proposals that meet both the Eligibility and Threshold Requirements are Eligible Proposals which will then be subject to a price and non-price assessment. Two teams have been established to undertake the Proposal evaluation process: a Price Evaluation Team and Non-Price Evaluation Team. The results of the price and non-price analysis will be a relative ranking and scoring of all Eligible Proposals. Price-related criteria will account for sixty percent (60%) of the total score and non-price-related criteria will account for forty percent (40%) of the total score. The non-price criteria and methodology for applying the criteria are explained in Section 4.4.2.

The Company will employ a closed-bidding process for this solicitation in accordance with Part IV.H.3 of the Framework where the price and non-price evaluation models to be used will not be provided to Proposers. However, the Company will provide the Independent Observer with all necessary information to allow the Independent Observer to understand the evaluation models and to enable the Independent Observer to observe the entire analysis to ensure a fair process. The evaluation models will be finalized prior to the receipt of Proposals.

4.4.1 Evaluation of the Price Related Criteria

For the evaluation price analysis, an equivalent LEP (Levelized $/MWh) will be calculated for each Eligible Proposal based on information provided in the Proposal including the Lump Sum Payment ($/year), Price for Purchase of Electric Energy ($/MWh), and the Net Energy Potential (“NEP”) RFP Projection (MWh) information defined in RFP Sections 3.9 and 3.10.

The Eligible Proposal with the lowest LEP will receive 600 points. All other Eligible Proposals will receive points based on a proportionate reduction using the percentage by which the Eligible Proposal’s LEP exceeds the lowest LEP. For example, if a Proposal’s LEP is ten percent (10%) higher than the lowest LEP, the Proposal will be awarded 540 points (that is, 600 points less 10%). The result of this assessment will be a ranking and scoring of each Proposal.

4.4.2 Evaluation of the Non-Price Related Criteria

For the non-price analysis, each Proposal will be evaluated on each of the eight (8) non-price criteria categories set forth below to assess their merit in the general areas of Project development feasibility and operational viability.

- Community Outreach and Cultural Resource Impacts
- Project Schedule and Costs
- Performance Standards
- Environmental Compliance and Permitting Plan
- Experience and Qualifications
• Financial Strength and Financing Plan
• RDG PPA Contract Exceptions
• Guaranteed Commercial Operations Date

Each of the first three criteria – Community Outreach and Cultural Resource Impacts, Project Schedule and Costs, Performance Standards – will be weighted twice as heavily as the others to reflect the impact these categories have to achieve a successful and timely procurement. The non-price criteria are generally scored on a scale of 1 (poor) to 5 (highly preferable).

The total non-price score will be the sum of the scores for each of the individual non-price criteria. The Company will then award non-price evaluation points in accordance with the relative ranking of scores. The Proposal with the highest total non-price score will receive 400 points, and all other Proposals will receive points equal to the Proposal’s score divided by the top score, multiplied by 400.

During the non-price criteria evaluation, a fatal flaws analysis will also be conducted such that any Proposal that is deemed not to meet the minimum standards level for three (3) or more non-price criteria will be disqualified given that the Proposal has failed to meet a majority of non-price factors that are indicative as to the general feasibility and operational viability of a proposed Project.

The Company’s evaluation of the non-price criteria will be based on the materials provided by a Proposer in its Proposal. Acceptance of any Proposal into the Final Award Group shall not be assumed or construed to be an endorsement or approval that the materials provided by Proposer are complete, accurate or in compliance with applicable law. The Company assumes no obligation to correct, confirm or further research any of the materials submitted by Proposers. Proposers retain sole responsibility to ensure their Proposals are accurate and in compliance with all laws.

The non-price criteria are:

• **Community Outreach and Cultural Resource Impacts** – Gaining community support is an important part of a Project’s viability and success. An effective Community Outreach Plan will call for early meaningful communications with stakeholders and will reflect a deep understanding and respect for the community’s desire for information to enable them to make informed decisions about future projects in their communities. Therefore, Proposals will be evaluated on the quality of the Community Outreach Plan to inform the Project’s impacted communities. Proposers need to also be mindful of the Project’s potential impacts to historical and cultural resources. Proposers will be evaluated on their proposed plan to select and engage with a consultant to assess if there are any historical and/or cultural resources at the Site, including the extent to which traditional and customary native Hawaiian rights are exercised in the area, and how any potential historical or cultural resource issues that arise during the term will be addressed.

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12 A score of 3 is the “meets minimum standards” level that a Proposal must achieve in at least four (4) criteria.
At a minimum, Proposals should include a Community Outreach Plan that describes the Proposer’s commitment to work with the neighboring community and stakeholders and to provide timely Project information during project development, construction and operation. The Community Outreach Plan shall include, but not be limited to, the following:

1) **Project description.** A thorough description including a map of the location of the Project. This information will help the community understand the impact that the Project may have on the community.

2) **Community scoping.** Identify stakeholders (individuals, community leaders, organizations), community issues and concerns, and community sentiment.

3) **Project benefits.** An explanation of the need for the Project. This will help the community to understand how the Project might benefit their community.

4) **Government approvals.** Required government permits and approvals, public hearings and other opportunities for public comment. This information will help the community to understand the level of public scrutiny and participation that might occur for the Project and the opportunities to provide public comments.

5) **Development process.** A Project schedule that identifies key milestones will facilitate the community’s understanding of the development process.

6) **Communications Plan.** A communications plan including a detailed community outreach schedule that will keep the affected communities and stakeholders informed about the Project’s outreach efforts during early Project development period through construction and operations.

Preference will be given to Proposers who have already identified established contacts to work with the local community, have proposed a community benefits package (including details of the community recipients and benefits package), or have community consultants as part of the Project team doing business in Hawai‘i that have successfully worked with communities in Hawai‘i on the development of two or more energy projects or projects with similar community issues. These criteria are aligned with the Companies’ community engagement expectation whereby all developers will be required to engage in community outreach prior to signing a PPA with the Companies. This process is also outlined in RFP Section 5.3.

At a minimum, Proposers should provide a plan to select and engage with a consultant to assess if there are any historical and/or cultural resources at the Site and how any potential historical or cultural resource issues that arise during the term will be addressed. Preference will be given to Proposals that are able to provide a mitigation/action plan or are able to provide a date for when a mitigation/action plan will be available that addresses any identified cultural resource issues.

- **Project Schedule and Costs** – Projects should demonstrate how they plan to capture any ITC safe harbor and reach their GCOD specified, including
identification of risks and schedule assumptions. (Schedules must identify the
IRS completion date and PUC approval dates assumed.) Proposals should also
demonstrate, via a detailed critical path schedule, that there is a high likelihood
that the Project will be able to reach commercial operations as specified.
Proposals shall include a Gantt chart that clearly illustrates the overall schedule
and demonstrates achievement of any ITC safe harbor, if applicable, and
commercial operations by their specified COD. The Gantt chart shall include
task durations and dependencies, identify tasks that will be fast tracked, and
identifies slack time and contingencies.

This criterion will also look at the high-level Project costs set forth in the Proposal
including: costs for equipment, construction, engineering, Seller-Owned
Interconnection Facilities, Company-Owned Interconnection Facilities, land,
annual O&M, the reasonableness of such costs and the assumptions used for such
costs. Project costs that do not appear reasonable for a project of the size
proposed may result in a lower ranking for this criterion if the Company
reasonably determines that the cost information is unrealistic based on prior
experience in the market which may result in a risk that the Project can be built on
time and for the price proposed by the Proposer. The Company reserves the right
to discuss any cost and financial information with a Proposer to ensure the
information provided is accurate and correct.

- **Performance Standards** – The proposed Facility must be able to meet the
  performance attributes identified in this RFP and the Performance Standards
  identified in the RDG PPA. The Company will review the Proposal information
  received, including design documents and operating procedures materials
  provided in the Proposal, and evaluate whether the Project as designed is able to
  meet the Performance Standards identified in the RDG PPA and in this RFP. At a
  minimum, in addition to meeting the Performance Standards, the Proposals should
  include sufficient documentation, provided in an organized manner, to support the
  stated claim that the Facility will be able to meet the Performance Standards. The
  Proposal should include information required to make such a determination in an
  organized manner to ensure this evaluation can be completed on a timely basis.
  Preference will be given to Proposals that provide detailed technical and design
  information showing how each standard can be met by the proposed Facility.
  Preference will also be provided to proposed Projects that offer additional
capabilities (e.g., Black Start).

- **Environmental Compliance and Permitting Plan** – This criterion relates to the
  potential (short- and long-term) environmental impacts associated with each
  project, the quality of the plan offered by the Proposer to mitigate and manage
  any environmental impacts (including any pre-existing environmental conditions),
  and the plan of Proposers to remain in environmental compliance over the term of
  the contract. These impacts are reflected on a technology-specific basis.
  Completing any necessary environmental review and obtaining the required
  permitting in a timely manner is also important and Proposals will be evaluated
  on their plan to identify, apply for, and secure the required permits for the Project,
any permitting activity that has been completed to date, including having initial discussions with U.S. Fish and Wildlife and the State of Hawai‘i Department of Land and Natural Resources’ Division of Forestry and Wildlife, to the extent applicable, prior to submitting a Proposal, and the degree of certainty offered by the Proposer in securing the necessary permits.

At a minimum, proposed Projects should be expected to have minimal environmental impact for most areas and Proposals should provide a comprehensive plan to mitigate the identified potential or actual significant environmental impacts to remain in environmental compliance. The proposed mitigation plans should be included in the Project timeline. Preference will be given to Proposals that provide a more detailed plan as well as those that have proactively taken steps to mitigate potential environmental impacts.

Also, this criterion requires that, at a minimum, Proposers should have identified, and disclosed in their Proposal(s), all major permits, approvals, appurtenances and entitlements (including applicable access, rights of way and/or easements) (collectively, the “permits”) required and have a preliminary plan for securing such permits. Preference will be given to Proposals that are able to provide a greater degree of certainty that its plan to secure the required permits is realistic and achievable, or have already received all or a majority of the required permits. The Proposer should disclose all identified (a) discretionary permits required, i.e., those requiring public or contested case hearings and/or review and discretionary approval by an appropriate government agency and (b) ministerial permits required, i.e., those requiring the submission of documents or other ministerial conditions without discretionary approval conditions. In all cases, the Proposer must provide a credible and viable plan to secure all necessary and appropriate permits necessary for the project. For example, if the project is located within an agricultural district, the Proposer shall provide evidence of Proposer’s verification with the appropriate government agency that the project complies with HRS Section 205-2 and Section 205-4.5, relating to solar energy facilities placed on agricultural land, provided, however that where a special use permit (under Section 205-6), exemption (under Section 205-6), or amendment to land use district boundary lines (under Section 205-4) is required to secure such compliance, Proposer shall identify the need for such permit, exemption or amendment and provide a list of required prerequisites and/or conditions and a realistic timeline necessary to obtain such permit, exemption or amendment satisfactory for Proposer to still meet its designated GCOD.

- **Experience and Qualifications** – Proposals will be evaluated based on the experience of the Proposer in financing, designing, constructing, interconnecting, owning, operating, and maintaining projects (including all components of the project) of similar size, scope and technology. At a minimum, Proposals must show via the table format specified in RFP Appendix B Section 2.13 that at least one (1) member must have specific experience in each of the following categories: financing, designing, constructing, interconnecting, owning, operating, and maintaining at least one electricity generation project including all
components of the project similar to the Project being proposed. Preference will be given to Proposers with experience in successfully developing multiple projects that are similar to the one being proposed and/or that have prior experience successfully developing and interconnecting a utility scale project to the Company’s System.

- **Financial Strength and Financing Plan** – This criterion addresses the comprehensiveness and reasonableness of the financial plan for the Project as well as assesses the financial strength and capability of the Proposer to develop the Project. A complete financial plan addresses the following issues: Project ownership, capital cost and capital structure, sources of debt and equity, and evidence that credit-worthy entities are interested in financing the Project. The financial strength of Proposers or their credit support providers will be considered, including their credit ratings. The financing participants are expected to be reasonably strong financially. Developers and their sources of capital that have investment grade credit ratings from a reputable credit rating agency (S&P, Moody’s, Fitch) will also be given preference, with those that have higher credit ratings ranked higher.

- **RDG PPA Contract Proposed Modifications** – Proposers are encouraged to accept the contract terms identified in the model PPA in its entirety in order to expedite the overall RFP process and potential contract negotiations. Proposers who accept the model agreements without edits will receive a higher score and will be the only proposals that can achieve the highest scoring for this non-price evaluation. Technology-specific or operating characteristic-required modifications, with adequate explanation as to the necessity of such modifications, will not jeopardize a project’s ability to achieve the highest score. Proposers who elect to propose modifications to the model agreements shall provide a Microsoft Word red-line version of the applicable document identifying specific proposed modifications to the model agreement language, as well as a detailed explanation and supporting rationale for each modification. General comments without proposed alternate language, drafting notes without explanation or alternate language, footnotes such as “parties to discuss,” or a reservation of rights to make additional modifications to the model agreements at a later time are unacceptable will be considered unresponsive, and will result in a lower score. The Company and Independent Observer will evaluate the impact that the proposed modifications will have on the overall risk assessment associated with the evaluation of each Proposal.

- **Guaranteed Commercial Operations Date** - The Company is procuring resources and incorporating projects onto its System as part of its long-term plan to meet RPS goals. Proposers will be held to the Guaranteed Commercial Operations Date identified in their Proposal. The GCOD will be a Guaranteed Milestone and will be inserted without amendment into the RDG PPA. Proposers that are able to design for and commit to an earlier GCOD will be given more favorable scoring. Proposers must have met the GCOD requirements of RFP Section 1.2.10 prior to being evaluated in this non-price criterion.
4.5 Selection of the Final Award Group

At the conclusion of both the price and non-price analysis, a total score will be calculated for each Eligible Proposal using the 60% price-related criteria/40% non-price-related criteria weighting outlined above. The price and non-price analysis, and the summation of both price and non-price scores described above, will result in a ranking of Proposals.

Based on the results of this Evaluation and review with the Independent Observer, the Company will select a Proposal to the Final Award Group from which to begin contract negotiations. All Proposers will be notified at this stage of the evaluation process whether their Proposal is included in the Final Award Group.

Selection to the Final Award Group and/or entering into contract negotiations does not guarantee execution of a PPA.

Further, if at any time during the evaluation process it is discovered that a Proposer’s Proposal contains incorrect or misrepresented information that have a material effect on any of the evaluation processes, including selection of the Final Award Group, the Company reserves the right, at any time prior to submission of the PPA application with the PUC, in consultation with the Independent Observer, to disqualify the Proposer from the RFP. If discovery of the incorrect or misrepresented information is made after the Company has filed its PUC application for approval of the PPA with the Proposer, the Company will disclose the incorrect or misrepresented information to the PUC for evaluation and decision as to whether such Proposer should be disqualified and the Company’s application dismissed.

Following any removal of a Proposal from the Final Award Group, either by disqualification noted immediately above, or via any other removal or withdrawal of a Proposal, including failure to reach agreement to the PPA, the Company, taking into consideration the timing of such removal and the current status of the Company’s needs under the RFP, in consultation with and concurrence from the Independent Observer, will determine (1) if another Proposal should be added to the Final Award Group; or (2) if either of the Contingency Plan or Parallel Plan should be pursued.

Order No. 36536 in Docket No. 2017-0352, issued on June 10, 2019 “directs the Companies to work with the [Independent Observers] to increase bid transparency within the RFP process, while maintaining an appropriate level of confidentiality regarding bids and bidders.” The Companies agree that it is desirable for the RFP process to be as transparent as possible while maintaining the confidentiality of Proposer and Proposal information. The type and quantity of information that can be disclosed will not be known until the Companies and the Independent Observer have a better understanding of the number proposals received and whether such information can be easily anonymized. The Companies will work with the Independent Observers to determine an appropriate level of disclosure after Proposals are received with a goal of disclosing more information than was disclosed in the Companies’ Stage 1 RFPs for O‘ahu, Maui, and Hawai‘i Island.
Chapter 5: Post Evaluation Process

5.1 Interconnection Requirements Study Process

A complete package of IRS Data Request worksheets and project single line diagram(s) shall be submitted with each Proposal. For Projects with a proposed GCOD in 2022, the models for equipment and controls, list(s) to clearly identify the components and respective files (for inverters and power plant controller), and complete documentation with instructions, shall be submitted within 60 days thereafter. See Section 2.11.1 of Appendix B. For all other Projects, the same complete submittal shall be due within 60 days after selection to the Final Award Group. PSSE Generic models, PSSE User models, and ASPEN models shall be configured to represent all of the functional equipment with settings in place to comply with the Company’s PPA performance requirements. These must be checked for functionality by the Proposer or its vendors and consultants prior to submission to the Company. Similar and fully accurate PSCAD models shall be submitted in a condition that complies with the PSCAD modeling guidelines provided by the Company. PSSE generic models shall be provided promptly after the PSSE user models have been approved by the Company.

After proposals and models are submitted, the Company will inspect the data packages for general completeness. For any incomplete submissions, a list of missing or non-functional items will be provided. Proposers will be given 15 Days to resolve data and modeling deficiencies. The Company, in consultation with the Independent Observer, may remove Proposals from being selected to the Final Award Group or may terminate PPA negotiations or executed PPAs, if their submission requirements are deemed incomplete for the lack of requested models. Proposals that are complete will be considered for further evaluation. A formal, technical model checkout will be deferred until a later date when IRS Agreements and deposits are in place, so that the expert subject matter work can be provided by the Company’s IRS consultant(s).

Upon notification of selection to the Final Award Group, the Company will provide a draft IRS Agreement for the selected project, with a statement of required deposit for individual and prorated work as part of an IRS Scope for a System Impact Study that will involve (a) technical model checkout for the project and (b) any considerations that are specific to the particular project and location. Interconnection cost and schedule, including cost of any required system upgrades, will be determined in a subsequent Facilities Study.

The technical model checkouts will be conducted first. Upon identification of any functional problems or deficiencies, corrective action shall be taken immediately and on an interactive basis so that the problems or deficiencies can be resolved within 15 Days, including re-submission of data and updated models, or the Project shall be deemed withdrawn. At the discretion of the Company and provided that there is a demonstration of good faith action to minimize delay that would affect the schedule for IRS analyses, a second round of model checkout and problem solving may proceed. Thereafter any notice that a Project is deemed withdrawn for lack of completeness shall be final. Subject
to consultation with the Independent Observer, failure to provide all requested material within the time(s) specified, or changes to the data provided after the due date(s), shall result in elimination from the Final Award Group.

Proposers shall be responsible for the cost of the IRS, under separate agreements for the System Impact Study and the Facilities Study. The overall IRS will provide information including, but not limited to, an estimated cost and schedule for the required Interconnection Facilities for a particular Project and any required mitigation measures. Proposers will be responsible for the actual final costs of all Seller-Owned Interconnection Facilities and Company-Owned Interconnection Facilities. Upon reviewing the results of the IRS, Proposers will have the opportunity to declare the PPA null and void in the event that the estimated interconnection costs and schedule for the Project are higher than what was estimated in the Project Proposal. See Section 12.4 of the RDG PPA.

5.2 Contract Negotiation Process

Within five (5) business Days of being notified by the Company of its intent to enter into contract negotiations, the Proposer selected to the Final Award Group will be required to indicate, in writing to the Company’s primary contact for this RFP, whether it intends to proceed with its Proposal. The awarded Proposer will be required to keep its Proposal valid through the award period. Contract negotiations will take place in parallel with the IRS process. The Company’s goal is to complete contract negotiations and submit an executed PPA for approval within six (6) months of notification of intent to enter contract negotiations. The IRS may not be completed at such time. The Company intends to execute and file the PPA with the PUC for approval and later amend the PPA to include the results of the IRS.

5.3 Community Outreach and Engagement / Cultural Resource Impacts

The public meeting and comment solicitation process described in this Section and Section 29.21 of the PPA (Community Outreach Plan) do not represent the only community outreach and engagement activities that can or should be performed by a Proposer. Within 30 Days of the start of PPA negotiations, Proposers shall have provided the Company with an updated comprehensive Community Outreach Plan to work with and inform neighboring communities and stakeholders and to provide them timely information during all phases of the Project. The Community Outreach Plan shall include but not be limited to the following information: Project description, Project stakeholders, community concerns and Proposer’s efforts to address such concerns, Project benefits, government approvals, Project schedule, and a comprehensive communications plan. Upon selection to the Final Award Group, a Proposer's Community Outreach Plan shall be a public document available to the public on the Proposer’s website and upon request. The Proposer shall also provide the Company with links to their Project website and Community Outreach Plan, which the Company will post on the Company’s website. Prior to the execution date of the PPA, Proposers shall also host a public meeting in the community where the proposed Project is to be located 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) calendar days from the date of said public meeting to submit written comments to Company and/or Proposer for inclusion in the Company’s submission to the PUC of its application for a satisfactory PUC Approval Order. The Proposer shall collect all public comments, and then provide the 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. If a PPA is executed by the Proposer and the Company, the Company may submit any and all public comments (presented in its original, unedited form) as part of its PUC application for this Project. Proposers shall notify the public at least three weeks in advance of the meeting. The Company shall be informed of the meeting. The Company will provide Proposers with detailed instructions regarding the community meeting requirement after the selection of the Final Award Group. (For example, notice will be published in county or regional newspapers/media, as well as media with statewide distribution. The Proposer will be directed to notify certain individuals and organizations. The Proposer will be provided templates to use for the public meeting notices, agenda, and presentation.) Proposers must also comply with any other requirement set forth in the PPA relating to Community Outreach.

Following the submission of the PUC application for the Project, and prior to the date when the Parties’ statements of position are to be filed in the docketed PUC proceeding for the Project, the Proposer shall provide another opportunity for the public to comment on the proposed Project. The Proposer’s statement of position filed in the docket associated with the Project will contain an attachment including those comments.

The Proposer shall be responsible for community outreach and engagement for the Project, and that the public meeting and comment solicitation process described in this section do not represent the only community outreach and engagement activities that can or should be performed.

Within 30 Days of the start of PPA negotiations, the Proposer shall contract with a consultant to begin a cultural impact assessment for the Project. The consultant shall identify (1) 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; (2) the extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken to reasonably protect native Hawaiian rights if they are found to exist.
5.4 Greenhouse Gas Emissions Analysis

The Proposer whose Proposal is selected for the Final Award Group shall cooperate with and promptly provide to the Company and/or Company’s consultant(s) upon request, all information necessary, in the Company’s sole and exclusive discretion, for such consultant to prepare a greenhouse gas (“GHG”) emissions analysis and report in support of a PUC application for approval of the PPA for the project (the “GHG Review”). Proposers shall be responsible for the full cost of the GHG Review associated with their project under a separate agreement between the Proposer and the Company. The GHG Review is anticipated to address whether the GHG emissions that would result from approval of the PPA and subsequent to addition of the Project to the Company’s system are greater than the GHG emissions that would result from the operations of the Company’s System without the addition of the Project, whether the cost for renewable, dispatchable generation, and/or energy storage services as applicable under the PPA is reasonable in light of the potential for GHG emissions, and whether the terms of the PPA are prudent and in the public interest in light of its potential hidden and long-term consequences.

5.5 PUC Approval of PPA

Any signed PPA resulting from this RFP is subject to PUC approval as described in the RDG PPA, including Article 12 and Section 29.20 thereof.

5.6 Facility In-Service

The Company requires the following be included with the 60% design drawings: relay settings and protection coordination study, including fuse selection and ac/dc schematic trip scheme.

For the Company to test the Facility, coordination between the Company and Project is required. Drawings must be approved by the Company prior to testing. The entire Facility must be ready for testing to commence. Piecemeal testing will not be allowed. Communication infrastructure and equipment must be tested by the IPP and ready for operation prior to Company testing.

If approved drawings are not available, or if the Facility is otherwise not test ready as scheduled, the Project will be moved to the end of the Company’s testing queue. If tests are not completed within the allotted scheduled testing time, the Project will be moved to the end of the Company’s testing queue. The IPP will be allowed to cure if successful testing is completed within the allotted scheduled time. No adjustments will be made to PPA milestones if tests are not completed within the original allotted time. Liquidated damages for missed milestones will be assessed pursuant to the PPA.
REQUEST FOR PROPOSALS

FOR

VARIABLE RENEWABLE DISPATCHABLE GENERATION

PAIRED WITH ENERGY STORAGE

ISLAND OF LĀNAʻI

NOVEMBER 27, 2019

Docket No. 2019-0178

Appendix A – Definitions
“Affiliate” means any person or entity that possesses an “affiliated interest” in a utility as defined by section 269-19.5, Hawaii Revised Statutes (“HRS”), including a utility’s parent holding company but excluding a utility’s subsidiary or parent which is also a regulated utility.

“Allowed Capacity” has the meaning set forth in the RDG PPA.

“Code of Conduct” means the code of conduct approved by the PUC in Docket No. 03-0372 (Decision and Order No. 23614, August 28, 2007) with respect to a Self-Build Option. An updated code of conduct was submitted to the PUC in Docket No. 2017-0352 on October 23, 2017.

“Code of Conduct Procedures Manual” or “Procedures Manual” means the manual approved by the PUC, which was put in place to address and to safeguard against preferential treatment or preferential access to information in a Maui Electric RFP process. The Procedures Manual is attached as Appendix C to this RFP.

“Commercial Operations” has the meaning set forth in the RDG PPA.

“Community Outreach Plan” is a community outreach and communication plan described in Section 4.3 and 4.4.2 of this RFP.


“Company-Owned Interconnection Facilities” has the meaning set forth in the RDG PPA.

“Competitive Bidding Framework” or “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.

“Consumer Advocate” means the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs of the State of Hawai‘i.

“Day” means a calendar day, unless the term “business day” is used, which means calendar day excluding weekends and federal and State of Hawai‘i holidays.

“Development Period Security” has the meaning set forth in Section 14.2 of the RDG PPA.

“Dispatchable” means the ability to turn on or turn off a generating resource at the request of the utility’s system operators, or the ability to increase or decrease the output of a generating resource from moment to moment in response to signals from a utility’s Automatic Generation Control System, Energy Management System or similar control system, or at the request of the utility’s system operators.

“Electronic Procurement Platform” means the third-party web-based sourcing platform that will be used for the intake of Proposals and associated electronic information, storage and handling of Proposer information, and communication.

“Eligibility Requirements” has the meaning set forth in Section 4.2 of this RFP.
“Eligible Proposals” means Proposals that meet both the Eligibility and Threshold Requirements.

“Energy Contract Manager” is the primary Company contact for this RFP.

“Evaluation Team” means agents of the Company who evaluate Proposals.

“Facility” has the meaning set forth in the RDG PPA.

“Final Award Group” means the Proposer selected by the Company which the Company will begin contract negotiations with, based on the results of the Company’s evaluation.

“Greenhouse Gas” or “GHG” are gases that contribute to the greenhouse gas effect and trap heat in the atmosphere.

“Guaranteed Commercial Operations Date” or “GCOD” means the date on which a Facility first achieves Commercial Operations.


“HRS” means the Hawai‘i Revised Statutes as of the date of this Request for Proposals.

“Imputed Debt” means adjustments to the debt amounts reported on financial statements prepared under generally accepted accounting principles (“GAAP”). Certain obligations do not meet the GAAP criteria of “debt” but have debt-like characteristics; therefore, credit rating agencies “impute debt and interest” in evaluating the financial ratios of a company.

“Independent Observer” has the meaning set forth in Section 1.4 of this RFP.

“Independent Power Producer” or “IPP” means an entity that owns or operates an electricity generating facility that is not included in the Company’s rate base.

“Interconnection Facilities” means the equipment and devices required to permit a Facility to operate in parallel with, and deliver electric energy to, the Company System (in accordance with applicable provisions of the Commission’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 Facilities includes Company-Owned Interconnection Facilities and Seller-Owned Interconnection Facilities.

“Interconnection Requirements Study” or “IRS” means a study, performed in accordance with the terms of the IRS Letter Agreement, to assess, among other things, (1) the system requirements and equipment requirements to interconnect the Facility with the Company System, (2) the Performance Standards of the Facility, and (3) an estimate of interconnection costs and project schedule for interconnection of the Facility.

“kV” means kilovolt.
“Levelized Energy Price” or “LEP” means a calculation ($/MWh) used for comparison of Proposals based on information provided in the Proposal submission in this RFP.

“Lump Sum Payment” has the meaning set forth in the RDG PPA. It may also be referred to as a monthly Lump Sum Payment to reflect the portion of the payment made each month.


“Maui Electric System” or “System” means the electric system owned and operated by Maui Electric on the island of Lāna‘i (including 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.

“Mediation” means the confidential mediation conducted in Honolulu, Hawai‘i, pursuant to and in accordance with the Mediation Rules, Procedures, and Protocols of Dispute Prevention Resolution, Inc. (or its successor) or, in its absence, the American Arbitration Association then in effect.

“MW” means megawatt.

“MWh” means megawatt hour.

“NDA” means the Mutual Confidentiality and Non-Disclosure Agreement attached to this RFP as Appendix E.

“NEP” means Net Energy Potential.

“Non-Price Evaluation Team” means Employees and consultants of the Company who evaluate the Proposal non-price related criteria as set forth in Section 4.4 of this RFP. Non-Price Evaluation Team members will not include any Shared Resources and will be solely made up of Company RFP Team Members.

“O&M” means operation and maintenance.

“Operating Period Security” has the meaning set forth in Section 14.4 of the RDG PPA.

“Performance Standards” means the various performance standards for the operation of the Facility to the Company as set forth in Section 2.10 of Appendix B, as such standards may be revised from time to time pursuant to Article 23 of the RDG PPA, and as described in Chapter 2 of this RFP.

“Point of Interconnection” has the meaning set forth in the RDG PPA.

“Power Purchase Agreement” or “PPA” means an agreement between an electric utility company and the developer of a renewable energy generation facility to sell the power generated by the facility to the electric utility company.

“Power Supply Improvement Plan” or “PSIP” means the Company’s Power Supply Improvement Plan.
“Price Evaluation Team” means Employees and consultants of the Company who evaluate the Proposal price related criteria as set forth in Section 4.4 of this RFP. Price Evaluation Team members will not include any Shared Resources and will be solely made up of Company RFP Team Members.

“Price for Purchase of Electric Energy” is the amount that the Company will pay the Seller for electric energy delivered to the Company in accordance with the terms and conditions of the RDG PPA on a monthly basis as described in Attachment J. This payment will be calculated in terms of dollars per MWh.

“Project” means a Facility proposed to Maui Electric by a Proposer pursuant to this RFP.

“Proposal” means a proposal submitted to Maui Electric by a Proposer pursuant to this RFP.

“Proposal Due Date” means the date stated in RFP Schedule - Row 10 for the Self-Build and/or Affiliate Proposal and Row 11 for the IPP Proposal of this RFP.

“Proposal Fee” means the non-refundable fee of $5,000 for each proposal submitted as set forth in Section 1.8 of this RFP.

“Proposer” means a person or entity that submits a Proposal to Maui Electric pursuant to this RFP.

“Proposer’s Response Package” means the form in which the Proposal should be submitted, which is attached as Appendix B to this RFP.


“PUC” means the State of Hawai‘i Public Utilities Commission.

“RDG PPA” means the Model PV Renewable Dispatchable Generation Power Purchase Agreement attached as Appendix K respectively to this RFP.

“Renewable Portfolio Standards” or “RPS” means the Hawai‘i law that mandates that the 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 in HRS §§ 269-91 through 269-95.

“Request for Proposals” or “RFP” means a request for Proposals issued pursuant to a competitive bidding process authorized, reviewed, and approved by the PUC.

“RFP Schedule” means the schedule set forth in Table 1, Section 3.1 of this RFP.

“Self-Build Option” or “SBO” means a Proposal submitted by the Company that is responsive to the resource need identified in the RFP, as required by Section VI of the Framework.

“Self-Build Team” means agents of the Company who develop Self-Build Option proposals.
“Seller” means the entity that the Company is contracting with, as set forth in the RDG PPA.

“Seller-Owned Interconnection Facilities” has the meaning set forth in the RDG PPA.

“Site” means the parcel of real property on which the Facility, or any portion thereof, will be constructed and located, together with any Land Rights reasonably necessary for the construction, ownership, operation, and maintenance of the Facility.

“Threshold Requirements” has the meaning set forth in Section 4.3 of this RFP.

Any capitalized term not defined in this RFP has the meaning set forth in the RDG PPA.
REQUEST FOR PROPOSALS

FOR

VARIABLE RENEWABLE DISPATCHABLE GENERATION
PAIRED WITH ENERGY STORAGE

ISLAND OF LĀNAʻI

NOVEMBER 27, 2019

Docket No. 2019-0178

Appendix B – Proposer’s Response Package / IRS Data Sheet
1.0 GENERAL INSTRUCTIONS TO PROPOSERS

The Company has elected to use the services of PowerAdvocate®, a third-party electronic platform provider. Sourcing Intelligence®, developed by PowerAdvocate®, is the Electronic Procurement Platform that the Company has licensed and will utilize for the RFP process. All IPP and Affiliate Proposals and all relevant information must be submitted via the Electronic Procurement Platform, in the manner described in this RFP. The Sealed SBO Proposals must be submitted via hard copy as described in Section 1.9 of the RFP.

Proposers must adhere to the response structure and file naming conventions identified in this Appendix for the Proposer’s response package. Information submitted in the wrong location/section or submitted though communication means not specifically identified by the Company will not be considered by the Company.

Proposers must provide a response for every item. If input/submission items in the RFP are not applicable to a specific Proposer or Proposal variation, Proposers must clearly mark such items as “N/A” (Not Applicable) and provide a brief explanation.

Proposers must clearly identify all confidential information in their Proposals, as described in more detail in Section 3.12 of the RFP.

All information (including attachments) must be provided in English. All financial information must be provided in U.S. Dollars and using U.S. credit ratings.

It is the Proposer’s sole responsibility to notify the Company of any conflicting requirements, ambiguities, omission of information, or the need for clarification prior to submitting a Proposal.

The RFP will be conducted as a “Sealed Bid” event within Sourcing Intelligence, meaning the Company will not be able to see or access any of the Proposer’s submitted information until after the event closes.

1.1 ELECTRONIC PROCUREMENT PLATFORM

To access the RFP event, the Proposer must register as a “Supplier”1 on Sourcing Intelligence (Electronic Procurement Platform). One Proposal may be submitted with each Supplier registration. Sizing variations, as defined in Section 1.8.2 of this RFP must be submitted along with the Proposal under the same registration.

If a Proposer is already registered on Sourcing Intelligence, the Proposer may use their current login information to submit their first Proposal. Sizing variations of a Proposal, as described in the RFP, will be submitted together with the primary Proposal, following the instructions outlined in this Appendix. If the Proposer chooses to submit more than one Proposal, the Proposer must register as a new “Supplier” on Sourcing Intelligence for each additional Proposal.

Each registration will require a unique username, unique Email address, and unique Company name. Proposers that require multiple registrations to submit multiple Proposals should use the Company name field to represent

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1 The language in Appendix B sometimes refers to “Energy Contract Managers” as “Bid Event Coordinator” and to “Proposers” as “Suppliers” (Bid Event Coordinator and Supplier are terms used by PowerAdvocate).
the Company name and Proposal number (ex: CompanyNameP1). Proposers may use shorthand or clear abbreviations. Proposers are asked to refer to their chosen unique company name throughout when referring to it in text responses.

Proposers can register for an account on Sourcing Intelligence by clicking on the “Registration” button (located in the top right corner of the webpage) on the PowerAdvocate website at the following address:

www.poweradvocate.com

The Proposer’s use of the Electronic Procurement Platform is governed by PowerAdvocate’s Terms of Use. By registering as a “Supplier” on the Electronic Procurement Platform, the Proposer acknowledges that the Proposer has read these Terms of Use and accepts and agrees that, each time the Proposer uses the Electronic Procurement Platform, the Proposer will be bound by the Terms of Use then accessible through the link(s) on the PowerAdvocate login page.

Once a Proposer has successfully registered as a “Supplier” with PowerAdvocate, the Proposer shall request access to the subject RFP event from the Company Contact via Email through the RFP Email address set forth in Section 1.6 of the RFP. The Email request must list the Company Name field and username under which the Proposer has registered with PowerAdvocate. If the Proposer plans to submit multiple Proposals and has registered multiple accounts in accordance with the instructions above, the Email request must contain the Company Name field and username for each account that will be used to submit the Proposals. After the Energy Contract Manager has added the Proposer to the event, the Proposer will receive an invitation to the RFP event at the registered Email account, and the Proposer will see the bid event on their dashboard upon logging into Sourcing Intelligence. Once the RFP event opens, the Proposer may begin submitting their Proposal(s).

After registering and prior to the opening of the RFP, Proposers are encouraged to familiarize themselves with the Electronic Procurement Platform, including tabs, the dashboard, the messaging feature, the Sourcing Intelligence Quick Start for Suppliers, etc. Proposers should note that they will not be able to access any bid documents until the event officially opens.

Proposers may contact PowerAdvocate Support for help with registration or modification of registration if desired. Support is available from 8 AM to 8 PM Eastern Time (2 AM to 2 PM Hawai‘i Standard Time when daylight savings is in effect) Monday to Friday, except for Holidays posted on the PowerAdvocate website, both by phone (857-453-5800) and by Email (support@poweradvocate.com).

Contact information for PowerAdvocate Support can also be found on the bottom border of the PowerAdvocate website:  www.poweradvocate.com

Once the RFP event is opened, registered Proposers will have online access to general notices, RFP-related documents, and other communications via the Electronic Procurement Platform. Proposers should also monitor the RFP Website throughout the RFP event.

1.2 PROPOSAL SUBMISSION PROCEDURES

An Email notification will be sent to all registered Proposers via the messaging feature in the Electronic Procurement Platform when the event has been opened to receive Proposals.
After logging onto the Electronic Procurement Platform, the RFP will be visible on the Proposer’s dashboard with several tabs, including the following:

- **“1. Download Documents:”** Documents stored under this tab are provided for the Proposer’s use and information. All documents can be downloaded and/or printed, as required.
- **“2. Upload Documents:”** Proposal submission documents requested in Appendix B must be uploaded using this tab.
- **“3. Commercial Data:”** This tab is NOT USED for this event.
- **“4. Technical Data:”** This tab is NOT USED for this event.
- **“5. Pricing Data:”** This tab is NOT USED for this event.

Step-by-step instructions for submitting a complete Proposal are provided below:

1. Proposers must upload their Proposal files, including all required forms and files, to submit a complete Proposal. All files must be uploaded before the Proposal Due Date.

2. Submit (upload) one consolidated PDF representing your Proposal via the “2. Upload Documents” tab. That Proposal PDF must abide by the format specified in this Appendix B. A MSWord.docx template that outlines the format of this document is available under the “1. Download Documents” tab for the Proposer’s use. **Response information must be provided in the order, format, and manner specified in this Appendix B and must clearly identify and reference the Appendix B section number that the information relates to.**
   a. Proposers shall use a filename denoting: CompanyName_Proposal#.pdf. (example: AceEnergy_P1.pdf)

3. Proposal information that cannot be easily consolidated into the PDF file described in Step 2 (such as large-scale drawing files) or files that must remain in native file format (such as computer models and spreadsheets) shall be **uploaded separately but must be referenced from within the main Proposal PDF file** (e.g., “See AceEnergyP1V2_2.5_SiteControlMap.kmz”). Such additional files must follow the naming convention below:
   a. File names must include, in order, Company Name, Proposal number (if more than one Proposal being submitted per Proposer), Variation, Appendix B section number, and a file descriptor, as shown in the example file name below:
      AceEnergyP1V2_2.5_SiteControlMap.kmz
   b. Proposers may use abbreviations if they are clear and easy to follow.

   a. For all documents identify the "Document Type" as “Technical Information.” (Do not identify any documents as “Commercial and Administrative” or “Pricing.”)
   b. "Reference ID" may be left blank.
   c. Select "Choose File..." Navigate to and choose the corresponding file from your computer. Select "Open" and then "Submit Document."

There is no limit to the number or size of files that can be uploaded. Multiple files may be grouped into a .zip archive for upload. (Any zipped files must still adhere to the naming directions in #3 above.) When
successfully uploaded, documents will appear under the "Bid Submissions" section on the bottom of the tab's page, organized within the “Technical Information” Document Type. Repeat steps a, b, and c, as required for each file upload.

If a file with the same name is uploaded twice, the Platform will automatically append a unique numerical extension to the Document Name. To delete a file that has been previously uploaded, click on the “X” button in the “Actions” column for the file to be deleted. Do not upload any files prior to the issuance of the Final RFP.

5. The Company will not be responsible for technical problems that interfere with the upload or download of Proposal information. Support is available to answer technical questions about PowerAdvocate’s Sourcing Intelligence from 8 AM to 8 PM Eastern Time (2 AM to 2 PM Hawai‘i Standard Time when daylight savings is in effect) Monday to Friday, except for Holidays posted on the PowerAdvocate website, both by phone (857-453-5800) and by Email (support@poweradvocate.com).

6. Proposers are strongly encouraged to start early and avoid waiting until the last minute to submit the required information. Proposers are allowed to add, modify, and/or delete documents that have been previously submitted any time prior to the event close deadline.

7. Any questions or concerns regarding the RFP may be submitted to the Company Contact via the RFP Email address provided in Section 1.6 of the RFP or via the PowerAdvocate Messaging tab. Per RFP Section 1.4.2, the Independent Observer will monitor messages within the bid event. Proposers are responsible for following instructions and uploading documents in their appropriate locations. Documents uploaded in the wrong tab will not be considered by the Company.

1.3 PROPOSAL COMPLETION AND CONFIRMATION PROCEDURES

To confirm the submission of all proposal files, in the “Status” tab on the Electronic Procurement Platform, confirm that the “Total Uploaded Files” is the number of expected files to be included in the submission by checking it against your list of submitted files.

Example “Status” tab view:

<table>
<thead>
<tr>
<th>Your Bid Intention: Bidding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Uploaded Files:</td>
</tr>
<tr>
<td>Last Upload: 02/08/18</td>
</tr>
<tr>
<td>Saved Commercial Datasheets: 0 of 0</td>
</tr>
<tr>
<td>Saved Technical Datasheets: 0 of 0</td>
</tr>
<tr>
<td>Saved Pricing Datasheets:   0 of 0</td>
</tr>
</tbody>
</table>
2.0 PROPOSAL SUMMARY TABLE

Primary Proposal Summary. For sizing variations, any changes to the summary information for such variations must be specifically identified in a similar table placed in sections 3.1, 3.2, and 3.3 of this Appendix, as applicable.

To be filled out by ALL Proposals:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Proposer Name (Company Name)</td>
</tr>
<tr>
<td>2</td>
<td>Parent Company/Owner/Sponsor/Business Affiliation/etc.</td>
</tr>
<tr>
<td>3</td>
<td>Project Name</td>
</tr>
<tr>
<td>4</td>
<td>Net AC Capacity of the Facility (MW)</td>
</tr>
<tr>
<td>9</td>
<td>Proposal Guaranteed Commercial Operations Date (MM/DD/YYYY)</td>
</tr>
<tr>
<td>10</td>
<td>The Proposer hereby certifies that the Project meets all performance attributes identified in this RFP and the Performance Standards in the applicable RDG PPA? (Yes/No)</td>
</tr>
<tr>
<td>11</td>
<td>The Proposer hereby certifies that no single point of failure from the Facility shall result in a decrease in net electrical output greater than 3.3 MW. Additionally, in meeting this requirement, the Proposer certifies that the Facility is segmented in equally sized capacities. (Yes/No)</td>
</tr>
<tr>
<td>12</td>
<td>The Proposer hereby certifies that the Proposal (including its pricing elements) is not contingent upon changes to existing County, State, or Federal laws or regulations. (Yes/No)</td>
</tr>
<tr>
<td>13</td>
<td>The Proposer hereby agrees to provide Development Period Security and Operating Period Security as set forth in the applicable RDG PPA. (Yes/No)</td>
</tr>
<tr>
<td>14</td>
<td>The Proposer hereby certifies under penalties of perjury that this Proposal has been made in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business partnership, corporation, union, committee, club, or organization, entity, or group of individuals. (Yes/No)</td>
</tr>
</tbody>
</table>

IPP or Affiliate proposals: Complete the summary table items in part A below.

Sealed Self-Build Option Proposal: Complete the summary table items in part B below.
### A. To be filled out by IPP or Affiliate proposals:

<table>
<thead>
<tr>
<th>Question</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>17 Net Energy Potential (NEP) Projection for the Facility (MWh)</td>
<td></td>
</tr>
<tr>
<td>18 Lump Sum Payment ($/Year)</td>
<td></td>
</tr>
<tr>
<td>19 Price for Purchase of Electric Energy, if any ($/MWh)</td>
<td></td>
</tr>
<tr>
<td>20 Incremental cost required to enable Black Start, if any and if</td>
<td></td>
</tr>
<tr>
<td>applicable ($)</td>
<td></td>
</tr>
<tr>
<td>22 Project Energy Storage Technology</td>
<td></td>
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<tr>
<td>23 Energy Storage Capacity for the Facility (MWh)</td>
<td></td>
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<tr>
<td>26 Is the Project capable of being 100% charged from the grid after the</td>
<td></td>
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<tr>
<td>ITC recapture period? (Yes/No)</td>
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</tr>
</tbody>
</table>

### B. To be filled out by the Sealed Self-Build Option Proposal:

<table>
<thead>
<tr>
<th>Question</th>
<th>Description</th>
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<tbody>
<tr>
<td>17 Net Energy Potential (NEP) Projection for the Facility (MWh)</td>
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<tr>
<td>20 Incremental cost required to enable Black Start, if any and if</td>
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<tr>
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<tr>
<td>22 Project Energy Storage Technology</td>
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<td>23 Energy Storage Capacity for the Facility (MWh)</td>
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<tr>
<td>26 Is the Project capable of being 100% charged from the grid after the</td>
<td></td>
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<tr>
<td>ITC recapture period? (Yes/No)</td>
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<tr>
<th>Year (YYYY)</th>
<th>Project Capital Cost ($)</th>
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<table>
<thead>
<tr>
<th>Year (YYYY)</th>
<th>O&amp;M Cost ($)</th>
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<tr>
<th>Year (YYYY)</th>
<th>Annual Revenue Requirement ($)</th>
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Extend the table for questions 29, 30, and 31 for as many years as needed up to the 20-year PPA term.
2.1 REQUIRED FORMS ACCOMPANYING PROPOSAL PDF

The following forms must accompany each proposal, must be attached to the Proposal PDF, and uploaded via the “2. Upload Documents” tab:

- Document signed by a representative for the Proposer authorizing the submission of the Proposal
- Fully executed Stage 2 Mutual Confidentiality and Non-Disclosure Agreement (Appendix E to the RFP, may be downloaded from the “1. Download Documents” tab in the Electronic Procurement Platform)
- Certificate of Good Standing for the Proposer (a Certificate of Vendor Compliance for the Proposer may be provided in lieu of a Certificate of Good Standing)
- Federal and State tax clearance certificates for the Proposer (a Certificate of Vendor Compliance for the Proposer may be provided in lieu of Federal and State tax clearance certificates)
- Certification of Counsel for Proposer, if applicable. (See Appendix B Attachment 1.)
- Completed applicable Interconnection Requirement Study Data Request form for the proposed technology and project single line diagram(s). Models for equipment and controls, list(s) identifying components and respective files (for inverters and power plant controller), and complete documentation with instructions as specified in the Data Request form shall be submitted within the respective timeframes specified in Section 5.1 of the RFP.² (See Section 2.11.1 below)
- [For Self-Build Only] Self-Build Option Team Certification Form. See Appendix G Attachment 1.
- [For Self-Build Only] Revenue Requirements Worksheets that support the annual revenue requirements estimates shall be submitted. See Appendix G Attachment 2 for a starter revenue requirements template example. The revenue requirements worksheets submitted will be modified to reflect the details of the Project’s Proposal. All assumptions used will be reflected in an assumptions input tab. (The starter template can be found in the “1. Download Documents” tab as Appx G Att 2 – Template Rev Req Model MSExcel files.)

2.2 PROPOSAL SUMMARY/CONTACT INFORMATION

2.2.1 Provide a primary point of contact for the Proposal being submitted:
- Name
- Title
- Mailing Address
- Phone Number
- Email Address

2.2.2 Executive Summary of Proposal. The executive summary must include an approach and description of the important elements of the Proposal, including additional descriptions for each sizing variation to the Proposal being submitted. Refer to Section 1.8.2 of the RFP for an explanation of the sizing variations that are required. A table summarizing the differences among the variations shall be included.

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² If the Models, lists, respective files and complete documentation are not submitted with the Proposal upload, they shall be submitted via PowerAdvocate’s Messaging as attachments within the respective timeframes specified in Section 5.1 of the RFP.
2.2.3 **Pricing information.** Pricing information must be filled out in the Section 2.0 Proposal Summary Table above. Each variation’s pricing summary must be identified in a similar pricing table in Sections 3.1, 3.2, 3.3 as applicable. Provide any pricing information only in those table sections – do not embed pricing information in any other portion of the Proposal PDF.

2.2.4 Provide a **high-level overview of the proposed Facility**, including at a minimum the following information:

- Facility Generation Size (MWAC and MWDC)
- Net Maximum Output Capacity of the Facility at the Point of Interconnection (MWAC)
- Identified Available Hosting Capacity of the Transmission-level Circuit Facility Interconnecting to (MWAC)
- Technology Type
- Number of Generators
- Rated Output of each Generator
- Generator Facility Design Characteristics
- Fuel Source for Generation
- Technology Type (i.e. lithium ion battery)
- Discharge Duration (hours)
- Storage Capacity (i.e. amount of energy released to fully discharge and amount of energy required to fully charge, in MW and MWh)
- Operational Limitations, such as, but not limited to: number of charge/discharge cycles per day-month-year (see the energy discharge requirement in Section 1.2.12 and 1.2.13 of the RFP).
- Minimum and Maximum Operational Ranges, such as minimum and maximum required state of charge
- Round Trip Efficiency at rated power measured at the Point of Interconnection (i.e. discharge energy divided by charge energy, expressed as a percentage)
- Round Trip Efficiency using full duty cycle for a fixed duration measured at the Point of Interconnection (%)  

2.3 **FINANCIAL**

Provide the following financial information identified below.

2.3.1 Identification of Equity Participants

2.3.1.1 Who are the **equity participants** in the Project (or the equity partners’ other partners)?

2.3.1.2 Provide an **organizational structure** for the Proposer including any general and limited partners and providers of capital that identifies:

- Associated responsibilities from a financial and legal perspective
- Percentage interest of each party

2.3.2 Project Financing

2.3.2.1 **How will the Project be financed** (including construction and term financing)? Address at a minimum:
• The Project’s projected financial structure
• Expected source of debt and equity financing

2.3.2.2 [For IPP and Affiliate Proposals] Identify all estimated development and capital costs for, at a minimum:

• Equipment
  ▪ Identify the manufacturer and model number for all major equipment
• Construction
• Engineering
• Seller-Owned Interconnection Facilities
• Company-Owned Interconnection Facilities
• Land
• Annual O&M

[For Self-Build Only] Identify all estimated development and capital costs for, at a minimum:

• Facility (including any generation and storage components)
• Outside Services
• Interconnection
• Overhead Costs
• Allowance for Funds Used During Construction
• Annual O&M

2.3.2.3 Discuss and/or provide supporting information on any project financing guarantees.

2.3.2.4 Describe any written commitments obtained from the equity participants.

2.3.2.5 Describe any conditions precedent to project financing, and the Proposer’s plan to address them, other than execution of the Power Purchase Agreement or any other applicable project agreements and State of Hawaii Public Utilities Commission approval of the Power Purchase Agreement and other agreements.

2.3.2.6 Provide any additional evidence to demonstrate that the Project is financeable.

2.3.3 Project Financing Experience of the Proposer
Describe the project financing experience of the Proposer in securing financing for projects of a similar size (i.e., no less than two-thirds the size) and technology as the one being proposed including the following information for any referenced projects:

• Project Name
• Project Technology
• Project Size
• Location
• Date of Construction and Permanent Financing
• Commercial Operations Date
• Proposer’s Role in Financing of the Project
• Off-taker
• Term of the Interconnection Agreement
• Financing Structure
• Major Pricing Terms
• Name(s) of Finance Team Member(s); Time (i.e., years, months) worked on the project and Role/Responsibilities

2.3.4 Evidence of the Proposer’s Financial Strength

2.3.4.1 Provide copies of the Proposer’s audited financial statements (balance sheet, income statement, and statement of cash flows):
• Legal Entity
  o Three (3) most recent fiscal years
  o Quarterly report for the most recent quarter ended
• Parent Company
  o Three (3) most recent fiscal years
  o Quarterly report for the most recent quarter ended

2.3.4.2 Provide the current credit ratings for the Proposer (or Parent Company, if not available for Proposer), affiliates, partners, and credit support provider:
• Standard & Poor’s
• Moody’s
• Fitch

2.3.4.3 Describe any current credit issues regarding the Proposer or affiliate entities raised by rating agencies, banks, or accounting firms.

2.3.4.4 Provide any additional evidence that the Proposer has the financial resources and financial strength to complete and operate the Project as proposed.

2.3.5 Provide evidence that the Proposer can provide the required securities

2.3.5.1 Describe the Proposer’s ability (and/or the ability of its credit support provider) and proposed plans to provide the required securities including:
• Irrevocable standby letter of credit
• Sources of security
• Description of its credit support provider

2.3.6 Disclosure of Litigation and Disputes
Disclose any litigation, disputes, and the status of any lawsuits or dispute resolution related to projects owned or managed by the Proposer or any of its affiliates

2.4 CONTRACT EXCEPTIONS AND FINANCIAL COMPLIANCE
2.4.1 If Proposers elect to propose modifications to the Model PPA, provide a Microsoft Word redline version of the Model PPA identifying specific proposed modifications to the model language that the
Proposer is agreeable to and a detailed explanation and supporting rationale for each modification. General comments, drafting notes, and footnotes such as “parties to discuss” are unacceptable and will be considered non-responsive.

Proposers that do not upload redlines of the applicable PPA with their Proposal submission will be deemed to have accepted the model PPA in its entirety.

2.4.2 State to the best of the Proposer’s knowledge: Will the Project result in consolidation of the Developer entity’s finances onto the Company’s financial statements under FASB 810. Provide supporting information to allow the Company to verify such conclusion.

2.5 PROJECT SITE INFORMATION

2.5.1 Provide a site layout plan which illustrates:
- Proposed location of all equipment
- Proposed location of all facilities on the site, including any proposed line extensions
- Site boundaries (if the proposed Project does not cover the entire Site)

2.5.2 Describe the Interconnection route and include:
- Site sketches of how the facility will be interconnected to the Company’s System (above-ground and/or underground)
- Identify the approximate latitude and longitude of the proposed Point of Interconnection, in decimal degrees format, to six (6) decimal places.
- Description of the rationale for the interconnection route

2.6 ENVIRONMENTAL REVIEW, PERMITTING PLAN, ENVIRONMENTAL COMPLIANCE/IMPACTS

2.6.1 Describe your overall land use and environmental permits and approvals strategy and approach to obtaining successful, positive results from the agencies and authorities having jurisdiction, including:
- Explanation of the conceptual plans for siting
- Studies/assessments
- Permits and approvals
- Gantt format schedule which identifies the sequencing of permit application and approval activities and critical path. (Schedule must be in MM/DD/YY format.)

2.6.2 Discuss the City Zoning and State Land Use Classification:
- Identify present and required zoning and the ability to site the proposed Project within those zoning allowances.
- Identify present and required land use classifications and the ability to site the proposed Project within those classifications.
- Provide evidence of proper zoning and land use classifications for selected site and interconnection route.
• If changes in the above are required for the proposed Project, provide a plan and timeline to secure the necessary approvals.

2.6.3 Identify all required discretionary and non-discretionary **land use, environmental and construction permits, and approvals** required for development, financing, construction, and operation of the proposed Project, including but not limited to zoning changes, Environmental Assessments, and/or Environmental Impacts Statements.

Provide a **listing of such permits and approvals** indicating:

- Permit Name
- Federal, State, or Local agencies and authorities having jurisdiction over the issuance
- Status of approval and anticipated timeline for seeking and receiving the required permit and/or license
- Explanation of your basis for the assumed timeline
- Explain any situation where a permit or license for one aspect of the Project may influence the timing or permit of another aspect (e.g. a case where one permit is contingent upon completion of another permit or license), if applicable.

2.6.4 Provide a **preliminary environmental assessment of the site** (including any pre-existing environmental conditions) and potential short- and long-term **impacts** associated with, or resulting from, the proposed Project – including direct, indirect, and cumulative impacts associated with development, construction, operation, and maintenance of the proposed Project in every area identified below. Discuss if alternatives have been or will be considered. The assessment shall also include Proposer’s short- and long-term plans to mitigate such impacts and explanation of the mitigation strategies for, but not limited to, each of the major environmental areas as presented below:

- **Natural Environment**
  - Air quality
  - Biology (Natural habitats and ecosystems, flora/fauna/vegetation, and animals, especially if threatened or endangered)
  - Climate
  - Soils
  - Topography and geology
- **Land Regulation**
  - Land Uses, including any land use restrictions and/or pre-existing environmental conditions/contamination
  - Flood and tsunami hazards
  - Noise
  - Roadways and Traffic
  - Utilities
- **Socio-Economic Characteristics**
- **Aesthetic/Visual Resources**
- **Solid Waste**
- **Hazardous Materials**
- **Water Quality**
- **Public Safety Services (Police, Fire, Emergency Medical Services)**
- **Recreation**
- **Potential Cumulative and Secondary Impacts**

2.6.5 Provide a **decommissioning plan**, including:
• Developing and implementing program for recycling to the fullest extent possible, or otherwise properly disposing of installed infrastructure, if any, and
• Demonstrating how restoration of the Site to its original ecological condition is guaranteed in the event of default by the Proposer in the applicable Site Control documentation.

2.7 CULTURAL RESOURCE IMPACTS

2.7.1 Provide a plan to select and engage with a consultant, with expertise in the field, to identify any cultural, historical or natural resources as they pertain to the Project Site and interconnection route. For any impacts that are identified to the categories listed below, describe the Proposer’s plan to address and mitigate such impacts.

• Archaeological Resources
• Cultural Practices and Resources

2.8 COMMUNITY OUTREACH

2.8.1 Provide a detailed Community Outreach Plan to work with and inform neighboring communities and stakeholders and to provide them timely information during all phases of the Project. The plan shall address, but not be limited to, the following items:

• Project description
• Community scoping
• Project benefits
• Government approvals
• Development process
• Identification of communities and other stakeholders that may be affected by the proposed Project:
  o How will they be affected?
  o What mitigation strategies will the Proposer implement?
• Comprehensive communication strategy with affected communities and the general public regarding the proposed Project:
  o Describe frequency of communication
  o Provide source of information
  o Identify communication outlets
  o Describe opportunities, if any, for affected communities and general public to provide the developer with feedback and comments on the proposed Project

2.8.2 Provide any documentation of local community support or opposition including any letters from local organizations, newspaper articles, or communications from local officials.

2.8.3 Provide a description of community outreach efforts already taken or currently underway, including the names of organizations and stakeholders contacted about the proposed Project.

2.8.4 Describe any anticipated or negotiated investment in the community and other community benefits that the Proposer proposes to provide in connection with the Project, along with an estimated value of the community benefits in dollars (including the cost to Proposers providing the benefits and supporting details on how those costs and benefits were derived).
2.9 OPERATIONS AND MAINTENANCE (O&M)

2.9.1 To demonstrate the long-term operational viability of the proposed Project, describe the planned operations and maintenance, including:

- Operations and maintenance funding levels, annually, throughout the term of the contract.
- Description of the operational requirements by frequency (daily, weekly, monthly, yearly, as-necessary, run hour interval) and maintenance requirements by frequency (daily, weekly, monthly, yearly, as-necessary, run hour interval).
- A discussion of the staffing levels proposed for the Project and location of such staff. If such staff is offsite, describe response time and ability to control the Project remotely.
- Technology specific maintenance experience records.
- Identification of any O&M providers.
- The expected role of the Proposer (Owner) or outside contractor.
- Scheduling of major maintenance activity.
- Plan for testing equipment.
- Estimated life of Generation and/or Storage Facilities and associated Interconnection Facilities.
- Safety plan, including historical safety records with environmental history records, violations, and compliance plans.
- Security plan.
- Site maintenance plan.
- Substation equipment maintenance plan.

2.9.2 State whether the Proposer would consider 24-hour staffing. Explain how this would be done.

2.9.3 Describe the Proposer’s contingency plan, including the Proposer’s mitigation plans to address failures. Such information should be described in the Proposal to demonstrate the Project’s reliability with regard to potential operational issues.

2.9.4 Describe if the Proposer will coordinate their maintenance schedule for the Project with the Company’s annual planned generation maintenance. See Article 5 of the model RDG PPA.

2.9.5 Describe the status of any O&M agreements or contracts that the Proposer is required to secure. Include a discussion of the Proposer’s plan for securing a long-term O&M contract.

2.9.6 Provide examples of the Proposer’s experience with O&M services for other similar projects.

2.10 PERFORMANCE STANDARDS

2.10.1 Design and operating information. Provide a description of the project design. Description shall include:

- Configuration description
- Overview of the Facility Control Systems – central control and inverter- or resource-level control
- Diagrams approved by a Professional Electrical Engineer registered in the State of Hawai‘i, indicated by the presence of the Engineer’s Professional seal on all drawings and documents. Including but not limited to:
o A single-line diagram, relay list, trip scheme and settings of the generating facility, which identifies the Point of Interconnection, circuit breakers, relays, switches, synchronizing equipment, monitoring equipment, and control and protective devices and schemes.

o A three-line diagram which shows the Point of Interconnection, potential transformer (PT) and current transformer (CT) ratios, and details of the generating facility configuration, including relays, meters, and test switches.

2.10.1.1 Provide the projected hourly annual energy potential production profile of the Facility\(^3\) (24 hours x 365 days, 8760 generation profile) for the provided RFP NEP Projection.

2.10.1.2 Provide the sample rate of critical telemetry (i.e. frequency and voltage) based on inputs to the facility control systems.

2.10.1.3 Provide a description of the Facility’s capability to be grid-forming and have black-start capability. If black start is not a capability already enabled, provide a description of the modifications to the Facility necessary to enable black start and any additional cost to include that capability (within the summary tables of Section 2.0).

2.10.2 Capability of Meeting Performance Standards. The proposed Facility must meet the performance attributes identified in this RFP and the Performance Standards identified in the RDG PPA. Provide confirmation that the proposed Facility will meet the requirements identified in the Model PPA or provide clarification or comments about the Facility’s ability to meet the performance standards. Proposals should include sufficient documentation to support the stated claim that the Facility will be able to meet the Performance Standards. The Proposal should include information required to make such a determination in an organized manner to ensure this evaluation can be completed within the evaluation review period.

2.10.3 Reactive Power Control: Provide the facility's ability to meet the Reactive Power Control capabilities, including Voltage Regulation at the point of interconnection, required in the Performance Standards, including contribution from the inverters of generation and/or storage and means of coordinating the response. Provide the inverter capability curve(s). Confirm ability to provide reactive power at zero active power.

2.10.4 Ramp Rate for Generation Facilities: Confirm the ability to meet the ramp rate requirement specified in the Model PPA.

2.10.5 Undervoltage ride-through: Provide the facility’s terminal voltage level(s) and elapsed time at which the facility will disconnect from the utility system during the disturbance, if any. Confirm the ability to meet ride-through requirements and include supporting documentation regarding inverter design, control parameters, etc.

2.10.6 Overvoltage ride-through: Provide the facility’s terminal voltage level(s) and elapsed time at which the facility will disconnect from the utility system during the disturbance, if any. Confirm the ability to

\(^3\) The projected hourly annual energy production profile is the projected output from the generating facility without curtailment and before any energy is directed to an energy storage component, if one will be provided.
meet ride-through requirements and include supporting documentation regarding inverter design, control parameters, etc.

2.10.7 **Transient stability ride-through:** Provide the facility's ability to stay online during Company System: (1) three-phase fault located anywhere on the Company System and lasting up to ___ cycles; and (2) a single line to ground fault located anywhere on the Company System and lasting up to ___ cycles. Provide the Facility’s ability to withstand subsequent events.

2.10.8 **Underfrequency ride-through:** Provide the facility’s terminal frequency level(s) and elapsed time at which the facility will disconnect from the utility system during the disturbance, if any. Confirm the ability to meet ride-through requirements and include supporting documentation regarding inverter design, control parameters, etc.

2.10.9 **Overfrequency ride-through:** Provide the facility’s terminal frequency level(s) and elapsed time at which the facility will disconnect from the utility system during the disturbance, if any. Confirm the ability to meet ride-through requirements and include supporting documentation regarding inverter design, control parameters, etc.

2.10.10 **Frequency Response:** Provide the facility’s frequency response characteristics as required by the Model PPA, including time of response, tunable parameters, alternate frequency response modes, and means of implementing such features.

2.10.11 **Auxiliary Power Information:** Proposer must provide the maximum auxiliary power requirements for:
- Start-up
- Normal Operations (from generator)
- Normal Operating Shutdown
- Forced Emergency Shutdown
- Maintenance Outage

2.10.12 **Coordination of Operations:** Provide a description of the control facilities required to coordinate generator operation with and between the Company’s System Operator and the Company’s System.
- Include a description of the equipment and technology used to facilitate dispatch to the Company and communicate with the Company.
- Include a description of the control and protection requirements of the generator and the Company’s System.

2.10.13 **Cycling Capability:** Describe the Facility’s ability to cycle on/off and provide limitations.

2.10.14 **Active Power Control Interface:** Describe the means of implementing active power control and the Power Possible, including the contribution to the dispatch signal from paired storage, if any. Provide the Proposer’s experience dealing with active power control, dispatch, frequency response, and ride-through.

2.10.15 Provide the details of the major equipment (i.e. batteries, inverters, battery management system), including, but not limited to, name of manufacturer, models, key metrics, characteristics of the equipment, and performance specifications.
2.10.16 **Energy Storage performance standards:** Provide additional performance standard descriptions as follows:

- Number of cycles per day, or equivalent MWh storage output for a full year
- Ramp Rate: Provide the Facility’s ramp rate, which should be no more than 2 MW/minute for all conditions other than those under control of the Company System Operator and/or those due to desired frequency response.
- System Response Time – Idle to Design Maximum (minutes)
- Discharge Start-up time (minutes from notification)
- Charge Start-up time (minutes from notification)
- Start and run-time limitations, if any
- Ancillary Services provided, if any (i.e. Spinning Reserves, Non-Spinning Reserves, Regulation Up, Regulation Down, Black Start capability, other)

2.10.17 Provide the description and details of the **grid-charging capabilities of the Facility.** Include a description on the ability to control the charging source.

2.11 **INTERCONNECTION REQUIREMENT STUDY**

2.11.1 Provide the completed **Interconnection Requirement Study Data Request form** for the proposed technology with the Proposal submission. (The form can be found in the “1. Download Documents” tab as Appx B Att 2 IRS Data Request Form (PV Generation) MS Excel file.) Also provide all **project single line diagram(s)** with the Proposal submission. **Models for equipment and controls, list(s)** identifying components and respective files (for inverters and power plant controller), and **complete documentation with instructions** shall be submitted within the timeframes specified in Section 5.1 of the RFP. Proposers may also download the PSCAD model requirements memo labelled as Appx B Att 3 from the “1. Download Documents” tab.

2.12 **PROVEN TECHNOLOGY**

2.12.1 Provide all supporting information for the Company to assess the **commercial and financial maturity of the technology** being proposed. Provide any supporting documentation that shows examples of projects that:

- Use the technology at the scale being proposed
- Have successfully reached commercial operations (for example, by submitting a PPA)
- Demonstrate experience in providing Active Power dispatch

2.13 **EXPERIENCE AND QUALIFICATIONS**

Proposers, its affiliated companies, partners, and/or contractors and consultants are required to demonstrate project experience and management capability to successfully develop and operate the proposed Project.

2.13.1 Provide an **organizational chart** for the Project that lists the project participants and identifies the management structure and responsibilities.
For each of the project participants (including the Proposer, partners, and proposed contractors), fill out the table below and provide statements that list the specific experience of the firm in: financing, designing, constructing, interconnecting, owning, operating, and maintaining renewable energy generating or storage facilities, or other projects of similar size and technology, and

- Provide any evidence that the project participants have worked jointly on other projects.

<table>
<thead>
<tr>
<th>Participant Name:</th>
<th>Financing</th>
<th>Designing</th>
<th>Constructing</th>
<th>Interconnecting</th>
<th>Owning</th>
<th>Operating</th>
<th>Maintaining</th>
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EXPERIENCE:
In the applicable columns below, include project details (i.e., project name, location, technology, size) and relevant job duties (role/responsibilities) and time (in years/months) spent on the project. List multiple projects if applicable.

2.13.2 Identify those **member(s) of the team** the Proposer is submitting to meet the experience Threshold Requirement and demonstrate the member(s) firm commitment to provide services to the Proposer.

2.13.3 Identify those **members of the team with experience and qualifications**, including affiliates, and their principal personnel who will be involved in the project contracting to sell and deliver energy. If the Proposer consists of multiple parties, such as joint ventures or partnerships, provide this information for each party, clearly indicating the proposed role of each party, including an ownership chart indicating direct and indirect ownership, and percentage interests in the partnership or joint venture.

2.13.4 Provide a **management chart** which lists the key personnel dedicated to this Project and provide biographies / resumes of the key personnel, including position, years of relevant experience, and similar project experience. Provide specifics as they relate to financing of renewable energy projects. Identify architects and engineers or provision to provide same that are licensed to practice in the State of Hawai‘i.

2.13.5 Provide a **listing in the table format below, of all renewable energy generation or energy storage projects** the Proposer has successfully developed or that are currently under construction. Describe the Proposer’s role and responsibilities associated with these projects (lead developer, owner, investor, etc.). Provide the following information as part of the response:

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Location (City, State)</th>
<th>Technology (wind, PV, hydro, plus storage, etc.)</th>
<th>Size (MW/MWh)</th>
<th>Commercial Operation Date</th>
<th>Offtaker (if applicable)</th>
<th>Role &amp; Responsibilities</th>
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</table>
2.14 PROJECT SCHEDULE

2.14.1 Provide a **project schedule in GANTT chart format** with complete **critical path activities** identified for the Proposal from the Notice of Selection of the Proposal for contract negotiation to the start of Commercial Operations.

- The **schedule** must include:
  - Interconnection Requirement Study (IRS) assumptions
  - Anticipated contract negotiation period assumptions
  - Regulatory assumptions
  - Anticipated submittal and approval dates for permitting (including but not limited to environmental and archaeological compliance)
  - Cultural Resource implications and mitigation activities
  - Community outreach and engagement activities
  - Energy resource assessment
  - Financing
  - Engineering
  - Procurement
  - Facility construction including construction management events
  - Applicable reporting milestone events specified in the Model PPA
  - Testing
  - Interconnection (including engineering, procurement, and construction)
  - Commercial Operations Date
  - All other important elements outside of the direct construction of the Project

- For each project element, list the start and end date (must be in MM/DD/YY format), and include predecessors to clearly illustrate schedule dependencies and durations.
- Proposers must also list and describe critical path activities and milestone events, particularly as they relate to the integration and coordination of the project components and the Company’s Electric System. Proposers must ensure that the schedule provided in this section is consistent with the milestone events contained in the PPA and/or other agreements.

2.14.2 Describe the **construction execution strategy** including:

- Identification of contracting/subcontracting plans
- Modular construction
- Safety plans
- Quality control and assurance plan
- Labor availability
- Likely manufacturing sites and procurement plans
- Similar projects where these construction methods have been used by the Proposer.

2.14.3 Explain how you plan to reach **safe harbor milestones** (if applicable) and **guaranteed commercial operations**, including durations and dependencies which support this achievement.

---

4 A document that describes the various safety procedures and practices that will be implemented on the Project and how applicable safety regulations, standards, and work practices will be enforced on the Project.
3.0 PROPOSAL SIZING VARIATIONS

Proposers are required to submit sizing variations of its Proposal as described in Section 1.2.1 of this RFP and must provide the details of each variation in the below section(s). In each proposal variation section below, Proposers must add the applicable tables from Section 2.0 Proposal Summary of this Appendix B. The information in these tables should reflect the information for the variation being proposed. Additionally, Proposers must identify all changes to the information provided in response to Sections 2.1 through 2.14 of this Appendix B for the proposal variation. If differences are not identified for the Section 2.0 Proposal Summary or a particular section in Sections 2.1 through 2.14, the Company will assume that the information contained in the base Proposal also applies to the proposal variation.

Note: Section 2.2.2 above requires a table summarizing the differences among the variations.

3.1 SIZING VARIATION 1

Identified changes to Sections 2.0 through 2.14, as required for each variation.

3.2 SIZING VARIATION 2

Identified changes to Sections 2.0 through 2.14, as required for each variation.

3.3 SIZING VARIATION 3

Identified changes to Sections 2.0 through 2.14, as required for each variation.
Certification of Counsel for Proposer

Variable Renewable Dispatchable Generation Paired with Energy Storage RFP

Pursuant to Section 1.7.3 of Hawaiian Electric Company, Inc., Hawai‘i Electric Light Company, Inc. and Maui Electric Company, Limited’s (each a “Company” and collectively, the “Companies”) Request For Proposals for Variable Renewable Dispatchable Generation Paired with Energy Storage (“RFP”), the Companies may require legal counsel who represent multiple unaffiliated proposers to sign a certification that they have not shared confidential information obtained through the representation of one proposer with any other unaffiliated proposer.

Accordingly, by signing below, I hereby acknowledge, agree and certify that:

1) in connection with the RFP, I represent the following company that has submitted a proposal(s) for the RFP: ___________________ (“Proposer”);

2) irrespective of any proposer’s direction, waiver or request to the contrary, I will not share a proposer’s confidential information or the Company’s confidential information associated with such proposer, including, but not limited to, a proposer’s or Company’s negotiating positions, with third parties unaffiliated with Proposer (by contract or organizational structure), including other proposers responding to the RFP;

3) the Companies may rely on this certification for purposes of the RFP; and

4) at the conclusion of power purchase agreement negotiations, if any, the Company may require me to sign a certificate certifying that I have not shared a proposer’s confidential information or the Company’s confidential information associated with such proposer, including, but not limited to, a proposer’s or Company’s negotiating positions, with third parties unaffiliated with Proposer (by contract or organizational structure), including other proposers responding to the RFP.

Name (print)

Law Firm (if applicable)

Signature Date

Section 1.7.3 of the RFP provides in relevant part that:

In submitting a Proposal in response to this RFP, each Proposer certifies that the Proposal has been submitted in good faith and without fraud or collusion with any other unaffiliated person or entity. The Proposer shall acknowledge this in the Response Package submitted with its Proposal. Furthermore, in executing the NDA provided as Appendix E, the Proposer agrees on behalf of its Representatives (as defined in the NDA) that the Company’s negotiating positions will not be shared with other Proposers or their respective Representatives.

In addition, in submitting a Proposal, a Proposer will be required to provide Company with its legal counsel’s written certification in the form attached as Appendix B Attachment 1 certifying in relevant part that irrespective of any proposer’s direction, waiver, or request to the contrary, that the attorney will not share a proposer’s confidential information associated with such proposer, including, but not limited to, a proposer’s or Company’s negotiating positions, with third parties unaffiliated with Proposer (by contract or organizational structure), including other proposers.
responding to the RFP. If legal counsel represents multiple unaffiliated proposers whose Proposals are selected for the Final Award Group, such counsel will also be required to submit a similar certification at the conclusion of power purchase agreement negotiations that he or she has not shared a proposer’s confidential information or the Company’s confidential information associated with such proposer, including but not limited to, a proposer’s or Company’s negotiating positions, with third parties unaffiliated with such proposer (by contract or organizational structure), including other proposers responding to the RFP.
Interconnection Requirement Study - Data Request
FOR PV GENERATION
PROJECT: 
DATE: 
(Nonexclusive Preliminary List)

***ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.***

<table>
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<th>Response</th>
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1) Please provide a plan map of the Non-Utility Generation (NUG) facility. Please indicate the interconnection point to the HECO system.

2) Please provide the following generation and load information for the NUG facility:
   - a. Gross and net output of the facility
   - b. Expected KW and KVAR loads including, but not limited to, generators' auxiliary load curve, process load(s) profile(s), etc.
   - c. Expected minimum and maximum MW and MVAR "import from" AND "export to" HECO.

3) Please provide Single-Line Diagram(s), Three-Line Diagram(s), and Protective Relay List & Trip Schedule for the generation and interconnection facilities:
   - a. The Single-line diagram(s) and Three-line diagram(s) should include:
     - i. For main and generator step up transformer(s), please show:
       - Transformer voltage and MVA ratings.
       - Transformer impedance(s).
       - Transformer winding connections and grounding. If neutrals are grounded through impedance, please show the impedance value.
     - ii. The protective relaying and metering for the generators, transformers, buses, and all other main substation equipment.
     - iii. For the potential transformers, please indicate the type, quantity, ratio, and accuracy rating.
     - iv. For the current transformers, please indicate the type, quantity, ratio, and accuracy rating, and thermal rating factor.
     - v. Auxiliary power devices (e.g. capacitors, reactors, storage systems, etc.) and their rating(s); additional inquiries may be made to obtain technical data for these devices.
     - vi. For the interconnection / tie lines (overhead or underground) and the plant's generation system, please provide the following, as applicable:
       - Installation details such as cross-section(s), plan and profiles, etc.
       - Conductor data such as size, insulation, length etc.
       - Voltage rating (nominal and maximum KV).
       - BIL rating.
       - Positive, negative, and zero-sequence impedances (resistance, reactance, and susceptance)
       - Capacitance or charging current.
       - Short-circuit current capability.
     - vii. Include station power for facility and all applicable details.
     - viii. All applicable notes pertaining to the design and operation of the facility.
   - b. The Protective relay list & trip schedule should list the protected equipment; the relay description, type, style number, quantity, ANSI Device No., and range; and the breaker(s)/switching device(s) tripped, for both the generator protection and the interconnection facilities protection.
   - c. Please provide both a paper and an electronic version (e.g. dgn, dxf, or pdf) of the single-line diagram(s) and the protective relay list & trip schedule.
   - d. Single-line diagrams should be provided for both the generation plant and the interconnection substation.
Interconnection Requirement Study - Data Request  
FOR PV GENERATION  
PROJECT:  
DATE:  
(Nonexclusive Preliminary List)  
***ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.***

<table>
<thead>
<tr>
<th>4) For the PV Inverter Based Generating Facility, please provide the following data:</th>
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<tbody>
<tr>
<td>a. Inverter manufacturer, Type, Size, Impedances. Attach copy of inverter data sheet.</td>
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<tr>
<td>b. Power Factor Range Capability</td>
</tr>
<tr>
<td>c. Inverter Reactive Power Capability Curve</td>
</tr>
<tr>
<td>d. Auxiliary loads (P, Q, Power Factor)</td>
</tr>
<tr>
<td>e. Ramp rates (up, down) Typical and Measured Proxy Data</td>
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<tr>
<td>f. Inverter’s Internal Isolation Transformer Grounding Method, if used (i.e. effectively grounded, resonant grounded, low inductance grounded, high-resistance grounded, low-resistance grounded, ungrounded). If the transformer is not solidly grounded, provide the impedance value for the grounding neutral and the impedance for the isolation transformer.</td>
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<tr>
<td>g. Diagram for Inverter’s internal isolation transformer</td>
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<tr>
<td>h. Switching and service restoration practice</td>
</tr>
<tr>
<td>i. Protection data (voltage ride-through and trip settings, frequency ride-through and trip settings etc.). Include setpoint and clearing time ranges for voltage and frequency settings.</td>
</tr>
<tr>
<td>j. Details of filters etc. at Point of Interconnection</td>
</tr>
<tr>
<td>k. Description of harmonic spectrum of inverter injection (order, magnitude)</td>
</tr>
<tr>
<td>l. Description of PV inverter with respect to varying levels of solar irradiance</td>
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<tr>
<th>5) Energy Storage System, if applicable</th>
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<tbody>
<tr>
<td>a. Operation characteristics</td>
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<tr>
<td>b. Voltage level</td>
</tr>
<tr>
<td>c. Capacity (how long and how much can the battery support)</td>
</tr>
<tr>
<td>d. Deployment strategy/schedule</td>
</tr>
<tr>
<td>e. Energy storage system data sheet</td>
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<tr>
<th>6) For the PV plant’s collector system, please provide the following, as applicable:</th>
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<tbody>
<tr>
<td>a. Conductor data such as size, insulation, etc.</td>
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<tr>
<td>b. Continuous and emergency current ratings.</td>
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<tr>
<td>c. Voltage rating (nominal and maximum kV).</td>
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<tr>
<td>d. BIL rating.</td>
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<tr>
<td>e. Positive, negative, and zero-sequence impedances (resistance, reactance, and susceptance).</td>
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<tr>
<td>f. Capacitance or charging current.</td>
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<tr>
<td>g. Short-circuit current capability.</td>
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### Interconnection Requirement Study - Data Request

**FOR PV GENERATION**

**PROJECT:**

**DATE:**

(Nonexclusive Preliminary List)

***ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.***

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7) **Please provide the following software models that accurately represent the Facility:**

- **a.** Validated PSS/E load flow model up to the point of interconnection. The PSS/E model shall include the main transformer, collection system, generator step-up transformers, inverter systems, and any other components including capacitor banks, energy storage systems, DVAR, etc. An equivalent representation of the collection system, generator step-up transformers, and inverter systems is acceptable. Documentation on the model shall be provided.

- **b.** Validated PSS/E dynamic model for the inverter; and other components including energy storage system, DVAR, etc. if applicable. The inverter model shall include the generator/converter, electrical controls, plant-level controller, and protection relays. Generic and Detailed models shall be provided. Documentation on the model(s) shall be provided, including the PSS/E dyre file with model parameters.

  - **i.** Generic models shall parameterize models available within the PSS/E standard model library.

  - **ii.** Detailed models shall be supplied by the vendor/manufacturer as user-written models. The uncompiled source code for the user-written model shall be provided to ensure compatibility with future versions of PSS/E. In lieu of the uncompiled source code, a compiled object file and applicable library files shall be provided in PSS/E versions 33 AND 34 format. Updates of the object file compatible with future PSS/E versions must be provided as requested for the life of the project as written in the power purchase agreement. Documentation shall include the characteristics of the model, including block diagrams, values, names for all model parameters, and a list of all state variables.

- **c.** Validated PSCAD model of the inverter; and other components including energy storage system, DVAR, auxiliary plant controllers, etc. if applicable. Documentation on the model(s) shall be provided. Refer to PSCAD Technical Memo for model requirements.

- **d.** Overlayed plots validating the performance of the three dynamic models for a three-phase fault. Plots shall include voltage, real and reactive power, real and reactive current.

- **e.** Voltage plot validating the performance of inverter to meet the Companies’ Transient Overvoltage (TrOV-2) policy. Plot shall show the inverter trip and resulting voltage and current waveforms. Refer to Appendix E of Companies’ Grid Supportive Utility-Interactive Inverter Qualification Requirements.

- **f.** Validated Aspen Oneliner short circuit model that accurately represents the facility (including energy storage system if applicable), and is valid for all faults conditions anywhere on the Utility system. Documentation on the model(s) shall be provided. (OTHERWISE SEE ADDITIONAL TABS FOR REQUIRED INFORMATION TO MODEL INVERTER)

8) **For the main transformer and generator step-up transformers, please provide:**

- **a.** Transformer voltage and MVA ratings, and available taps. Attach copy of transformer test report or data sheet

- **b.** The tap settings used.

- **c.** The LTC Control Scheme.

- **d.** Transformer winding connections and grounding used. If the transformer is not solidly grounded, provide the impedance value for the grounding method.

- **e.** Positive, negative, and zero sequence impedance values.

9) **For the circuit breakers and fault-clearing switching devices, including the generator breakers, please provide:**

- **a.** The voltage, continuous current and interrupting capability ratings.

- **b.** The trip speed (time to open).
Interconnection Requirement Study - Data Request
FOR PV GENERATION

(Nonexclusive Preliminary List)

***ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.***

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<td>10) For the power fuses, please provide:</td>
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<tr>
<td>a.</td>
<td>The manufacturer, type, size, and interrupting capability.</td>
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<tr>
<td>b.</td>
<td>The minimum melt and total clearing curves.</td>
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<td>11) For the protective relaying, please provide:</td>
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<tr>
<td>a.</td>
<td>Data for the CTs used with the relaying including the manufacturer, type of CT, accuracy class, and thermal rating factor.</td>
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<tr>
<td>b.</td>
<td>Data for the PTs used with the relaying including the manufacturer, type of PT, voltage ratings, and quantity.</td>
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<td>12) Please provide protective relay settings for existing and proposed generators, including but not limited to, reverse power, negative sequence, over and underfrequency, over and under voltage, volts per hertz, etc.</td>
<td></td>
</tr>
</tbody>
</table>
Instructions:
Please fill in the data in the green blanks below
(Note: This does not include the internal isolation transformer, if used)

[1] Maximum rated output power = [ ] kVA

[2] Impedances in Per Unit based on kVA from [1]

<table>
<thead>
<tr>
<th>Impedance Type</th>
<th>R</th>
<th>X</th>
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<tr>
<td>Subtransient</td>
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<td>Transient</td>
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<tr>
<td>Synchronous</td>
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<td>Negative Sequence</td>
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<tr>
<td>Zero Sequence</td>
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</tr>
</tbody>
</table>

[3] Neutral impedance (if any) in actual Ohms:

NOTE: These parameters should reflect the inverter response for all types of faults at any point on the electrical system to which the inverter is connected. This includes faults at the inverter output terminals, and also on the 138 kV transmission system. If the stated parameters do not cover this range, please state the adjustments needed to these parameters to accurately represent the inverter response across this range.

These parameters will be used to model the inverter in the Aspen Oneliner program as shown in the sample dialog box below:
Instructions:
Please fill in the data in the green blanks below

[1] Internal open circuit voltage
   Magnitude = Per Unit
   Angle = Degrees


NOTE: These parameters should reflect the inverter response for all types of faults at any point on the electrical system to which the inverter is connected. This includes faults at the inverter output terminals, and also on the 138 kV transmission system. If the stated parameters do not cover this range, please state the adjustments needed to these parameters to accurately represent the inverter response across this range.

These parameters will be used to model the inverter in the Aspen Oneliner program as shown in the sample dialog box below:
Instructions:
Please fill in the data in the green blanks below
(Note: This is not required if an internal isolation transformer is not used)

[1] Transformer rated power = kVA

   Inverter Side = Delta/Wye
   Customer Side = Delta/Wye

[2] Impedances in **Per Unit** based on kVA
   Positive Sequence =
   Zero Sequence =

[3] Neutral impedance (if any) in actual **Ohms**:

These parameters will be used to model the inverter in the Aspen Oneliner program as shown in the sample dialog box below:
Recommended PSCAD model requirements Rev. 5

Date: February 15, 2018
Prepared By: Andrew L. Isaacs P.Eng.
Garth Irwin P.Eng.

Phone: 1-204-953-1833
12-75 Scurfield Blvd.
Winnipeg, MB, Canada, R3Y 1P6
www.electranix.com
Introduction
Specific model requirements for a PSCAD study depend on the type of study being done. A study with a scope covering weak system interconnections, ride-through evaluation, short term event response, and fast control interaction with nearby devices (for example) would require a model which has the following characteristics. Some specialty studies may require other features.

Model Accuracy Features
For the model to be sufficiently accurate, it must:

A. Represent the full detailed inner control loops of the power electronics. The model cannot use the same approximations classically used in transient stability modeling, and should fully represent all fast inner controls, as implemented in the real equipment. It is possible to create models which embed the actual hardware code into a PSCAD component, and this is the recommended type of model.2

B. Represent all control features pertinent to the type of study being done. This may include external voltage controllers, plant level controllers, customized PLLs, ride-through controllers, SSCI damping controllers or others. As in point A, actual hardware code is recommended to be used for most control and protection features. Operating modes that require system specific adjustment should be user accessible. In most cases, plant level voltage control should be represented along with adjustable droop characteristics.

C. Represent all pertinent electrical and mechanical configurations. This includes any filters and specialized transformers. There may be other mechanical features such as gearboxes, pitch controllers, or others which should be modelled if they impact electrical performance within the timeframe of the study. Any control or dynamic features of the actual equipment which may influence behaviour in the simulation period which are not represented or which are approximated should be clearly identified.

D. Have all pertinent protections modeled in detail for both balanced and unbalanced fault conditions. Typically this includes various OV and UV protections (individual phase and RMS), frequency protections, DC bus voltage protections, converter overcurrent protections, and often other inverter

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1 Example analysis periods could be 2 to 10 seconds from fault inception. Some studies could require longer periods.

2 The model must be a full IGBT representation (preferred), or may use a voltage source interface that mimics IGBT switching (i.e., a firing pulse based model). A three phase sinusoidal source representation is not acceptable. Models manually translated block-by-block from MATLAB or control block diagrams may be unacceptable because the method used to model the electrical network and interface to the controls may not be accurate, or portions of the controls such as PLL circuits or protection circuits may be approximated or omitted. Note, however, that MATLAB may be used to generate C code which is used in the real control hardware, and if this approach is used by the developer, the same C code may be directly used to create an extremely accurate PSCAD model of the controls. The controller source code may be compiled into DLLs or binaries if the source code is unavailable due to confidentiality restrictions.

If the model is assembled using standard blocks available in the PSCAD master library, approximations are usually introduced, and specific implementation details for important control blocks may be lost. In addition, there is a risk that errors will be introduced in the process of manually assembling the model. For this type of manually assembled model, (not using a direct “real code” embedding process), extra care is required, and validation is recommended.
specific protections. As in point A, actual hardware code is recommended to be used for these protection features.

E. **Be configured to match expected site-specific equipment settings.** Any user-tunable parameters or options should be set in the model to match the equipment at the specific site being evaluated, as far as they are known. Default parameters may not be appropriate.

**Model Usability Features**

In order to allow study engineers to perform system analysis using the model, the PSCAD model must:

F. **Have control or hardware options which are pertinent to the study accessible to the user.** Examples of this could include protection thresholds, real power recovery ramp rates, or SSCI damping controllers. Care should be taken to ensure that any user-settable options are not changed in a way that is not implementable in the real hardware, and that any selectable options are actually available at the specific site being considered. Discussion is recommended with the manufacturer prior to any changes being made in model configuration.

G. **Be accurate when running at a simulation time step of 10 us or higher.** Often, requiring a smaller time step means that the control implementation has not used the interpolation features of PSCAD, or is using inappropriate interfacing between the model and the larger network. Lack of interpolation support introduces inaccuracies into the model at larger simulation time-steps.

H. **Have the ability to disable protection models.** Many studies result in inadvertent tripping of converter equipment, and the ability to disable protection functions temporarily provides study engineers with valuable system diagnostic information.

I. **Include documentation and a sample implementation test case.** Test case models should be configured according to the site-specific real equipment configuration. Access to technical support engineers is desirable.

J. **Accept external reference variables.** This includes real and reactive power ordered values for Q control modes, or voltage reference values for voltage control modes. Model should accept these reference variables for initialization, and be capable of changing these reference variables mid-simulation, i.e. dynamic signal references.

K. **Be capable of initializing itself.** Once provided with initial condition variables, the model must initialize and ramp to the ordered output without external input from simulation engineers. Any slower control functions which are included (such as switched shunt controllers) should also accept initial condition variables if required.

L. **Have the ability to scale plant capacity.** The active power capacity of the model should be scalable in some way, either internally or through an external scaling transformer. This is distinct from a dispatchable power order, and is used for modeling different capacities of plant or breaking a lumped equivalent plant into smaller composite models.

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3 Care should be taken to ensure that any user-settable options are not changed in a way that is not implementable in the real hardware, and that any selectable options are actually available at the specific site being considered. Discussion is recommended with the manufacturer prior to any changes being made in model configuration.

4 A free publicly available scaling transformer suitable for this purpose is available in the E-Tran library.
Study Efficiency Features

In addition, the following elements are required to improve study efficiency, model compatibility, and enable other studies which include the model to be run as efficiently as possible. If these features are not supported, additional discussion is required:

M. Model should be compiled using Intel Fortran compiler version 9 or higher. Intel Fortran version 12 or higher is preferred. Model should not be dependent on a specific Fortran version to run.

N. Model uses PSCAD version 4.5.3 or higher.

O. Model initializes as quickly as possible (for example <5 seconds) to user supplied terminal conditions.

P. Model supports multiple instances of its own definition in the same simulation case.

Q. Model supports the PSCAD “snapshot” feature.

R. Model supports the PSCAD “multiple run” feature.

Electranix has parallelization tools available (E-Tran Plus for PSCAD) which can circumvent compatibility concerns in some cases.
REQUEST FOR PROPOSALS

FOR

VARIABLE RENEWABLE DISPATCHABLE GENERATION

PAIRED WITH ENERGY STORAGE

ISLAND OF LĀNAʻI

NOVEMBER 27, 2019

Docket No. 2019-0178

Appendix C – Code of Conduct Procedures Manual
I. INTRODUCTION

The Framework for Competitive Bidding ("Framework") adopted on December 8, 2006, by the Public Utilities Commission of the State of Hawaii (the "Commission") pursuant to Decision and Order No. 23121 (Docket No. 03-0372, Instituting a Proceeding to Investigate Competitive Bidding for New Generating Capacity in Hawaii) requires that the utility develop and follow a Code of Conduct whenever a utility or its affiliate seeks to advance an energy generation resource proposal in response to a request for proposals ("RFP") issued by the Company. Section III.A.4 of the Framework required the utility to submit to the Commission for review and approval (subject to modification if necessary) a Code of Conduct prior to the commencement of any competitive bid process under the Framework. On June 7, 2007, by letter to the Commission, the Company submitted its form of Code of Conduct for Commission review and approval. By Decision and Order No. 23614 (Docket No. 03-0372), issued August 28, 2007, the Commission approved the Code of Conduct. Amendments to the Code of Conduct were approved by the Commission for Stage 1 of the Companies’ 2018 Variable RFP by Order No. 35286, issued on February 20, 2018, in Docket No. 2017-0352.

This Code of Conduct Procedures Manual has been developed to outline the procedures to be followed and the policies that have been developed surrounding the implementation of the Companies’ competitive bidding process for new generating capacity. The Companies’ initial Code of Conduct Procedures Manual ("Manual") was approved by the Commission for Stage 1 of the Companies’ 2018 Variable RFP by Order No. 35286, issued February 20, 2018, in Docket No. 2017-0352. This Code of Conduct Procedures Manual has been developed for the Companies’ Variable Renewable Dispatchable Generation and Energy Storage Stage 2 RFP and in accordance with the requirements of Section IV.H.9.a(iii) of the Framework and outlines requirements (1), (3) and (4) of such section, namely: (1) the protocols for communicating with Proposers, the Company Self-Build team, and others; (3) the documentation forms, including logs for any communications with proposers; and (4) other information consistent with the requirements of the solicitation process. Requirement (2) of the section, the evaluation process in
detail and the methodologies for undertaking the evaluation process for the RFP are described in detail in Chapter 4 (Evaluation Process and Evaluation Criteria) of the Variable Renewable Dispatchable Generation and Energy Storage RFP Stage 2. The bid evaluation process and methodology will consider both price/system impacts and non-price criteria in accordance with Section IV.E of the Framework and Tariff Rule 19 (See Appendix I (Tariff Rule 19) of the RFP).

The procedures and policies set forth herein have been designed to ensure that the procurement process is undertaken in a fair and equitable manner and that each Proposer is afforded an equal opportunity to participate and compete within the RFP requirements.

This Code of Conduct Procedures Manual is intended to be followed by Company personnel in connection with implementing the Companies’ solicitation process and to manage communications between Company personnel and consultants participating in the RFP processes covered by the Framework. Necessary additions, deletions, and/or changes depending on the circumstances surrounding the RFP and directions from the IO may be required.

II. DEFINITIONS

- **Affiliate** – Any person or entity that possesses an “affiliated interest” in a utility as defined by section 269-19.5, Hawaii Revised Statutes (“HRS”), including a utility’s parent holding company but excluding a utility’s subsidiary or parent which is also a regulated utility.

- **Affiliate Team** – Employees and consultants of an Affiliate of the Company who prepare a proposal to be submitted to the Company in response to a Company RFP.

- **ATRs** – The Affiliate Transaction Requirements, issued by the Commission, applicable to the Companies and Affiliates, attached as Exhibit B to Order No. 36112 issued on January 24, 2019 in Docket No. 2018-0065.

- **Code of Conduct** – A written code developed by Hawaiian Electric Company, Inc., Maui Electric Company, Limited and Hawaii Electric Light Company, Inc. (each, a
“Company” and collectively, the “Companies”) to ensure the fairness and integrity of the competitive bidding process, in particular where the host utility or its affiliate seeks to advance its own resource proposal in response to an RFP. The Code of Conduct follows the requirements described in Section IV.H.9.c of the Framework and was approved by the Commission in Decision & Order No. 23614, and amended and approved by Order No. 35286 issued on February 20, 2018, in Docket No. 2017-0352.

- **Communications Log** – A written record to note activities and/or information shared between the Company RFP Team or Company Self-Build Team with Shared Resources or Unassigned Company Resources, accessed via the RFP Communication Tool Kit SharePoint Site.

- **Company Executive in Charge** – A Company’s executive responsible for ensuring compliance with this Code of Conduct and serving as the point of contact for the Independent Observer for reporting any violations by the Company of the Code of Conduct. For any RFP of the Companies, the Company Executive in Charge shall be the Senior Vice President of Business Development & Strategic Planning. The Company’s Corporate Compliance Officer shall remain responsible for the Companies’ independent corporate code of conduct and may support compliance matters and questions arising with employees, agents, and other representatives of the Company, e.g., conflicts of interest, with respect to this Code of Conduct.

- **Company RFP Team** – The Company personnel and outside consultants responsible for the development of the Company’s RFPs conducted under the Framework and the evaluation of bids submitted in response to these RFPs. Subject to the transfer rules specified herein, the Company RFP Team will have fixed team members who will not have any involvement with the Company Self-Build Team for the subject RFP.

- **Company Self-Build Team** – The Company personnel and outside consultants responsible for the development of the Company’s self-build response to the RFP. Subject to the transfer rules specified herein, the Company Self-Build Team will have fixed team members who will not have any involvement with the Company RFP Team for the subject RFP.
- Competitive Bidding Code of Conduct Acknowledgement of Receipt (Acknowledgement) – A document that must be signed that shows acknowledgement of receipt of the Code of Conduct and a person’s responsibility to comply with the Code.

- Confidential Information – Any non-public information developed and provided by the Company (i.e., proprietary system information, etc.) or Proposers during the RFP process (such non-public information may include, for example, the identity of competing Proposers, and their technical, trade, or financial information). This term includes any material non-public information regarding the RFP process developed for and used during the competitive bidding solicitation process, such as the evaluation process or criteria. Confidential Information does not include public information, such as information in the Companies’ public filings with the Commission.

- Director of Renewable Acquisition – The supervisor of the Division that will oversee the Company’s competitive bidding process.

- Eligible Proposer – A Proposer who has met the minimum requirements and threshold requirements in the RFP necessary to remain eligible to compete in the process.

- Energy Contract Manager – The staff position(s) within the Company’s Renewable Acquisition Division responsible for managing the Company RFP Team(s). The Energy Contract Manager shall be a member of the Company RFP Team he/she manages.

- Framework – The Framework for Competitive Bidding contained in Decision & Order No. 23121 issued by Commission on December 8, 2006, to establish rules for competitive bidding in response to a request for proposals when a utility seeks to acquire new generation resources.

- Independent Observer (“IO”) – The neutral person or entity appointed by the Commission to monitor the utility’s competitive bidding process, and to advise the utility and Commission on matters arising out of the competitive bidding process, as described in Part III.C of the Framework.

- Manager of Energy Procurement - The supervisor of the department within the Renewable Acquisition Division responsible for directing the resources responsible
for the implementation of the competitive bidding process pursuant to the Framework. The Manager of Energy Procurement will report to the Director of Renewable Acquisition on the status of the competitive bidding process and shall be a member of the Company RFP Team.

- **Non-Price Evaluation Team** – Employees and consultants of the Company who evaluate the Proposal non-price related criteria as set forth in these RFPs. Non-Price Evaluation Team members will not include any Shared Resources and will be solely made up of Company RFP Team Members.

- **Price Evaluation Team** – Employees and consultants of the Company who evaluate the Proposal price related criteria set forth in these RFPs. Price Evaluation Team members will not include any Shared Resources and will be solely made up of Company RFP Team Members.

- **Proposer** – Entity who submits or plans to submit a proposal in response to a Company-issued RFP. An Affiliate of the Company or a Company Self-Build Team participating in the RFP and submitting a proposal shall be considered a Proposer.

- **RFP** – A written request for proposals issued by one of the Companies to publicly solicit bids to supply future generating capacity to the Company pursuant to the competitive bidding process established in the Framework.

- **Roster** – A consolidated list of members that comprise the Company RFP Team, Company Self-Build Team, Shared Resources, and Unassigned Company Resources located in the RFP Communication Tool Kit SharePoint Site. Company employee names and titles and consultants in their designated role will be identified.

- **Shared Resource** – Company employees and consultants who, because of the scarcity of their expertise within the Company, are designated and authorized to provide information or input to both the Company RFP Team and the Company Self-Build Team (but not any Affiliate Team) and is not a resource dedicated to either team. For example, Shared Resources may include an environmental attorney and members of the Company’s Risk Management Department.

- **Unassigned Company Resource** – Company employees unassigned to an essential team that may be called upon by the Company RFP Team and/or the Company Self-Build Team (but not any Affiliate Team) to assist in meeting unforeseen tasks
for the RFP or the self-build proposal. For example, the Company RFP Team may be unable to evaluate an unforeseen technical specification included in a bid. In that event, the Company RFP team would need to request assistance from a Company employee or a consultant that is not already assigned to an essential team and possesses the specific expertise. Such personnel are intended to assist the requesting team only in an ad hoc manner, limited in scope and purpose to the particular task required.

III. STATEMENT OF OBJECTIVES

From time to time, each of the Companies will be proposing to seek power supply proposals for electric generation resources that best meet the needs of the respective Company’s system. The timing for issuance of RFPs for each of the systems will be dependent upon the Commission’s approval of the associated resource plan and the necessary competitive bidding procedures identified in the Framework and upon the timing of the need for capacity for each island. Each of the Companies will undertake a detailed multi-stage review and evaluation process whereby eligible proposals will be selected based upon their ability to most cost-effectively and reliably satisfy the requesting Company’s resource requirements. While cost minimization is a major criterion, the Companies’ objective is to select those resources which, in their opinion, represent the best value to the Companies and their customers regarding economic and technical attributes, limited risk, and flexibility for meeting their projected requirements. The individual RFPs seeking generation resources, including the Variable Renewable Dispatchable Generation and Energy Storage Stage 2 RFP, are part of the Companies’ overall renewable resource procurement plan, which is based on the Companies’ ongoing long range planning, but also may be revised on short notice in order to address unforeseen events such as premature equipment failures or natural events. With each successive RFP, the Companies are not only seeking to procure additional renewable energy that is required to meet the RPS goals, but also continually building off results of previous RFPs to continue to meet the above objective.

The needs for each island system vary, and therefore the timing and schedule of the RFPs cannot be consistently coordinated. Multiple RFPs will likely be active at the
same time. Furthermore, because the Companies must work expeditiously, successive RFPs will consider previous procurements and build on appropriate aspects of prior successful RFP execution plans. Therefore, in order to consistently ensure the competitive benefits of the procurement process while continuing to provide equitable and fair consideration for all proposals, the Companies will designate and maintain the Roster. Subject to the transfer rules specified herein, the Roster will be maintained for the durations of the RFPs. The Companies also intend that the evaluation process will be well-documented so that the results of the evaluation can be fully reviewed by an IO to confirm that all proposals were treated in a fair and consistent manner.

The Code of Conduct and this Manual address (1) communication requirements and procedures associated with the relationship between utility employees (Company RFP Team, Company Self-Build Team, Shared Resources, and Unassigned Company Resources); (2) communication requirements and procedures associated with the relationship between the Company RFP Team, the Company Self-Build Team, and Proposers; and (3) communication requirements associated with the relationship between Company management and the Company RFP Team.

The Code of Conduct and this Manual also include procedures for the sharing of resources, where appropriate, by the Company RFP Team and the Company Self-Build Team for the purposes of completing their efforts to effectively evaluate an RFP or to submit a bid in response to an RFP. The small size of the Companies and limitation of resources will require specialized services, information exchange and sharing of resources in certain limited circumstances. Company personnel and consultants identified as “Shared Resources” shall be designated by the Companies for this specific purpose.

IV. ORGANIZATION AND COMMUNICATION RESPONSIBILITIES

This section outlines the RFP organizational structure for the development of the RFP and the Company self-build option and the organization’s responsibilities to ensure that communications between Company personnel and consultants working on their respective RFP or self-build projects are conducted in a fair, consistent, and equitable
basis so that the Company Self-Build Team does not enjoy any unfair advantage over other Proposers responding to an RFP.

A. Organization

The Company shall identify and maintain two separate teams to facilitate the independence and objectivity of the Company resources working on an RFP and ensure an arms-length relationship with the resources working on the Company’s self-build project to avoid any real or perceived inequity in an RFP process. The two essential teams shall be the “Company RFP Team” and the “Company Self-Build Team.”

Other limited Company resources, such as select staff from various functional areas of the Company that are in short supply and thus cannot be dedicated solely to either team, may be designated as “Shared Resources” to perform services for the Company RFP Team and Company Self-Build Team. Shared Resource employees are allowed to carry on with both their RFP (for either the Company RFP Team and/or the Company Self-Build Team) and regular functions throughout the resource planning process (including the development of any Company Parallel or Contingency Plan as defined in the Framework), which may require communications with or services performed for the Company Self-Build Team. Shared Resource employees, however, will not participate in the evaluation and selection process of proposals submitted in response to an RFP. Rules for communications between Shared Resources and the essential teams are specified below.

Company employees unassigned to an RFP may be called upon by the Company RFP Team, Company Self-Build Team, or both for help to meet unforeseen tasks. After completing the Code of Conduct training, these “Unassigned Company Resources” are eligible to assist on an ad hoc basis with the requirement that all communications as an Unassigned Company Resource must be memorialized and logged in the same manner as communications with Shared Resources on the Communication Log. If an Unassigned Company Resource is called upon repeatedly for a substantial amount of assistance by a
particular team, the employee should be assigned to such team or evaluated for designation as a shared resource.

**B. Essential Teams**

1. **Company RFP Team.** The Company RFP Team, tasked with preparing the RFP and evaluating the responses and bids in response to the RFP, will consist primarily of Director/Manager-level and other experienced employees together with possible outside consultants, with backgrounds in a number of disciplines necessary to conduct a thorough evaluation of each proposal. The Company RFP Team will be comprised of a Price Evaluation Team and a Non-Price Evaluation Team and will be prepared to evaluate proposals on the basis of their price and non-price aspects pertaining to their level of expertise. Members of the Company RFP Team will include professionals with experience in the following areas of expertise: engineering, siting/land use, environmental, transmission planning, fuel procurement, legal, financial planning, system operations, integrated resource planning, generation planning, production cost analysis, and others as needed.

   The Price Evaluation Team and the Non-Price Evaluation Team will conduct their sections of the bid evaluation process separately and will not share the results of their evaluation with members of the other sub-team. Each team will submit their evaluation results to an oversight team, which will be responsible for compiling the results of the evaluations and selecting the Priority List.

   The Energy Contract Manager will be responsible for directing the evaluation efforts of the Company RFP Team when the proposals are received. The Energy Contract Manager will be responsible for maintaining the documentation underlying the evaluation of each proposal as well as all communications with Proposers.

2. **The Company Self-Build Team.** The Company Self-Build Team, tasked with preparing any Company proposal to be submitted by the Company in response to a Company RFP, will consist primarily of Company employees, along with possible
outside consultants with backgrounds in a number of disciplines necessary to complete a competitive proposal in response to the Company RFP. The members of the team will include professionals with experience in the following areas of expertise: engineering, siting/land use, environmental, transmission planning, fuel procurement, legal, financial planning, system operations, integrated resource planning, generation planning, production cost analysis, and others as needed.

3. **Affiliate Team.** Any Affiliate Team will be comprised solely of employees and consultants of the Affiliate and no Company employee or consultant shall serve as a member of an Affiliate Team; provided, however, that a consultant may perform services for an Affiliate and the Company so long as appropriate “walls” are established satisfactory to the Company that ensures that employees of the consultant working for the Affiliate Team do not also perform work for the Company nor communicate with employees of the consultant performing work for the Company, and vice versa. The Company will inform consultants providing services for the Company RFP Team of these separation requirements, and will seek confirmation in writing from any consultant performing services for an Affiliate and the Company that such separation requirements will be met. Affiliate Teams will be considered and treated as separate independent third-party Proposers for all purposes within any RFP and shall have no access to, interaction or communications with Shared Resources or Unassigned Company Resources for the purpose of completing a proposal in response to any RFP. Affiliate Teams shall also be subject at all times to the terms, conditions and restrictions specified in the Company’s ATRs.

4. **Transfers between Teams.** As members of both the Company RFP Team and the Company Self-Build Team are intended to be fixed, transfers between teams should not be permitted. However, there will be instances where a member of a particular team (whether Company RFP or Company Self-Build) transfers to a position in which he/she may be requested, as part of his/her new job responsibilities, to participate as a member of the other team. Such employee shall not be permitted to transfer from one team to the other during the pendency of any particular RFP (or stage or phase of a particular RFP). After completion of the RFP (or stage or phase of a particular RFP) under which the employee recently participated, the employee may transfer to the other team.
under the following conditions: (a) the employee is prohibited from disclosing any Confidential Information known to such employee as a result of being a member of his/her former team with members of the new team he/she is joining; and (b) for a period of one (1) year, such employee shall not participate or be involved in the evaluation of any subsequent stage(s) or phase(s) of a prior RFP which such employee participated in with his/her former team.

Transfers of employees between the Company and any Affiliate shall be subject to the terms, conditions, and restrictions specified in the ATRs.

C. Communications Protocols

1. Overview and General Requirements.

The Company has developed policies and procedures governing communication between the Company RFP Team, the Company Self-Build Team, Shared Resources, the Proposers, the IO, and with the Commission regarding RFP design and bid evaluation. Bid information and evaluation data and information shall not be communicated between members of the Company RFP Team, outside parties and other employees within the Companies except to those with a business need to know.

To ensure that the competitive bidding process is fair and unbiased, that all Proposers have access to the same information so that no Proposer has an unfair advantage, and that any Company self-build and/or Affiliate proposals do not have any unfair competitive advantage over third-party bids, the Companies shall follow the Code of Conduct whenever the utility or its Affiliate is seeking to advance a resource proposal as provided in Section IV.H.9.b of the Framework.

Each employee or consultant on the Company RFP Team, Company Self-Build Team, and Shared Resources shall read, acknowledge and sign the Competitive Bidding Code of Conduct Acknowledgement of Receipt. Unassigned Company Resources who are called upon by the Company RFP Team or Company Self-Build Team for help to meet unforeseen tasks shall also read, acknowledge, and sign the Competitive Bidding Code of Conduct Acknowledgement of Receipt.
The Company issuing the RFP will establish a shared drive on its corporate computer network designed to maintain the bid evaluation documentation and other information associated with the bidding process. Only Company RFP Team members will have access to all the files on the shared drive.

In cases where staffing and resources are limited or constrained, the Company may identify Shared Resources or those employees eligible to provide information or serve as a resource to both the Company RFP Team and the Company Self-Build Team. Specific rules to log communications with the Company RFP Team or the Company Self-Build Team are described below.

Shared Resources will not have access to the Company’s shared drive established for the RFP process which will include the documentation of the bid evaluation results.

Team members should clearly mark all e-mails, documents, or other communications that contain Confidential Information and make clear which team should not receive it with the following header or a substantially similar message: “This communication contains self-build information that must be kept confidential. DO NOT copy, forward, or discuss the contents with Company RFP Team members” OR “This communication contains Company RFP Team information that must be kept confidential. DO NOT copy, forward, or discuss the contents with Company Self-Build Team members.”

2. **Communications Between the Company RFP Team and Proposers, including the Company Self-Build Team and any Affiliate Team.**

During the RFP process, the Energy Contract Manager shall serve as the primary contact person for all RFP communications with Proposers. This is important from the standpoint of maintaining consistency and confidentiality of information between Proposers and the Company. For documentation and oversight purposes, all
communications from Proposers must be submitted to an established website link provided by the Company (the "Company RFP website"). The IO will monitor all communications through the Company RFP website. To ensure fair and equal access to information, any Company Self-Build Team and/or Affiliate Team shall be considered a Proposer for communication purposes and any request for information from the Company Self-Build Team or Affiliate Team to the Company RFP Team shall be through the Company RFP website.

Subject to confidentiality obligations, it is the objective of the Code of Conduct that all Proposers, including the Company Self-Build Team and any Affiliate Team, receive access to information released by the Company RFP Team, whether in response to a question from a Proposer or not, at the same time.

The communications process for addressing questions and requests for information from Proposers, and for the Company RFP Team to provide information to Proposers, is provided below:

a. Other than during Company sponsored conferences, Proposers must submit all questions to the Company RFP website or the designated RFP email address (if the Company RFP website has not been opened yet for the RFP).

b. Questions will be reviewed and responses will be coordinated with the appropriate functional area within the Company for a response. Every reasonable effort will be made to provide responses in a timely manner.

c. All responses, including the classification of such response, i.e., whether non-confidential or confidential as described below, will be provided to the IO for monitoring purposes via email or the PowerAdvocate messaging system. The IO may choose to comment on any response at its discretion.
d. Depending on the questions received, responses may involve Confidential Information of the Company and/or Proposers. Release of any Company Confidential Information must be approved in advance by the Company Executive authorized to release the Confidential Information. Any release of Company Confidential Information shall be accompanied by appropriate confidentiality and non-disclosure agreements, protective orders, or other means required to maintain the confidentiality of the Company Confidential Information while still permitting its disclosure under circumstances deemed appropriate by the responsible Company Executive. Other non-Company Confidential Information will not be shared without the prior written consent of the owner of such Confidential Information and the execution of appropriate confidentiality and non-disclosure agreements by all recipients of such Confidential Information. Responses will be categorized as follows:

i. **Non-Confidential Responses:** Questions and responses will either be posted directly on the Company RFP website (process-related questions or simple, non-substantive information) or a description of the information that can be made available will be posted and Proposers will be instructed to submit a request to the Company via the Company RFP website to receive a copy.

ii. **Confidential Responses:** Questions and a description or notice of a Confidential Information response will be posted on the Company RFP website and Proposers will be instructed to submit a request to the Company via the Company RFP website to receive instructions on how to access the Confidential Information. The Confidential Information will only be provided to the requestor after receipt of an executed confidentiality and non-
disclosure agreement. Only those who have qualified to submit a bid (i.e., Eligible Proposers) and have executed a confidentiality and non-disclosure agreement will be considered for receipt of Confidential Information.

iii. **Process for Distribution of Confidential Information**
Confidential Information provided in response to questions from proposers may be made available only to parties as indicated above via the following:

A. **Confidential Information that is approved for exchanging on a secured access site:** (1) Confidential Information may be made available on a secured website with an individual password provided to each approved Proposer; and (2) Confidential Information in documents may be transmitted to approved recipients through the Company’s secure email system.

B. **Confidential Information that can be made available for inspection only, but cannot be copied:** There may be some types of Confidential Information that the Company may consider making available for inspection only with no copies allowed. This type of Confidential Information will be made available on Company premises for inspection only. Proposers will be advised via the Company RFP website to make arrangements with Company staff to view the Confidential Information.

C. **Confidential Information that may not be released:** In the event that Proposers submit questions that require responses that the Company feels are not appropriate to provide for reasons which may include, but not be limited
to, safety, security, protection of trade secrets or intellectual property rights, Proposers will be advised as such via the Company RFP website.

e. Prior to and during the RFP, and outside of the Company RFP website protocol, developers may direct questions to the Company prior to submitting a Proposal to discuss specific questions regarding their specific Proposal. Questions shall be directed to the Company Contact for Proposals listed in RFP Section 1.6. Questions and responses that do not contain Confidential Information and which are deemed relevant to all Proposers will be published without identifying information via the Company RFP website.

f. Once bids are received, the Company may submit information requests to Proposers to clarify their proposals or request additional information. All contacts with Proposers will be through the Company RFP website. All contacts and information exchanged will be under the oversight of the IO.

g. A single exception to the communication process outlined above shall be instituted for the purpose of facilitating the verification of proposed project models and documentation required to perform the IRS. For this limited scope, the Company’s Manager of Interconnection Services will serve as the primary contact person for all such interconnection communications with the Proposers on the Priority List, provided that all necessary confidentiality and non-disclosure agreements are in place. The Manager of Interconnection Services and personnel in the Interconnection Services Department shall be members of the Company RFP Team. Interconnection communications will be limited to a Proposer’s bid and no more information other than as necessary
to facilitate such communications will be permitted. Discussion of locations of projects shall be limited to that necessary only to determine the interconnection requirements of such project. The IO shall have the right to monitor all such communications in his/her discretion.

3. **Communications Between the Companies and the Commission.**

The Company’s Regulatory Affairs staff will be responsible for initiating communication with the Commission regarding the RFP or the Companies’ evaluation process. Regular updates may be provided to the Commission regarding the RFP process if requested.

4. **Communications Between the Company RFP Team and the IO.**

Communications between the Company RFP Team and the IO will be required for many aspects of the evaluation process. The IO is also required to maintain confidentiality of any Confidential Information. The IO will coordinate all activities through the Energy Contract Manager. The IO will be invited to participate in any meetings or discussions between the Company RFP Team and the Proposers and other communications as noted above. Sufficient notice will be provided whenever possible and teleconference and/or web conference alternatives may be utilized.

5. **Communications Between the Company RFP Team and the Company Self-Build Team or any Affiliate Team.**

Any communication between the Company RFP Team and the Company Self-Build Team or any Affiliate Team with respect to the RFP shall be handled no differently than with Proposers and other outside parties. Accordingly, the Company Self-Build Team or any Affiliate Team will be required to submit any questions or information
requests to the Company RFP Team via the Company RFP website and all responses will be provided in the same manner as to other Proposers. Accordingly, as stated in Section 2 above, responses will be provided to the IO for monitoring purposes via Email or the PowerAdvocate messaging system. Members of the Company RFP Team are prohibited from providing any input into the development of the self-build option by the Company or an Affiliate. Company RFP Team members are prohibited from sharing any Confidential Information (i.e., detailed evaluation criteria, other proposals, etc.) with any Company Self-Build or Affiliate Teams except in accordance with the procedures in the Code of Conduct, this Manual, or the RFP.

Company RFP Team members and Company Self-Build Team members may continue to work with each other on projects not related to the RFP. Further, members of each respective team do not have to be physically separated from each other, but members of each team must make reasonable efforts to keep all Confidential Information (including electronic data) secure and inaccessible to the other team.

Company RFP Team members and Affiliate Team members may continue to work with each other on matters not related to the RFP as permitted under the ATRs.

6. Communications among the Company RFP Team, the Company Self-Build Team and Shared Resources.

Shared Resources may provide services to the Company RFP Team and the Company Self-Build Team (but not any Affiliate Team). Shared Resources shall be limited as much as possible to instances where Company resources cannot provide a dedicated member to the Company RFP Team and the Company Self-Build Team at the same time and still provide the necessary functions of its area to the Company as a whole. Shared Resources are expressly prohibited from providing any information developed on behalf of the Company RFP Team to the Company Self-Build Team or any information developed on behalf of the Company Self-Build Team with the Company RFP Team, except through the formal communication process outlined above, i.e., through the Company RFP website.
Additionally, a written record of the time, date, and substance of all conversations, data, and written material directly or indirectly exchanged with the Company RFP Team or the Company Self-Build Team that pertain to the RFP shall be maintained on the Communications Log. The RFP Communication Tool Kit SharePoint Site will be set up and managed by the Energy Contract Manager to provide an easy to use and understand mechanism to log and memorialize these conversations.

Shared Resources will not have direct access to the Company’s shared drive developed for the RFP process which will include documentation of the bid evaluation results.

7. **Communications between the Company RFP Team, the Company Self-Build Team, and any Unassigned Company Resource or consultant that is not a Shared Resource.**

There may be times where a Company RFP or Company Self-Build team (but not an Affiliate Team) member may need ancillary or other ministerial or administrative assistance that requires communication and/or assistance from Company personnel who are not on any team nor considered a Shared Resource. Under those circumstances, such personnel may assist the requesting team member on an ad hoc basis upon the following conditions:

a. The essential team member making the request must inform the Company personnel that sharing of the requested information or assistance with the other team, be it the Company RFP or Company Self-Build Team, is expressly prohibited under the Code of Conduct.

b. The assisting Company personnel shall complete the Code of Conduct training and sign the Acknowledgement.
c. The assisting Company personnel shall be directed to the Roster provided by such requesting team member to determine and/or confirm the restrictions on communication with the other team members. The essential team member making the request will ensure the Roster is updated by the Energy Contract Manager to include the assisting Company personnel.

d. A written record of the time, date, and substance of all conversations, data, and written material directly or indirectly exchanged with the Company RFP Team or the Company Self-Build Team that pertain to the RFP shall be maintained on the Communication Log. The RFP Communication Tool Kit SharePoint Site will be set up and managed by the Energy Contract Manager to provide an easy to use and understand mechanism to log and memorialize these conversations.

e. If assistance from Unassigned Company Resource becomes more than occasional or more substantive than ancillary, ministerial, or administrative services, the Unassigned Company Resource should be considered for inclusion on the team that he/she has been assisting on such basis. Additionally, the Unassigned Company Resource may also be considered for inclusion as a Shared Resource. Members of the Company RFP Team and/or Company Self-Build Team shall consult with the Company Executive for resolution.

8. **Communications between the Company RFP Team, the Company Self-Build Team, and Company Management.**

The Company RFP Team and the Company Self-Build Team will necessarily require management approval of the RFP and the Company Self-Build Team Proposal. Because of the size of the Company, it may be possible that a single employee (at whatever level) (the “Approver”) may have approval responsibility for matters affecting the RFP and the Company Self-Build Team proposal. Approvers in this situation must use
their best judgment in making decisions reviewing and approving matters for the respective teams. The Code of Conduct must be adhered to in these situations and the Approver must not communicate matters learned from the Company RFP Team with the Company Self-Build Team.

If an Approver feels that he/she cannot manage this potential conflict, the Approver is recommended to consult with his/her immediate supervisor to determine whether such higher authority could be appointed with the task of reviewing and approving matters for a designated team, either the Company RFP Team or the Company Self-Build Team. In matters where a team of employees (including one or more Approvers) is responsible for reviewing and approving matters for the respective teams, approving employees (from whatever level, including executives) with information from reporting personnel beneath them from both the Company RFP Team and the Company Self-Build Team may consider recusing himself/herself from the decision making if such employee cannot objectively make a decision on the matter.

Finally, an Approver may be a member of the Company RFP Team and have a subordinate reporting to him/her that is a member of the Company Self-Build Team (or vice versa). In such situations, because the Code of Conduct prohibits communication between the teams, the manager must recuse himself/herself from the decision making and request his/her manager to review and approve the matter in his/her place.

In all instances, it is possible that any particular situation above may be addressed and/or resolved by the terms and conditions of the Company’s internal code of conduct implemented for all employees and consultants of the Company. As appropriate, an Approver or any other team member, Energy Contract Manager, or Company executive in Charge may involve the Company’s Corporate Compliance Officer for input and possible resolution under the Company’s internal corporate code of conduct.

V. WHEN THE CODE OF CONDUCT BECOMES EFFECTIVE

A. No later than 30 days after the Commission opens the docket to issue a RFP covered by the Framework, the Code of Conduct for that RFP will be activated.
However, if the Company Self-Build Team determines at any time that it will not pursue a self-build option for a particular RFP, the Code of Conduct may be de-activated.

B. Upon the activation of the Code of Conduct, members of the Company RFP Team and the Company Self-Build Team must then conduct activities on the RFP or self-build process in compliance with the Code of Conduct. Once identified and having commenced work, no information may be shared outside the respective team members with respect to the RFP or a self-build option except through the formal communication processes outlined above.

C. Immediately upon assignment to a Company team (RFP or Self-Build), designation as a Shared Resource, or request to assist as an Unassigned Company Resource, each such employee or consultant must review this Manual, and sign the Acknowledgement. Annually, each member of the respective teams, Shared Resources, and designated Unassigned Company Resources shall reaffirm their obligations to comply with the Code of Conduct and this Procedures Manual by executing an annual update to the Acknowledgement.

D. Within the RFP process, after a member has been assigned to a particular Company team (RFP or Self-Build), he or she will not be able to transfer to the other Company team during the pendency of any particular RFP (or stage or phase of a particular RFP). It is the responsibility of each team to fill vacant team positions with employees that have not been previously assigned as a team member for a team until the PPA negotiations have been concluded and the final contracts are executed.

E. Each employee and consultant working on the RFP shall review the Code of Conduct and sign the Acknowledgement attesting to his/her compliance with the Code of Conduct for each subsequent year until the Code of Conduct is terminated, or until the employee is no longer working in the position he/she was in while working on the RFP.

F. The Energy Contract Manager will be responsible for maintaining the Roster and the signed Acknowledgements. The Company Executive in Charge shall be
responsible for ensuring compliance with the Code of Conduct and shall have the written authority and obligation to enforce the Code of Conduct.

VI. IMMEDIATE ACTIONS UPON ACTIVATION OF THE CODE OF CONDUCT

The following items are required to be completed as soon as possible after activation of the Code of Conduct, but no later than the designated events specified for each item below.

A. No later than 30 days after the opening of the docket commencing an RFP, a Roster listing employee (with their title) and consultants in their designated role; Company RFP Team, Company Self-Build Team, Shared Resource, or Unassigned Company Resource. When the IO is appointed, this Roster shall be provided to him/her. The Roster shall be placed in the RFP Communication Tool Kit SharePoint Site so that any Company personnel can access the database to determine the identity of the respective teams and Shared Resources.

B. Upon the finalization of the Roster for the RFP, the Energy Contract Manager shall verify that all employees (whether full-time, part-time, temporary, or contract) and consultants involved in the competitive bidding process, such as members of the Company RFP Team, the Company Self-Build Team, Shared Resources, or Unassigned Company Resources, have acknowledged receipt of the Code of Conduct and his or her responsibility to comply with the Code of Conduct by submitting the Acknowledgement (with electronic acknowledgment being acceptable). If an employee or consultant is added to a team, the Energy Contract Manager shall also verify that such employee or consultant has submitted the Acknowledgment.

C. No later than 30 days after the opening of the docket commencing an RFP, establishment of the Company email address to accept requests for information from Proposers, including the Company Self-Build Team or any Affiliate Team.
D. No later than 30 days after the opening of the docket commencing an RFP, establishment of the Company-secured site that houses the accessible database (such as SharePoint).

VII. WHEN THE CODE OF CONDUCT TERMINATES

A. The Code of Conduct for a specific RFP will terminate after the following two conditions are met when:
   a. the final contract(s) for RFPs conducted under the Framework with the successful proposer(s) is/are executed, or when written notice of termination of the RFPs to be conducted under the Framework is provided by the Manager of Energy Procurement or his/her designee to the IO and the Commission, and
   b. a certification of Code of Conduct compliance by all employees participating in the specific RFP process is submitted by affidavit by the Company Executive in Charge.

VIII. DOCUMENTATION FORMS

The following documentation forms may be utilized by those Company personnel involved in the RFP. These forms may be amended from time to time as necessary. Additional forms may also be developed as determined necessary.
- Competitive Bidding Code of Conduct Acknowledgement of Receipt
- Communications Log
- Roster

IX. APPLICABILITY OF THE ATRs

Except as specifically made applicable under Section V.C.1.i of the ATRs with respect to wholesale power procurement from Affiliates, the ATRs shall not apply to RFP matters covered by the Framework, the Code of Conduct and this Procedures Manual as it relates to the Companies’ interactions between the Company RFP Teams and Affiliate
Teams. Reference to the ATRs in the Code of Conduct and/or this Manual are specifically for matters outside the Companies’ administration of the RFP; provided, however, that such applicability may be revised as necessary and as may be directed by the Commission for any RFP.¹

¹ See Decision and Order No. 35962, filed on December 19, 2018, in Docket 2018-0065, at 56-57.
DRAFT REQUEST FOR PROPOSALS

FOR

VARIABLE RENEWABLE DISPATCHABLE GENERATION

PAIRED WITH ENERGY STORAGE

ISLAND OF LĀNAʻI

NOVEMBER 27, 2019

Docket No. 2019-0178

Appendix D – PowerAdvocate User Information
Sourcing Intelligence Quick Start for Suppliers

Logging In

1. Launch a web browser and go to www.poweradvocate.com
2. Click the orange Login button.
3. Enter your account User Name and Password (both are case-sensitive) and click Login.
4. Click the Events tab if it is not already displayed.

Dashboard

Your Dashboard lists the events you have been invited to. A line divides currently accessible events from others.

- Click an event name to view its Status tab, which displays a summary of your activity and key event dates. To view specific details of an event, click the buttons 1-5 to view the corresponding tab.
- To return to the Dashboard, click Dashboard in the navigation bar at the top of the window.
- An event will not appear on your Dashboard until you have been added as a participant.
Downloading Bid Packages

All of the Buyer’s bid package documents (if any) are centrally stored on the PowerAdvocate Platform. To view bid documents, click “1” on your Dashboard or on the 1. Download Documents tab from within the event.

- You can access the Bid sub-tab after the event opens. You can access Buyer documents before the event is opened from the Pre-Bid sub-tab, if the Buyer utilizes this feature.
- To view or download a document, click the file name.
- To download multiple documents:
  1. Select the checkbox in the Download column for each document you wish to download or click Select All.
  2. Click Download Selected Files.

Uploading Documents

To upload your documents, click “2” on your Dashboard, or on the 2. Upload Documents tab from within the event.

- Do not upload any files to the Pre-Bid tab.
- To upload a document to the Bid tab:
  1. Specify a Document Type (Reference ID can be left blank).
  2. Click Choose File, navigate to and select the document, and then click Open; multiple files can also be compressed into one .zip file for upload.
  3. Click Submit Document.
Datasheets will not be used in this RFP event. All Proposal information will be uploaded for submission through the 2. Upload Documents tab above. Buttons/tabs are grayed out (e.g., 4) if the event is not using a particular type of datasheet.

Communicating with the Bid Event Coordinator / Company Contact

Suppliers should use the PowerAdvocate Messaging tool to contact the Bid Event Coordinator (BEC) while the bid event is open.

**PowerAdvocate Messaging**

To send a message to the BEC, go to the **Messaging** tab and click **Create New Message**. To read or reply to a message from the BEC, click the message subject.

- You can send messages to the BEC and Buyer Team
- The Independent Observer can view all messages in the bid event.
- You can receive external e-mail notification of new PowerAdvocate messages by selecting “Yes” to “Send email notifications?” in the Messaging tab.

Getting More Information

- Click **Help** on the navigation bar to display online help.

- Supplier documentation can be downloaded from the online help system.
- Call PowerAdvocate Support at 857-453-5800 (Mon-Fri, 8 a.m. to 8 p.m. Eastern Time) or e-mail support@poweradvocate.com.
DRAFT REQUEST FOR PROPOSALS

FOR

VARIABLE RENEWABLE DISPATCHABLE GENERATION

PAIRED WITH ENERGY STORAGE

ISLAND OF LĀNAʻI

NOVEMBER 27, 2019

Docket No. 2019-0178

Appendix E – Mutual Confidentiality and Non-Disclosure Agreement
APPENDIX E
MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT
Independent Power Producers – (“IPPs”) 

This Mutual Confidentiality and Non-Disclosure Agreement (this “Agreement”) is effective as of ________________, 20____ (the “Effective Date”) between [INSERT NAME OF IPP], a [State of incorporation/organization] [type of entity] (“IPP”) and Hawaiian Electric Company, Inc., a Hawai’i corporation (“Company”) and Maui Electric Company, Limited, a Hawai’i corporation (“Maui Electric”) (Hawaiian Electric and Maui Electric collectively, the “Companies”). In consideration of the mutual promises contained in this Agreement, including the provision of Confidential Information (as defined below) by either party to the other hereunder, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Background

The Companies have or intend to issue a Request for Proposals (“RFP”) for renewable energy generation and/or storage. The IPP has or intends to submit one or more proposals for a nominal [___] MW PV+storage facility located at the Pūlama Site on the island of Lānaʻi, State of Hawai’i (“Proposal”).

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

In order to evaluate the Project, either party may from time to time provide to the other party certain Confidential Information. The parties are willing to provide such Confidential Information to each other upon the terms and conditions of this Agreement.

2. Confidential Information

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

(a) all information concerning the Provider and its affiliates’, and their customers’, suppliers’ and other third parties’ past, present and future business affairs including, without
limitation, finances, customer information, supplier information, products, services, designs, processes, organizational structure and internal practices, forecasts, sales and other financial results, records and budgets, business, marketing, development, sales and other commercial information and strategies;

(b) information concerning the Companies’ generation, transmission, and distribution systems (e.g., engineering and operating characteristics of the Companies’ transmission lines and substations) (“Critical Infrastructure Confidential Information”);

(c) the Provider’s unpatented inventions (whether or not they are patentable), ideas, methods and discoveries, techniques, formulations, development plans, trade secrets, know-how, unpublished patent applications and other confidential intellectual property;

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

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

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

3. Exclusions from Confidential Information

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

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

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

(c) was known by or in the possession of the Recipient or its Representatives, as established by documentary evidence, prior to being disclosed by or on behalf of the Provider pursuant to this Agreement;
(d) was or is independently developed by the Recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Provider’s Confidential Information; or

(e) was or is learned of established entirely from public sources, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Provider’s Confidential Information.

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

4. Non-Disclosure of Confidential Information

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

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

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

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

(d) to use diligent efforts to safeguard and protect the confidentiality of the Confidential Information, including, at minimum, implementing the same commercial measures that the Recipient uses to protect its own confidential information. Before disclosing the Confidential Information to any Representative, the Recipient will inform such Representative of the confidential nature of such information, their duty to treat the Confidential Information in accordance with this Agreement and shall ensure that such Representative is legally bound by the terms and conditions of this Agreement or subject to confidentiality duties or obligations to the Recipient that are no less restrictive than the terms and conditions of this Agreement.
(e) Any provision herein to the contrary notwithstanding, the Companies may disclose Confidential Information to the State of Hawai‘i Public Utilities Commission (“Commission”) and/or the State of Hawai‘i Division of Consumer Advocacy (including their respective staffs) provided that such disclosure is made under a protective order entered in the docket or proceeding with respect to which the disclosure will be made or any general protective order entered by the Commission.

5. Required Disclosure and Notice

If the parties or any of their Representatives become legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand, court order, or similar process) to disclose any of the Confidential Information, the compelled party shall undertake reasonable efforts to provide the other party with notice within three (3) business days of such requirement or advice prior to disclosure so that the other party may (a) seek a protective order or other appropriate remedy, (b) consult with the other party with respect to the compelled party taking steps to resist or narrow the scope of such requirement or advice, and/or (c) waive compliance, in whole or in part, with the terms of this Agreement. If such protective order or other remedy is not obtained, or the other party waives compliance with the provisions hereof, the compelled party agrees to furnish only that portion of the Confidential Information which it is legally required to so furnish and, at the request of the other party, to use reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information, it being understood that such reasonable efforts shall be at the cost and expense of the party whose Confidential Information has been sought. In any event, neither the IPP nor any of its Representatives will oppose action by the Companies to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

6. Return or Destruction of Confidential Information

At any time during or after the term of this Agreement, at the Provider’s written request, and in any event, upon the termination of the Agreement, the Recipient shall certify within ten (10) business days that it has destroyed all Confidential Information by using industry standard data elimination methods used to prevent unauthorized disclosure of information, and for Personally Identifiable Information (defined as personally identifiable information of individuals, and any information that may be used to track, locate or identify such individuals (or which is otherwise protected by privacy laws), including any automatically generated information (such as IP addresses and other customer identifiers) that identifies or is unique or traceable to a particular individual or computer or other electronic device capable of accessing the internet, including without limitation, name, address, telephone number, social security number, credit card account numbers, email addresses, user identification numbers or names and passwords, which is disclosed to the Recipient or its subcontractors in connection with this Agreement by the Provider, which products and services are used or intended to be used for personal, family or household purposes), such methods shall be consistent with Hawaii Revised Statute 487-R; provided, however, that with respect to Confidential Information in tangible form, the Recipient may return such Confidential Information to the Provider within ten (10) business days in lieu of destruction. The Recipient’s sole obligation with respect to the disposition of any Notes shall be to redact or otherwise expunge all such Confidential Information from such Notes and certify to the Provider that it has so redacted
or expunged the Confidential Information. Notwithstanding the foregoing, with respect to any Confidential Information stored in Recipient’s disaster recovery backups or other electronic archives, Recipient is not required to destroy such Confidential Information if it would impose a material cost or burden; provided, however, such Confidential Information shall be destroyed when such archives are destroyed in accordance with Recipients records retention policies.

7. **Authority**

   Each party represents and warrants that it has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each has been properly authorized and empowered to enter into this Agreement, understands it and agrees to be bound by it.

8. **No Representations or Warranties**

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

9. **No Other Obligations**

   Neither this Agreement nor the disclosure of the Confidential Information shall result in any obligation on the part of either party to enter into any further agreement with the other with respect to the subject matter hereof or otherwise, to purchase any products or services from the other, or to require either party to disclose any further information to the other. 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. Either party may offer products or services which are competitive with products or services now offered or which may be offered by the other. Subject to the express terms and conditions of this Agreement, neither this Agreement nor discussions and/or communications between the parties will impair the right of either party to develop, make, use, procure, and/or market any products or services, alone or with others, now or in the future, including those which may be competitive with those offered by the other. Whether or not the Project is consummated, neither party shall issue a press release or release any information to the general public concerning such transaction or the absence thereof without the express prior written consent of the other, and the parties agree that neither party will use the other’s name whether by including reference to the other in any press release, list of customers advertising that its services are used by Companies or otherwise, without written authorization by the respective party’s authorized representative.

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

11. **Publicly Traded Companies**

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

12. **Remedies**

(a) Each party acknowledges and agrees that any breach or threatened breach of this Agreement may give rise to an irreparable injury to the Provider or its Representatives, for which compensation in damages is likely to be an inadequate remedy. Accordingly, in the event of any breach or threatened breach of this Agreement by the Recipient or its Representatives, the Provider shall be entitled to seek equitable relief, including in the form of injunctions and orders for specific performance, in addition to all other remedies available at law or in equity.

(b) In the event that the Recipient learns of dissemination, disclosure, or use of the Confidential Information which is not permitted by this Agreement, the Recipient shall notify the Provider immediately in writing and shall use reasonable efforts to assist the Provider in minimizing damages from such disclosure. Such remedy shall be in addition to and not in lieu of any other rights or remedies available to the Provider at law or in equity.

13. **Cumulative Remedies**

No rights or remedy herein conferred upon or reserved to either party hereunder is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Agreement, or under applicable law, whether now or hereafter existing.

14. **Notice**

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

(b) 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):

(1) Companies:

By Mail:

Maui Electric Company, Ltd.
P.O. Box 398
Kahului, HI 96733-6898
Attn: Dean Ono, Renewable Acquisition Division

Delivered By Hand or Overnight Delivery:

Maui Electric Company, Ltd.
210 West Kamehameha Ave.
Kahului, HI 96732-2253
Attn: Dean Ono, Renewable Acquisition Division

By E-mail:

Maui Electric Company, Ltd.
Attn: Dean Ono, Energy Contract Manager
Email: dean.ono@mauielectric.com

With a copy to:

By Mail:

Hawaiian Electric Company, Inc.
Legal Division
P.O. Box 2750
Honolulu, Hawaii 96840

Delivered By Hand or Overnight Delivery:

Hawaiian Electric Company, Inc.
American Savings Bank Tower
1001 Bishop Street, Suite 1100
Honolulu, Hawaii 96813
Attn: Legal Division
By E-mail:

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

(2) [IPP]

By Mail:
[INSERT ADDRESS/CONTACT]

Delivered By Hand or Overnight Delivery:
[INSERT ADDRESS/CONTACT]

By E-mail:
[INSERT ADDRESS/CONTACT]

With a copy to:

By Mail:
[INSERT ADDRESS/CONTACT]

Delivered By Hand or Overnight Delivery:
[INSERT ADDRESS/CONTACT]

By E-mail:
[INSERT ADDRESS/CONTACT]

15. No Waiver

Except as otherwise provided in this Agreement, no delay or forbearance of a party 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.

16. Governing Law

This Agreement is made under, governed by, construed and enforced in accordance with, the laws of the State of Hawaii. Any action brought with respect to the matters contained in this Agreement shall be brought in the federal or state courts located in the State of Hawaii. Each party agrees and irrevocably consents to the exercise of personal jurisdiction over each of the parties by such courts and waives any right to plead, claim or allege that the State of Hawaii is an inconvenient forum or improper venue. Notwithstanding the foregoing, Companies, at its option, may elect to submit any such dispute to binding arbitration pursuant to the commercial arbitration rules of Dispute Prevention & Resolution, Inc. or the American Arbitration Association then in effect in which case the parties agree that any alternative dispute resolution shall take place in the State of Hawaii.
17. **Attorneys’ Fees and Costs**

    If there is a dispute between the parties and either party institutes a lawsuit, arbitration, mediation or other proceeding to enforce, declare, or interpret the terms of this Agreement, then the prevailing party in such proceeding shall be awarded its reasonable attorneys’ fees and costs.

18. **Assignment Prohibited**

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

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.

20. **Entire Agreement**

    This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, superseding all prior and contemporaneous agreements, understandings or undertakings, oral or written with respect to the subject matter. Any amendment or modification of this Agreement or any part hereof shall not be valid unless in writing and signed by the Parties. Any waiver hereunder shall not be valid unless in writing and signed via by the Party against whom waiver is asserted.

21. **Term and Survival**

    This Agreement shall remain in full force and effect for a period of two (2) years from the Effective Date. All confidentiality obligations within this agreement shall survive following expiration or termination of this Agreement.

22. **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.

23. **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.

24. **Counterparts and Electronic Signatures**

   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. 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 the parties which preserve the final terms of this Agreement or such writing. A party's signature transmitted by E-mail or other acceptable electronic means shall be considered an "original" signature which is binding and effective for all purposes of this Agreement.

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

HA\[i\]AIIA\[i\]N ELECTRIC COMPANY, INC.  
(“HA\[i\]AIIA\[i\]N ELECTRIC”)

By: ____________________________________  
Print Name: ____________________________  
Its: ____________________________________

MA\[i\]I ELECTRIC COMPANY, LIMITED  
(“MA\[i\]I ELECTRIC”)

By: ____________________________________  
Print Name: ____________________________  
Its: ____________________________________

[Insert Name of IPP]  
(“IPP”)

By: ____________________________________  
Print Name: ____________________________  
Its: ____________________________________
DRAFT REQUEST FOR PROPOSALS

FOR

VARIABLE RENEWABLE DISPATCHABLE GENERATION

PAIRED WITH ENERGY STORAGE

ISLAND OF LĀNAʻI

NOVEMBER 27, 2019

Docket No. 2019-0178

Appendix F – Description of the Pūlama Site
Pūlama Site

All proposals submitted in response to this RFP must be sited at the Pūlama Site which is an undeveloped site located adjacent to Miki Road approximately a mile from the airport. The site is close to an existing Company switchyard allowing for strategic interconnection. A map of the available area is included as Attachment 1 to this Appendix F. A draft copy of the proposed form of the lease is also included as Attachment 2 to this Appendix F. The terms of the lease will be negotiable with the landowner Pūlama Lāna’i.

Proposers must include the cost for interconnecting into the switchyard in their Proposals. Subject to confirmation from the IRS, overhead interconnection into the existing 12 kV switchyard is possible, and it is unlikely that existing 12 kV lines will need to be relocated. Work within the switchyard may include, but is not limited to, the installation of one (1) new 12 kV vacuum circuit breaker for each interconnecting line within an existing Company switchgear, new relaying and control equipment for the 12 kV vacuum circuit breaker within the Company’s switchgear enclosure building, transitioning the new 12 kV overhead interconnection to underground within the switchyard, and underground 12 kV duct lines and cable trenching within the switchyard to an existing handhole. A grounding study may be needed to determine if the existing ground grid is sufficient. The IRS will confirm all necessary interconnection facilities.

The Company has contracted with Fewell Geotechnical Engineering, Ltd and Cultural Services Hawai‘i to perform preliminary investigations at the Pūlama Site and is willing to share the geotechnical and the archaeological field investigation reports ("Information") with interested Proposers. The Information will be available no later than December 6, 2019. Requests for copies of these reports must be sent to the RFP email address, and the reports will be made available to Proposers only after execution of a Non-Disclosure Agreement. These reports are being furnished for the Proposer’s convenience only for use in preparing its Proposal and the Company assumes no responsibility whatsoever in respect to the sufficiency or accuracy of the Information or of the interpretation thereof, and there is no guaranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the Pūlama Site. In addition, no assurance is given that conditions found at the time of any surface or subsurface explorations will be the conditions that prevail at the time of construction at the Pūlama Site. The Proposer shall be solely responsible for all assumptions, deductions, or conclusions the Proposer may make or derive from the information furnished. Making such information available to the Proposer is not to be construed in any way as a waiver of the Proposer’s responsibility to examine the Request for Proposals and the Pūlama Site. Proposer must satisfy itself through its own investigation as to conditions to be encountered at the Pūlama Site. Proposers are not obligated to use the Information in the preparation of its Proposal, but are responsible for obtaining all necessary final investigations, design recommendations, and surveys (or similar) as applicable and required for the construction of their Project.
Additional Information

Additionally, the following links to a few publicly available resources relating to renewable energy project permitting and collaboration from the Hawaii State Energy Office are being provided for use at proposers’ sole discretion:

Project Permitting Assistance and Resources

http://energy.hawaii.gov/developer-investor/project-permitting-assistance-and-resources


Aloha Aina: A Framework for Biocultural Resource Management in Hawai‘i’s Anthropogenic Ecosystems

https://nmshawaiihumpbackwhale.blob.core.windows.net/hawaiihumpbackwhale-prod/media/archive/council/pdfs/aloha_aina.pdf

A framework developed by the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council to integrate Native Hawaiian and Western scientific management approaches toward ecosystem management. While intended for the Sanctuary, this document provides useful insight into successful collaboration in Hawaii.
Miki Basin Battery
12kV Switchgear Area

~ 50 acres
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Attachments:

Exhibit A  Legal Description
Exhibit B  Estoppel Certificate
Exhibit C  Guaranty
GROUND LEASE

BETWEEN

LĀNAʻI RESORTS, LLC

as Landlord

AND

_______________________________

as Tenant

FOR PREMISES LOCATED AT:

Lānaʻi City, Lānaʻi

TMK No. (2) 4-9-001 (por.)

[This form of Ground Lease is included in the Request for Proposals for general information only. Landlord reserves the right to revise the Ground Lease to conform to, among other things, the location of the Premises and the Project.]
GROUND LEASE

THIS GROUND LEASE (the “Lease”) is made and entered into as of ________, 20___ (the “Commencement Date”), between LĀNA‘I RESORTS, LLC, a Hawaii limited liability company (“Landlord”), and ________________, a ____________________ (“Tenant”).

Recitals:

(a) At the Commencement Date, Landlord owns the following real property (collectively, the “Premises”): (i) the unsubdivided land described in Exhibit A, consisting of approximately 50 acres of land (the “Land”) together with an easement over a roadway (the “Roadway”); (ii) all buildings, structures, and other improvements and appurtenances located on the Land other than any buildings, structures and other improvements or appurtenances that may have been constructed by on or behalf of Tenant prior to the commencement date; and (iii) the appurtenances and all the estate and rights of Landlord in and to the Land.

(b) Tenant and Maui Electric Company, Limited (“MECO”) have entered into a Power Purchase Agreement for Variable Renewable Dispatchable Generation dated as of _______________, 20__ between MECO, as Company, and Tenant, as Seller, as it may be Modified (the “Power Purchase Agreement”).

(c) In connection with the Power Purchase Agreement, and in order to fulfill its obligations under the Power Purchase Agreement, Tenant desires to lease the Premises from Landlord, and Landlord is willing to lease the Premises to Tenant.

Agreements:

NOW, THEREFORE, for good and valuable consideration, Landlord leases and demises the Premises to Tenant, and Tenant takes and hires the Premises from Landlord, subject only to Permitted Exceptions, for the Term, upon the terms and conditions of this Lease.

1. DEFINITIONS

1.1 Terms not Defined in Lease. Capitalized terms not defined in this Lease have the meanings given in the Power Purchase Agreement, unless the context clearly indicates otherwise. For example, the following terms used in this Lease are defined in the Power Purchase Agreement: “Extension Term,” “Facility,” “Financing Parties” and “Good Engineering and Operating Practices.”

1.2 Terms Defined in Lease. The following definitions apply in this Lease.
“Additional Rent” means all sums that this Lease requires Tenant to pay Landlord or a third party, whether or not expressly called Additional Rent, except Fixed Rent.

“Affiliate” of any specified Person means any other Person Controlling or Controlled by or under common Control with such specified Person. “Affiliated” shall have the correlative meaning.

“Application” means any agreement, application, certificate, document, or submission (or amendment of any of the foregoing):

(a) necessary or appropriate for any Construction this Lease allows, 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 Tenant may from time to time reasonably request for such Construction;

(b) to allow Tenant to obtain any abatement, deferral, or other benefit otherwise available for Real Estate Taxes;

(c) to enable Tenant from time to time to seek any Approval or to use and operate the Premises in accordance with this Lease; or

(d) otherwise reasonably necessary and appropriate to permit Tenant to realize the benefits of the Premises under this Lease.

“Approvals” means 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 Law to commence, perform, or complete any Construction, or for the zoning, rezoning (to the extent this Lease allows), use, occupancy, maintenance, or operation of the Premises, including approval of the State Public Utilities Commission.

“Bankruptcy Law” means 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 Proceeding” means any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

“Bankruptcy Sale” means a sale of any property, or any interest in any property, under 11 U.S.C. §363 or otherwise in any bankruptcy, insolvency, or similar proceeding affecting the owner of such property.
“Baseline Assessment” means a [Phase I and/or Phase II] Environmental Report dated ______________, 20___ made by ______________________, revealing the environmental conditions of the Land and Premises as of the Commencement Date.

“Business Day” means any weekday on which State-chartered banks are open to conduct regular banking business with bank personnel.

“Casualty” means any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting any or all Improvements, whether or not insured or insurable.

“Casualty Termination” means a termination of this Lease because of a Substantial Casualty, when and as this Lease expressly allows such a termination. Tenant’s election of a Casualty Termination shall not be effective without Leasehold Mortgagee’s consent.

“Certifying Party” shall have the meaning set forth in Section 23.1 hereof.

“Clean-up” shall have the meaning set forth in Section 10.11.1 hereof.

“Condemnation” means: (a) any temporary or permanent taking of (or of the right to use or occupy) any Premises by condemnation, eminent domain, or any similar proceeding; or (b) any action by any Government not resulting in an actual transfer of an interest in (or of the right to use or occupy) any Premises but creating a right to compensation, such as a change in grade of any street upon which the Premises abut.

“Condemnation Award” means any award(s) paid or payable (whether or not in a separate award) to either party or its mortgagee after the Commencement Date because of or as compensation for any Condemnation, including: (a) any award made for any improvements that are the subject of the Condemnation; (b) the full amount paid or payable by the condemning authority for the estate that is the subject of the Condemnation, as determined in Condemnation; (c) any interest on such award; and (d) any other sums payable on account of such Condemnation, including for any prepayment premium under any mortgage.

“Condemnation Effective Date” means, for any Condemnation, the first date when the condemning authority has acquired title to or possession of any Premises subject to the Condemnation.

“Confidential Information” shall have the meaning set forth in Section 26.1 hereof.

“Construction” means any alteration, construction, demolition, development, expansion, reconstruction, redevelopment, repair, Restoration, or other work affecting any Improvements, including the Facility and any other new construction.
“Contest” shall have the meaning set forth in Section 12.1 hereof.

“Contest Conditions” shall have the meaning set forth in 12.1 hereof.

“Contest Security” shall have the meaning set forth in 12.1.1 hereof.

“Control” means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether by ownership of Equity Interests, by contract, or otherwise.

“County” means the County of Maui.

“CPI” means the United States Department of Labor, Bureau of Labor Statistics “Consumer Price Index” for Urban Wage Earners and Clerical Workers (CPI-W) published for Honolulu, with a base of 1982-1984 = 100. If the CPI ceases to be published, with no successor index, then the parties shall reasonably agree upon a reasonable substitute index. The CPI for any date means the CPI last published before the calendar month that includes such date.

“CPI Adjustment Factor” means, as of any date, the greater of (a) 1.00 or (b) the CPI for such date divided by the CPI for the Commencement Date.

“Default” means any Monetary Default or Nonmonetary Default.

“Default Interest” means interest at an annual percentage rate per annum equal to the average daily Prime Rate for the period in question plus four (4) percentage points.

“Depository” means an FDIC insured financial institution with its principal office in the State, designated by a Leasehold Mortgagee (or, if no Leasehold Mortgage exists, then by Landlord).

“Discovered Items” shall have the meaning set forth in Section 25.1 hereof.

“Environmental Law” means any Law regarding the following at, in, under, above, or upon the Premises: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, control, disposal, generation, storage, release, transportation, or use of, or liability or standards of conduct concerning, Hazardous Substances.

“Environmental Report” shall have the meaning set forth in Section 10.11.1 hereof.

“Equity Interest” means all or any part of any direct or indirect equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in any entity at any tier of ownership that directly or indirectly owns or holds any ownership or equity interest in Tenant.
“Estoppel Certificate” means a statement, addressed either to Landlord or Tenant or as directed, in substantially the form of Exhibit B, and containing other assurances as Landlord or Tenant reasonably requests.

“Event of Default” shall have the meaning set forth in Section 19.1 hereof.

“Expiration Date” means the date when this Lease terminates or expires in accordance with its terms, whether on the Scheduled Expiration Date, by Landlord’s exercise of remedies for an Event of Default, or otherwise.

“Facility” means the Facility as described in the Power Purchase Agreement, as it may be Restored, modified, expanded or changed from time to time.

“Fee Debt Service” means all payments required from time to time under any Fee Mortgage, including principal, interest, late charges, costs of collection, reimbursement of protective advances, and any other sums any Fee Mortgage secures.

“Fee Estate” means Landlord’s fee estate in the Premises, including Landlord’s reversionary interest in the Premises after the Expiration Date.

“Fee Mortgage” means any mortgage, collateral assignment, or other lien (as modified from time to time) encumbering all or part of the Fee Estate.

“Fee Mortgagee” means a holder of a Fee Mortgage (and its successors and assigns).

“Fixed Rent” shall have the meaning set forth in Section 3.1 hereof.

“Foreclosure Event” means any: (a) foreclosure sale (or assignment in lieu of foreclosure, Bankruptcy Sale, or similar transfer) affecting the Leasehold Estate; or (b) Leasehold Mortgagee’s exercise of any other right or remedy under a Leasehold Mortgage (or applicable Law) that divests Tenant of its Leasehold Estate.

“GET” shall have the meaning set forth in Section 4.8 hereof.

“Government” means each and every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Premises (or any activity this Lease allows), including the United States government, the State and County governments and their subdivisions and municipalities, and all other applicable governmental agencies, authorities, and subdivisions thereof. “Government” shall also include any land use commission, planning commission, board of standards and appeals, department of buildings, city council, zoning board of appeals, or similar body having or claiming jurisdiction over the Premises or any activities on or at the Premises.
“Guarantor” means ___________________.

“Hazardous Substances” includes 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 Law, 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 Law 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.

“Hazardous Substances Claims” means (a) any actual, alleged or threatened Hazardous Substances Discharge; (b) any and all enforcement, cleanup, removal, mitigation, remediation or other Government actions instituted, contemplated or threatened pursuant to Environmental Law affecting the Premises; and (c) all claims made or threatened by any third party against Tenant or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Substances.

“Hazardous Substances Discharge” means any deposit, discharge, generation, release, or spill of Hazardous Substances that occurs at or from the Premises, or into the Land, or that arises at any time from the use, occupancy, or operation of the Premises or any activities conducted therein or any adjacent or nearby real property, or resulting from seepage, leakage, or other transmission of Hazardous Substances from other real property to the Land, whether or not caused by a party to this Lease and whether occurring before or after the Commencement Date.

“Immaterial Loss” means a Casualty or Condemnation whose estimated cost to Restore or value does not exceed $100,000.00, adjusted annually by the CPI Adjustment Factor.
“Improvements” means all buildings, structures, and other improvements and appurtenances located or to be located on the Land from time to time, including the Facility and the landscape buffer described in Section 8.3.

“Indemnify” means, where this Lease states that any Indemnitor shall “Indemnify” any Indemnitee from, against, or for a particular matter (the “Indemnified Risk”), that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against any and all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the Indemnified Risk; or (b) in enforcing the Indemnitor’s indemnity. Counsel retained by Indemnitor to fulfill its obligation to defend Indemnitee(s) shall be subject to Indemnitee’s approval, not to be unreasonably withheld.

“Indemnitee” means any party entitled to be Indemnified under this Lease and its agents, directors, employees, Equity Interest holders, mortgagees, and officers.

“Indemnitor” means a party that agrees to Indemnify any other Person.

“Initial Term” shall have the meaning set forth in Section 2.1 hereof.

“Insufficient Condemnation” means any Condemnation except a Substantial Condemnation, a Temporary Condemnation, or an Immaterial Loss.

“Land Value” means, as of the date of a PPA Disconnect or commencement of a Holding Over under Sections 10.11.5, 19.6, or 20.2 hereof, whichever is applicable, the fair market value of the Land as determined by Landlord in good faith. The fair market value of the Land means the amount that a willing buyer would pay a willing seller for the Land, neither being under a particular compulsion to buy or to sell, each fully aware of all applicable facts about the Land, and assuming a reasonable marketing period, considered as if the Land were vacant and clear of any structures or excavations, and free and clear of all leases (including this Lease), taking into account then-current general economic conditions; costs of construction; sales of comparable parcels; the real estate marketplace; and all other conditions as in effect on the determination date that may reasonably be considered in determining the fair market value of the Land. Land Value shall otherwise be determined in accordance with prevailing standards of appraisal practice at the time of determination.

“Landlord” initially means the Landlord named in the opening paragraph of this Lease. After every transfer of the Fee Estate, “Landlord” means only the owner(s) of the Fee Estate at the time in question. If any former Landlord no longer has any interest in the Fee Estate or a Transfer of the Fee Estate occurs, the Transferor (including a Fee Mortgagee, or anyone acting for a Fee Mortgagee, that has acquired and then disposed of the Fee Estate) shall be and hereby is entirely freed and relieved of all obligations of Landlord under this Lease accruing from and after the date of such Transfer.
“Laws” means all laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Government affecting the Premises, this Lease, or any Construction in any way, including any use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Premises, or relating to any State or County land use and zoning, any Real Estate Taxes, or otherwise relating to this Lease or any party’s rights and remedies under this Lease, or any Transfer of any of the foregoing, whether in force at the Commencement Date or passed, enacted, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

“Lease Impairment” means Tenant’s: (a) canceling, Modifying, restating, surrendering, or terminating this Lease, including upon Loss; (b) consenting, or failing to object, to a Bankruptcy Sale of any Premises; (c) determining that a Total Loss has occurred; (d) exercising any right to treat this Lease as terminated under 11 U.S.C. §365(h)(1)(A)(i) or any comparable provision of Law; (e) subordinating this Lease or the Leasehold Estate to any other estate or interest in the Premises; or (f) waiving any term(s) of this Lease.

“Lease Termination Notice” means a Notice stating this Lease has been terminated, and describing in reasonable detail any uncured Defaults.

“Lease Year” means: (a) the twelve calendar months starting on the first day of the first full calendar month after the Commencement Date; and (b) every subsequent period of twelve calendar months during the Term.

“Leasehold Estate” means Tenant’s leasehold estate, and all of Tenant’s rights, privileges, and Pre-Emptive Rights, under this Lease, upon and subject to all the terms and conditions of this Lease, and any direct or indirect interest in such leasehold estate.

“Leasehold Mortgage” means any mortgage, collateral assignment, or other lien (as modified from time to time) encumbering this Lease and the Leasehold Estate, made in connection with permitted financing under the Power Purchase Agreement to a Financing Party under the Power Purchase Agreement. A Leasehold Mortgage shall not attach to the Fee Estate.

“Leasehold Mortgagee” means a holder of a Leasehold Mortgage (and its successors and assigns), provided: (a) it is a Financing Party under the Power Purchase Agreement; (b) it is not an Affiliate of Tenant; and (c) Landlord has received notice of its name and address and a copy of its Leasehold Mortgage.

“Legal Costs” of any Person means all reasonable costs and expenses such Person incurs in any legal proceeding, including appeals (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys’ fees, court costs, and expenses, and in or as a result of any Bankruptcy Proceeding.
“Loss” means a Casualty or Condemnation affecting the Premises.

“Loss Proceeds” means any Property Insurance Proceeds or Condemnation Award paid or payable for a Loss.

“Management Meeting” shall have the meaning set forth in Section 14.7.1 hereof.

“Market Value” of the Land or the Facility means, as of any date of determination, the present fair market value of such estate or improvement (including the fair market value of the rights of the holder of such estate in and to any improvements) as of such date, considering: (a) as if no Loss had occurred; (b) without adjusting for any expectation of any Loss; and (c) as if the Leasehold Estate had been terminated. Market Value shall be determined independently of, and without regard to, any valuation established in a Condemnation unless Tenant Notifies Landlord otherwise. Any such Notice shall not be effective without Leasehold Mortgagee’s consent.

“Memorandum of Lease” means a memorandum of this Lease, in recordable form, setting forth following provisions of this Lease: (a) all information any Law requires; (b) the Term of the Lease; (c) any grant of a power of attorney; and (d) such other provisions, except the amount or means of determining Rent, as either party reasonably desires.

“Modification” or “Modify” means any abandonment, amendment, cancellation, discharge, extension, modification, rejection, renewal, replacement, restatement, substitution, supplement, surrender, termination, or waiver of a specified agreement or document, or of any of its terms or provisions, or the acceptance of any cancellation, rejection, surrender, or termination of such agreement, document, or terms.

“Monetary Default” means Tenant’s failure to pay any Rent or other money (including Real Estate Taxes and insurance premiums) when and as this Lease requires.

“New Lease” means a new lease of the Premises and related customary documents such as a memorandum of lease and a deed of Improvements. Any New Lease shall: (a) commence immediately after this Lease terminated; (b) continue for the entire remaining term of this Lease, as if no termination had occurred; (c) give New Tenant the same rights to Improvements that this Lease gave Tenant; (d) have the same terms, and the same priority, as this Lease, subject to any subsequent written amendments made with Leasehold Mortgagee’s consent; and (e) require New Tenant to cure, with reasonable diligence and continuity, within a reasonable time, all Defaults (except Tenant-Specific Defaults) not otherwise cured or waived.

“New Tenant” means Leasehold Mortgagee or its designee or nominee, and any of their successors and assigns.
“Nonmonetary Default” means Tenant’s: (a) failure to comply with any affirmative or negative covenant or obligation in this Lease, except a Monetary Default; or (b) breach of any representation or warranty (as of the date made or deemed made).

“Notice” or “Notify” means any consent, demand, designation, election, notice, or request relating to this Lease, including any Notice of Default. Notices shall be delivered, and shall become effective, only in accordance with the “Notices” Article of this Lease.

“Notice of Default” means any Notice claiming or giving Notice of a Default or alleged Default.

“Notice of Intent to Cure” means any Notice claiming or giving Notice of a Leasehold Mortgagee’s intent to cure a Default under this Lease.

“Permitted Exceptions” means only: (a) the recorded title exceptions affecting the Fee Estate and prior to this Lease as of the Commencement Date, listed as exceptions in Tenant’s leasehold policy of title insurance for this Lease; (b) any title exceptions (including Subleases) caused by Tenant’s acts or omissions, consented to or requested by Tenant, or resulting from Tenant’s Default; (c) any Application made at Tenant’s request; (d) this Lease and its terms and provisions; and (e) any state of facts an accurate survey would show.

“Phase I Environmental Assessment” means an environmental assessment and report prepared by a qualified environmental professional reasonably acceptable to Landlord 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).

“Phase II Environmental Assessment” means an environmental assessment and report prepared by a qualified environmental professional reasonably acceptable to Landlord that goes beyond the investigations of a Phase I Environmental Assessment and involves sampling and testing of the Premises, including (a) an asbestos survey conducted according to the standards of the Asbestos Hazard Emergency Response Act protocol; (b) testing of any transformers on the Premises for PCBs; (c) testing for lead based paints; (d) soil and groundwater sampling to measure the effect of any actual or suspected release or discharge of Hazardous Substances on the Premises; and (e) such other sampling and testing reasonably necessary to determine the environmental condition of the Premises.

“Permitted Use” means the construction, maintenance and operation of the Facility, consistent with Good Engineering and Operating Practices.

“PPA Disconnect” means any period of time during which the Power Purchase Agreement remains in effect but because of a Tenant Event of Default under the Power Purchase Agreement MECO is not purchasing power from Tenant.
“PPA Restoration” means either (a) the Power Purchase Agreement is reinstated following a termination of the Power Purchase Agreement; or (b) Tenant’s Event of Default under the Power Purchase Agreement has been cured and MECO is purchasing power from Tenant (or its permitted successor assignee) in accordance with the Power Purchase Agreement.

“Person” means any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind. (This does not limit any Transfer restriction.)

“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.

“Prohibited Lien” means 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 Tenant (or anyone claiming through Tenant), but only if such lien attaches (or may attach upon termination of this Lease) to the Fee Estate.

“Property Insurance Proceeds” means net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of any property insurance policies covering the Premises, when and as received by Landlord, Tenant, Depository, or any Fee Mortgagee or Leasehold Mortgagee, excluding proceeds of Tenant’s business interruption insurance in excess of Rent.

“PSC” shall have the meaning set forth in Section 4.8 hereof.

“Real Estate Taxes” means all general and special real estate taxes (including sales taxes, use taxes, and the like), conveyance taxes, transfer taxes, assessments, municipal water and sewer rents, rates and charges, excises, levies, license and permit fees, fines, penalties and other governmental charges and any interest or costs with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever that at any time before or during the Term and applicable to the Term or any part of it may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Premises, or the sidewalks or streets in front of or adjoining the Premises, or any vault, passageway or space in, over or under such sidewalk or street, or any other
appurtenances of the Premises, or other facility used in the operation thereof, or the rent or income received therefrom, or any use or occupancy thereof.

If at any time during the Term the method of taxation prevailing at the Commencement Date shall be altered so that any new tax, assessment, levy (including any municipal, state or federal levy), imposition, or charge, or any part thereof, shall be measured by or be based in whole or in part upon the Premises and imposed upon Landlord, then all such new taxes, assessments, levies, Real Estate Taxes, or charges, or the part thereof to the extent that they are so measured or based, shall be deemed to be included within the term “Real Estate Taxes,” to the extent that such Real Estate Taxes would be payable if the Premises were the only property of Landlord subject to such Real Estate Taxes.

“Remaining Premises” means any Premises that Landlord continues to own after a Total Loss.

“Removal Period” shall have the meaning set forth in Section 20.2 hereof.

“Rent” means Fixed Rent and Additional Rent.

“Requesting Party” shall have the meaning set forth in Section 23.1 hereof.

“Restoration” and “Restore” means, after a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of the damaged or remaining Improvements, substantially consistent with their condition before the Loss, subject to such Construction as Tenant shall perform in conformity with this Lease, subject to any changes in Law that would limit the foregoing.

“Restoration Funds” means any Loss Proceeds (and deposits by Tenant) to be applied to Restoration.

“Scheduled Expiration Date” means the date upon which the Power Purchase Agreement terminates, i.e., the end of the Term (as defined in the Power Purchase Agreement) plus any Extension Term (defined in the Power Purchase Agreement).

“Security Deposit” means fifty percent (50%) of the Operating Period Security (as defined in the Power Purchase Agreement) required under the Power Purchase Agreement.

“State” means the State of Hawaii.

“Sublease” means, for the Premises, any: (a) sublease; (b) agreement or arrangement (including a concession, license, management, or occupancy agreement) allowing any Person to occupy, use or possess; (c) subsublease or any further level of
subletting; or (d) Modification or assignment of (a) through (c). (Any reference to Subleases does not diminish, impair, limit, or waive any limit on Subleases.)

“Subrent” means all money due and payable by Subtenants under Subleases.

“Substantial Casualty” means a Casualty that, pursuant to Law, prevents the Premises from being Restored for the Permitted Use.

“Substantial Condemnation” means any Condemnation that (a) takes the entire Premises; or (b) in Tenant’s reasonable determination (with Leasehold Mortgagee’s consent) renders the remaining Premises unsuitable for the Permitted Uses.

“Subtenant” means any Person entitled to occupy, use, or possess any Premises under a Sublease.

“Temporary Condemnation” means a Condemnation of the temporary right to use or occupy all or part of the Premises.

“Tenant-Specific Default” means any Nonmonetary Default that by its nature relates only to, or can reasonably be performed only by, Tenant or its Affiliates.

“Term” means the Initial Term, as it may be extended by any Extension Term.

“Total Loss” means any (a) Condemnation that affects all or substantially all the Premises; or (b) Loss after which Tenant cannot legally Restore the Facility for its Permitted Use.

“Transfer” of any property means any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect:

(a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, or of any legal, beneficial, or equitable interest or estate in such property or any part of it (including the grant of any easement, lien, or other encumbrance);

(b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in the owner of such property by the holders of such Equity Interest(s);

(c) any transaction described in (b) affecting any Equity Interest(s) or any other interest in such property or in any such owner (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or

(d) any transaction that is in substance equivalent to any of the foregoing.
A transaction affecting Equity Interests, as referred to in clauses (b) through (d), shall be deemed a Transfer by Tenant even though Tenant is not technically the transferor. However, a “Transfer” shall not include any of the foregoing (provided that the other party to this Lease has received Notice thereof) relating to any Equity Interest: (a) that constitutes a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law and the State real estate transfer tax; or (b) to any Person that, as of the Commencement Date, holds an Equity Interest in the entity whose Equity Interest is being transferred.

“Unavoidable Delay” means delay in performing any obligation under this Lease (except payment of money) arising from or on account of any cause whatsoever beyond the obligor’s reasonable control, despite such obligor’s reasonable diligent efforts, including industry-wide strikes, labor troubles or other union activities (but only to the extent such actions affect similar premises at that time and do not result from an act or omission of the obligor), the obligor’s inability to obtain required labor or materials after commercially reasonable efforts to do so, litigation (unless caused by the obligor), Loss, accidents, Laws, governmental preemption, war, or riots. Unavoidable Delay shall exclude delay caused by the obligor’s financial condition, illiquidity, or insolvency. Any obligor claiming Unavoidable Delay shall Notify the obligee: (a) within 30 days after such obligor knows of any such Unavoidable Delay; and (b) within 10 days after such Unavoidable Delay ceases to exist. To be effective, any such Notice must describe the Unavoidable Delay in reasonable detail. Where this Lease states that performance of any obligation is subject to Unavoidable Delay(s) or words of similar import, such Unavoidable Delay(s) shall extend the time for such performance only by the number of days by which such Unavoidable Delay(s) actually delayed such performance.

“Underground Storage Tank” means any 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.

1.3 Principles of Interpretation. A term defined in the singular may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Lease. The words “include” and “including” shall be construed to be followed by the words: “without limitation.” Each of these terms shall be interpreted as if followed by the words “(or any part of it)” except where the context clearly requires otherwise: Fee Estate; Improvements; Land; Leasehold Estate; Premises; and any other similar collective noun. Every reference to any document, including this Lease, refers to such document as Modified from time to time (except, at Landlord’s option, any Modification that violates this Lease), and includes all exhibits, schedules, and riders to such document. The word “or” includes the word “and.”
1.4 Conflict between Lease and Power Purchase Agreement. To the extent there exists any conflict between the provisions of this Lease and the Power Purchase Agreement, the Power Purchase Agreement shall control.

2. TERM

2.1 Initial Term. The initial term of this Lease (the “Initial Term”) shall: (a) commence on the Commencement Date; and (b) end on the Scheduled Expiration Date, unless terminated sooner. If the Commencement Date is not the first (or the Expiration Date is not the last) day of a Lease Year, then from the Commencement Date through the day before the first Lease Year (or from the day after the last Lease Year through the Expiration Date), the parties shall have all the same rights and obligations under this Lease (including regarding Rent) that they do during the first (or the last, as applicable) full Lease Year, all prorated daily.

2.2 Automatic Termination. Notwithstanding anything to the contrary in this Lease, this Lease shall automatically terminate upon termination of the Power Purchase Agreement, without Notice.

3. RENT

3.1 Fixed Rent. Tenant shall pay Landlord, without notice or demand, in lawful money of the United States of America, a net annual rental (the “Fixed Rent”) as follows:

3.1.1 $50.00 per acre per month, as long as the Power Purchase Agreement remains in effect; or

3.1.2 10% of the Land Value per year, adjusted annually by the CPI Adjustment Factor, commencing on the date a PPA Disconnect occurs and continuing for the period a PPA Disconnect remains in effect.

If there is no longer a PPA Disconnect, and a PPA Restoration occurs, the Fixed Rent shall be restored to $50.00 per acre per month until any new PPA Disconnect occurs.

3.2 Annual or Monthly Payment; Proration; Etc. If Rent is $50.00 per acre per month, Tenant shall pay Fixed Rent annually in advance, otherwise Tenant shall pay Fixed Rent in equal monthly installments in advance on the first day of each month. Tenant shall pay all Rent payable to Landlord by good and sufficient check payable to Landlord or by wire transfer, at such address as Landlord shall designate from time to time.

3.3 Additional Rent. In addition to Fixed Rent, Tenant shall pay Landlord (or the appropriate third party, as applicable), as additional rent under this Lease, all Additional Rent. Except where this Lease provides otherwise, Tenant shall pay all
Additional Rent within 15 days after receipt of an invoice and reasonable backup documentation.

3.4 **No Offsets.** Tenant shall pay all Rent without offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever.

**4. ADDITIONAL PAYMENTS BY TENANT; REAL ESTATE TAXES**

4.1 **Landlord’s Net Return.** This Lease shall constitute an absolutely “net” lease. The Fixed Rent shall give Landlord an absolutely “net” return for the Term, free of any expenses or charges for the Premises, except as this Lease expressly provides. Tenant shall pay as Additional Rent and discharge (subject to Tenant’s right of Contest as this Lease expressly provides), before failure to pay creates a material risk of forfeiture or penalty, each and every item of expense, of every kind and nature whatsoever, related to or arising from the Premises, or by reason of or in any manner connected with or arising from the leasing, operation, management, maintenance, repair, use, or occupancy of, or Construction affecting the Premises.

4.2 **No Tenant Obligation.** Notwithstanding anything to the contrary in this Lease, Tenant need not pay the following items payable, accrued, or incurred by Landlord: (a) Fee Debt Service; (b) depreciation, amortization, brokerage commissions, financing or refinancing costs, management fees, or leasing expenses for the Fee Estate or the Premises; and (c) any costs or expenses that Landlord incurs in or for any Management Meeting, except to the extent that this Lease requires Tenant to pay such costs or expenses.

4.3 **Real Estate Taxes.** Tenant shall pay and discharge all Real Estate Taxes payable or accruing for all period(s) within the Term, before failure to pay creates a material risk to Landlord of forfeiture or penalty, subject however to Tenant’s right of Contest as this Lease expressly provides. Tenant shall also pay all interest and penalties any Government assesses for late payment of any Real Estate Taxes, except late payment because Landlord failed to remit any payment for Real Estate Taxes (paid to Landlord by Tenant) in accordance with Tenant’s reasonable instructions (provided they involve only ministerial functions) or failed to forward promptly Tenant a copy of any applicable bill that Landlord receives. In the latter case Landlord shall pay such interest and penalties. Tenant shall within a reasonable time after Notice from Landlord give Landlord reasonable proof that Tenant has paid any Real Estate Taxes that this Lease requires Tenant to pay. Tenant shall have the sole right and authority to contest Real Estate Taxes, in compliance with the Contest Conditions.

4.4 **Assessments in Installments.** To the extent Law allows, Tenant may apply to have any assessment payable in installments. Upon approval of such application, Tenant shall pay and discharge only such installments as become due and payable during the Term.
4.5 **Utilities.** Tenant shall arrange and pay for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, and other utility charges, and the expenses of installation, maintenance, use, and service in connection with the foregoing, for the Premises during the Term. Landlord shall have absolutely no liability or responsibility for the foregoing.

4.6 **Security Deposit.** Concurrently with Tenant’s execution of this Lease, Tenant shall deposit with Landlord the Security Deposit. Landlord shall hold the Security Deposit as security for the performance of Tenant’s obligations under this Lease. If Tenant Defaults on any provision of this Lease, Landlord may, without prejudice to any other remedy it has, apply all or part of the Security Deposit to any Rent or other sum in default, any amount that Landlord may spend or become obligated to spend in exercising Landlord’s rights under this Lease, or any expense, loss, or damage that Landlord may suffer because of Tenant’s Default.

4.7 **Tax.** Tenant will pay to Landlord at the time and together with each payment of Rent that is subject to tax, including GET or PSC, whichever is applicable, and any other applicable tax on account of the receipt, actual or constructive, by Landlord of the rental payments, reimbursement of gross income taxes, and any other taxable gross income attributable to the Premises or this Lease, an amount which, when added to Rent (whether actually or constructively received by Landlord), shall yield to Landlord, after deduction of the tax, an amount equal to that which Landlord would have realized had no such tax been imposed. For the purposes of this Section, “GET” means the State of Hawaii general excise tax on gross income under Hawaii Revised Statutes Chapter 237, and any sales or value added taxes under any successor, similar or new federal, state or county law that may be hereafter enacted, and “PSC” means the State of Hawaii public service company tax under Hawaii Revised Statutes Chapter 239. For purpose of illustration only, the amount necessary to reimburse Landlord is as of the Commencement Date 4.1666%.

4.8 **Conveyance Tax.** Tenant shall pay the conveyance tax imposed under Hawaii Revised Statutes Chapter 247 that is due and payable upon the Commencement Date. Tenant shall provide Landlord with proof satisfactory to Landlord that the conveyance tax has been paid.

5. **USE**

5.1 **Permitted Use.** Tenant shall use the Premises for the Permitted Use and only for the Permitted Use. Tenant shall continuously use and operate the Premises for the Permitted Use.

5.2 **Permitted Use Unique.** Landlord has leased the Premises to Tenant solely for the purpose of Tenant’s providing electrical power to MECO’s system pursuant to the Power Purchase Agreement. The State Public Utilities Commission has authorized
Landlord to enter into this Lease only in connection with and for the purposes of the Power Purchase Agreement. Tenant acknowledges and agrees that the Premises cannot be used for any purpose other than the Permitted Use. Tenant waives and relinquishes any right it may have under Bankruptcy Law, in any Bankruptcy Proceeding, or otherwise to assert the Premises should be used for a purpose other than the Permitted Use.

5.3 **Access.** All access roads made available or maintained by the Landlord, providing access from the Premises to public roads shall at all times be subject to the exclusive control and management of Landlord, and Landlord shall have the right, from time to time, to establish, modify and enforce reasonable rules and regulations with respect to the access and Tenant agrees to comply with all of Landlord’s rules and regulations with respect to the access.

5.4 **Exclusive Control.** Tenant shall have exclusive control, possession, occupancy, use, and management of the Premises, subject only to Permitted Exceptions.

5.5 **Operational Costs.** Tenant shall timely pay and discharge all fees, costs, and expenses related to or arising from the management or operation of the Premises and the provision of services to the Premises.

6. **SECURITY OF PREMISES**

6.1 **Secured Facility.** Tenant shall secure the Facility and prevent access to the Facility by unauthorized personnel in the same manner or higher as MECO secures its power generating facilities in the County. Notwithstanding MECO’s then current security procedures for its own facilities, Landlord may require Tenant to maintain personnel on the Premises 24 hours a day 7 days a week to monitor the security and safety of the Premises and Facility.

6.2 **Limited Access to Premises.** Tenant will maintain barriers on the Premises to prevent unauthorized persons or vehicles from entering or crossing through the Premises and adjacent lands owned or operated by Landlord.

6.3 **Personnel.** Tenant shall conduct security and background checks on all Tenant employees, independent contractors, and other persons who are regularly allowed access to the Facility and shall require all such persons to take periodic drug tests. Tenant shall not allow on the Premises any persons who do not pass such security checks or drug tests.

7. **COMPLIANCE**

7.1 **Generally.** Tenant shall during the Term, at Tenant’s expense, in all material respects, subject to Tenant’s right of Contest: (a) comply with all Laws and Permitted Exceptions; (b) comply with the Land Use Conditions, if any; (c) procure all
Appends required by Law other than the approval of the Power Purchase Agreement by the State Public Utilities Commission; and (d) comply with all Approvals.

7.2 **Power Purchase Agreement.** Tenant shall during the Term, at Tenant’s expense, in all material respects, comply with Tenant’s obligations under the Power Purchase Agreement.

7.3 **Notice of Inspections.** Tenant shall give Landlord Notice of any proposed inspection of the Premises or the Facility by any Government agency immediately upon Tenant’s receipt of notice of such inspection.

7.4 **Copies of Notices.** Landlord shall promptly give Tenant a copy of any notice of any kind regarding the Premises or any Real Estate Taxes (including any bill or statement), and any notice of nonrenewal or threatened nonrenewal of any Approval that Landlord receives from any Government, utility company, insurance carrier, or insurance rating bureau.

8. **MAINTENANCE AND CONSTRUCTION**

8.1 **Obligation to Maintain.** Except to the extent that (a) this Lease otherwise expressly provides or allows or (b) Tenant is performing Construction in compliance with this Lease, Tenant shall during the Term keep and maintain the Premises in good order, condition, and repair, subject to Loss (governed by other provisions of this Lease), reasonable wear and tear, and any other condition that this Lease does not require Tenant to repair. Tenant’s obligation to maintain the Premises includes an obligation to make all repairs that the Premises (including plumbing, heating, air conditioning, ventilating, electrical, lighting, fixtures, walls, building systems, ceilings, floors, windows, doors, plate glass, skylights, landscaping, drainage, retention basins, bridges, driveways, site improvements, curb cuts, parking lots, fences and signs located in, on or at the Premises, together with any sidewalks and streets adjacent to the Premises) may require by Law from time to time during the Term, whether structural or nonstructural, foreseen or unforeseen, capital or operating. Tenant shall remove trash and debris from the Premises and the adjoining sidewalk, and maintain them in a reasonably clean condition.

8.2 **Acceptance of Premises.** Tenant acknowledges that it has, or has had the opportunity, to inspect carefully the Premises, and accepts the Premises in **AS IS** condition **WITH ALL FAULTS.** Tenant further acknowledges that neither Landlord nor its agents or employees have made any representations or warranties of any kind whatsoever as to the suitability or fitness of the Premises for the conduct of Tenant’s business or for any other purpose, nor has Landlord or its agents or employees agreed to make any repairs, undertake any alterations, or construct any improvements to the Premises or with respect to the Premises.

8.3 **Construction.** At Tenant’s sole cost and expense, Tenant shall construct the Facility in accordance with the requirements of the Power Purchase Agreement.
Tenant shall not commence Construction until it has the applicable necessary Approvals. Prior to commencement of any Construction, Tenant shall cause each entity involved in such Construction, who is a direct contractor of Tenant and who has mechanic lien rights under Chapter 507 of the Hawaii Revised Statutes, to deliver to Landlord a performance and payment bond in a form acceptable to Landlord and from a surety reasonably acceptable to Landlord, covering the faithful performance of such entity’s contract with the Tenant and the payment of all obligations arising thereunder, and naming Landlord as an obligee. Tenant shall complete Construction of the Facility within the time periods required by the Power Purchase Agreement. Tenant shall pay for all Construction when and as required by the parties that perform such Construction. All Improvements that Tenant constructs on the Land shall become part of the Premises.

8.4 **Plans and Specifications.** To the extent that Tenant obtains plans and specifications or surveys (including working plans and specifications and “as-built” plans and specifications and surveys) for any Construction, Tenant shall promptly upon Landlord’s request give Landlord a copy, subject to the terms of any agreement between Tenant and the applicable architect, engineer, or surveyor. Tenant shall exercise reasonable efforts to cause its agreements with such professionals to permit these deliveries, which are for Landlord’s information only except to the extent, if any, this Lease otherwise expressly states.

8.5 **Applications.** Upon Tenant’s request, Landlord shall, without cost to Landlord, promptly join in and execute any Application as Tenant reasonably requests, provided that: (a) such Application is in customary form and imposes no material obligations (beyond obligations ministerial in nature or merely requiring compliance with Law) upon Landlord; (b) no uncured Event of Default exists; and (c) Tenant reimburses Landlord’s Legal Costs. Promptly upon Tenant’s request and without charge (except reimbursement of Landlord’s Legal Costs), Landlord shall furnish all information in its possession that Tenant reasonably requests for any Application.

9. **PROHIBITED LIENS**

9.1 **Tenant’s Covenant.** If a Prohibited Lien is filed, Tenant shall, within 30 days after receiving Notice from Landlord of such filing (but in any case within 15 days after Landlord Notifies Tenant 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. Tenant shall thereafter prosecute such action with reasonable diligence and continuity. If Landlord receives notice of any such filing, then Landlord shall promptly Notify Tenant. Nothing in this Lease shall be construed to: (a) limit Tenant’s right of Contest; or (b) obligate Tenant regarding any lien that results from any act or omission by Landlord.

9.2 **Protection of Landlord.** Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and
that no mechanic’s or other lien for any such labor or materials shall attach to or affect the Fee Estate. Nothing in this Lease shall be deemed or construed in any way to constitute Landlord’s consent or request, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer, equipment or material supplier for the performance of any labor or the furnishing of any materials or equipment for any construction, nor as giving Tenant 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 Fee Estate. Tenant shall Indemnify Landlord against any claims arising out of Construction undertaken by Tenant or anyone claiming through Tenant, and against all Prohibited Liens.

10. **HAZARDOUS SUBSTANCES**

10.1 **Baseline Assessment.** Tenant has obtained a Baseline Assessment and has provided Landlord with a copy of the results of the Baseline Assessment. Any Hazardous Substances not disclosed in the Baseline Assessment and subsequently discovered on the Premises shall be presumed to be present as a result of Tenant’s use and occupancy of the Premises during the Term, unless Tenant shall prove, by clear and convincing proof, that the Hazardous Substances: (a) were present on the Premises prior to the Term; (b) migrated onto the Premises as the result of the activities of a third party; or (c) are present on the Premises as the result of Landlord’s improper actions.

10.2 **Compliance with Environmental Law.** Tenant shall keep and maintain the Premises, 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 Premises or any portion of the Premises to be in violation of, any Environmental Law.

10.3 **Use of Hazardous Substances.** Tenant shall not cause or allow any Hazardous Substances Discharge, except (a) in the ordinary course of Tenant’s business (b) in accordance with the instructions of the manufacturer and for the purpose described in such instructions, and (c) in strict compliance with all applicable Environmental Law. Tenant shall not install any Underground Storage Tank on, within, under or about the Premises without first obtaining Landlord’s written approval. Tenant shall not accept hazardous waste (as defined under any Environmental Law) generated off the Premises for any purpose, including treatment, storage or disposal.

10.4 **List of Hazardous Substances.** On the Commencement Date and on each anniversary of the Commencement Date, and at any other time Landlord requests, Tenant shall provide Landlord with a written list identifying any Hazardous Substances then used, stored, or maintained upon the Premises, 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 Landlord may reasonably require or as may be required by Law.

10.5 Notice of Disturbance of Any Hazardous Substances. Tenant shall provide Landlord 30 days’ prior Notice before commencing any activities, including repair or remodeling of the Facility or the Premises or installation or removal of any personal property from the Premises, which could result in the disturbance of any Hazardous Substances. Together with such Notice, Tenant shall advise Landlord of protective measures to be taken by Tenant to ensure that Hazardous Substances shall not be released and to ensure compliance with Environmental Law. Tenant shall comply with all reasonable conditions (including adequate assurance of financial resources to comply with Environmental Law) that may be imposed by Landlord in connection with Tenant’s proposed activities.

10.6 Hazardous Substances Claims. Tenant shall immediately Notify Landlord of: (a) any Hazardous Substances Claims; or (b) Tenant’s discovery of any occurrence or condition of the Premises which could subject Tenant or Landlord to any liability, or restrictions on ownership, occupancy, transferability or use of the Premises under any Environmental Law.

10.7 Remediation and Removal. Except for the use of Hazardous Substances permitted by this Lease, Tenant shall cause any Hazardous Substances Discharge to be: (a) remediated on-site in accordance with applicable Environmental Law; or (b) removed from the Premises 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. Tenant shall deliver to Landlord copies of any hazardous waste manifest reflecting the proper disposition of such Hazardous Substances. Except in emergencies or as otherwise required by law, Tenant shall not take any remedial or removal action in response to a Hazardous Substances Discharge without first Notifying Landlord.

10.8 Proceedings on Hazardous Substances Claims; Indemnity. Tenant 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 Landlord of Tenant’s intention to do so and affording Landlord the opportunity to join and participate as a party if Landlord so elects in such proceedings. Tenant shall be solely responsible for and shall Indemnify the Indemnitee against any Hazardous Substances Claims, including: (a) the costs of any required or necessary removal, repair, cleanup or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial or other required plans; and (b) all reasonable costs and expenses incurred by Landlord in connection therewith, including Legal Costs.

10.9 Assurance of Performance.
10.9.1 **Landlord’s Phase II Environmental Assessment.** Landlord may, but shall not be required to, engage such contractors as Landlord determines to be appropriate to perform from time to time a Phase II Environmental Assessment, including environmental sampling and testing, of: (i) the Premises, the surrounding soil and any adjacent areas, and any ground water located under or surface water located adjacent to the Premises or any adjoining property; (ii) Tenant’s compliance with all Environmental Law and the provisions of this Lease; and (iii) the provisions made by Tenant for carrying out any removal or remedial action that may be required by reason of the nature of Tenant’s business and operations on the Premises.

10.9.2 **Cost of Assessment.** All costs and expenses incurred by Landlord in connection with any such Phase II Environmental Assessment shall be paid by Landlord, except that if any such Phase II Environmental Assessment shows that: (i) the environmental condition of the Premises has materially declined in comparison to the Baseline Assessment; (ii) Tenant has failed to comply with the provisions of this Lease with respect to Hazardous Substances; (iii) the Premises (including surrounding soil and any underlying groundwater or adjacent surface water) has become contaminated due to operations or activities not attributable to Landlord; or (iv) 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 Tenant.

10.9.3 **Conducting Assessment.** Each Phase II Environmental Assessment shall be conducted: (a) only after advance Notice of such assessment has been provided to Tenant at least 10 days’ prior to the date of the assessment; and (b) in a manner reasonably designed to minimize the interruption of Tenant’s operations and use of the Premises. Landlord shall repair any substantial damage to the Premises or to Tenant’s property that is directly caused by the Phase II Environmental Assessment.

10.10 **Tenant’s Obligations Prior to and Upon Surrender.**

10.10.1 **Tenant’s Phase I and Phase II Environmental Assessment Deposit.** No later than 18 months prior to the Scheduled Expiration Date, Tenant shall deposit with Landlord a sum equal to the then current estimated cost of conducting a Phase I and Phase II Environmental Assessment of the Premises. Landlord shall hold such sum for Tenant and shall apply or reimburse such sum as provided in this section.

10.10.2 **Tenant’s 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, Tenant, at Tenant’s sole cost and expense shall cause a Phase I Environmental Assessment of the Premises to be conducted, or provide Landlord with a report based upon a Phase I Environmental Assessment conducted no earlier than 3 months prior to the beginning of the last year of the Term. In addition, no later than the end of the Term, Tenant shall (A) cause all Hazardous
Substances previously owned, stored or used by Tenant to be removed from the Premises and disposed of in accordance with all Environmental Law; and (B) remove any Underground Storage Tanks or other containers installed or used by Tenant to store any Hazardous Substances on the Premises, and repair any damage to the Premises caused by such removal.

(b) Upon termination of this Lease and Tenant’s satisfactory compliance with all of the requirements of this section, Landlord shall return to Tenant, without interest, the amount deposited in accordance with this section. In the event that Tenant does not cause a Phase I Environmental Assessment to be conducted or does not provide Landlord with a timely report based upon an assessment conducted no earlier than 3 months prior to the beginning of the last year of the Term, Landlord may (but shall not be required to) cause a Phase I Environmental Assessment to be conducted and may apply the sums previously deposited by Tenant to pay for such assessment. If the assessment costs more than the amount of the deposit, Tenant shall pay to Landlord, upon demand, the difference. If the assessment costs less than the amount of the deposit, Landlord shall, no later than 30 days after payment in full of such costs, return to Tenant a sum equal to the amount by which the deposit exceeds the actual costs of such assessment.

(c) If either Tenant’s or Landlord’s Phase I Environmental Assessment identifies areas of concern that in Landlord’s reasonable judgment indicate that further investigation is required, Tenant, at Tenant’s sole cost and expense, shall cause a Phase II Environmental Assessment of the Premises to be conducted. If Tenant does not cause such Phase II Environmental Assessment to be conducted, Landlord may (but shall not be required to) cause a Phase II Environmental Assessment to be conducted and may apply the sums previously deposited by Tenant to pay for such assessment. If the assessment costs more than the amount of the deposit, Tenant shall pay to Landlord, upon demand, the difference. If the assessment costs less than the amount of the deposit, Landlord shall, no later than 30 days after payment in full of such costs, return to Tenant a sum equal to the amount by which the deposit exceeds the actual costs of such assessment. Tenant hereby expressly acknowledges and agrees that Tenant’s covenant and obligation to pay all costs and expenses associated with any Phase II Environmental Assessment required under this section, whether commissioned by Tenant or Landlord, shall survive termination of this Lease.

10.11 Clean-up.

10.11.1 Environmental Report. If any written report containing results of any Phase I Environmental Assessment (“Environmental Report”) shall: (i) reveal that the environmental condition of the Premises has materially declined in comparison to the Baseline Assessment; or (ii) Tenant has materially violated any warranty, representation, or covenant of this section; or (iii) recommend the repair, closure, remediation, removal or other clean-up (collectively, the “Clean-up”) of any Hazardous...
Substances found on or about the Premises, and if Landlord determines that Tenant is responsible for such Clean-up, then:

(a) Landlord shall provide Tenant with a copy of such Environmental Report and with a written explanation of the reasons why Landlord believes that Tenant 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, Tenant fails either (i) to complete the Clean-up, or (ii) 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 Landlord shall have the right, but not the obligation, to carry out any Clean-up recommended by the Environmental Report or required by any Government, and to recover all of the costs and expenses of such Clean-up from Tenant as Additional Rent together with Default Interest from the date Landlord incurred such costs and expenses until paid in full.

10.11.2 Emergency. If the Environmental Report reveals a situation which, in Landlord’s sole discretion, constitutes an emergency, then Landlord shall have the right, but not the obligation, to carry out any Clean-up recommended by the Environmental Report or required by any Government, and to recover all of the costs and expenses of such Clean-up from Tenant as Additional Rent together with interest at the Default Interest from the date Landlord incurred such costs and expenses until paid in full.

10.11.3 Submission of Report to Government. To the extent required by Law, Landlord shall be entitled to submit the Environmental Report to any Government.

10.11.4 Completion of Clean-up Before Surrender or Termination. Tenant shall complete Clean-up prior to surrender of the Premises and termination of this Lease, and shall fully comply with all Environmental Law and requirements of any Government over the Clean-up, including any requirement to file such assessment, mitigation plan, risk assessment or other information with any such Government prior to such surrender or termination.

10.11.5 Tenant’s Inability to Complete. Should any such Clean-up for which Tenant is responsible not be completed or should Tenant not receive any Government approvals regarding the Premises or areas adjacent to the Premises required under Environmental Law prior to the expiration or sooner termination of this Lease, including any extensions of this Lease, then (i) Tenant shall deposit with Landlord an amount of money equal to the balance of the estimated costs of the Clean-up; and (ii) if the nature of the Clean-up makes the Premises untenantable or unleasable until the
Clean-up is completed, then Tenant shall be liable to Landlord as a holdover tenant, subject to the terms and conditions set forth in this Lease, until the Clean-up has been sufficiently completed to make the Premises suitable for lease to third parties.

10.12 **Confidentiality.**

10.12.1 **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, Tenant agrees that Tenant shall not disclose, discuss, disseminate or copy any information, data, findings, communications, conclusions and reports regarding the environmental condition of the Premises, to any Person, including any Government, without the prior written consent of Landlord. Upon completion of any Clean-up of the Premises, Tenant shall deliver and return to Landlord, all information, data, findings, communications, conclusions and reports regarding the environmental condition of the Premises whether provided to Tenant by Landlord or not.

10.12.2 **Scope of Obligation.** Tenant’s obligation to maintain the confidentiality of all information, data, findings, communications, conclusions and reports regarding the environmental condition of the Premises, include but are not limited to Tenant’s officers, employees, agents, attorneys, environmental consultants and contractors. Tenant’s obligation to maintain the confidentiality of all information, data, findings, communications, conclusions and reports regarding the environmental condition of the Premises, shall survive the termination of this Lease.

10.13 **Copies of Environmental Reports.** Tenant shall provide Landlord with a copy of any and all environmental assessments, audits, studies and reports regarding Tenant’s past or current activities on the Premises or the environmental condition of the Premises within 30 days of Tenant’s receipt of such materials. Tenant shall be obligated to provide Landlord with a copy of such materials without regard to whether they are generated by Tenant or prepared for Tenant, or how Tenant comes into possession of such materials.

10.14 **Survival of Agreements.** The covenants of this section, including the indemnification provision, shall survive the expiration or termination of this Lease, or any termination of Tenant’s interest in the Premises.

11. **INDEMNIFICATION; LIABILITY OF LANDLORD**

11.1 **Obligations.** Tenant shall Indemnify Landlord against any: (a) wrongful act, wrongful omission, or negligence of Tenant (and anyone claiming by or through the Tenant) or its partners, members, directors, officers, or employees; (b) breach or default by Tenant under this Lease; or (c) breach of any representation or warranty Tenant makes in this Lease. Tenant shall also Indemnify Landlord against the following during the Term and so long as Tenant remains in possession after the Expiration Date: (u) any Contest Tenant initiates; (v) any Application made at Tenant’s request; (w) use,
occupancy, control, management, operation, and possession of the Premises; (x) any Construction and any agreements that Tenant (or anyone claiming through Tenant) makes for any Construction; (y) the condition of the Premises or any street, curb or sidewalk adjoining the Premises, or of any roadways or easements adjoining or appurtenant to the Premises; and (z) any accident, injury or damage whatsoever caused to any person in or on the Premises or upon or under roadways or easements adjoining or appurtenant to the Premises. Tenant shall be required to Indemnify Landlord Group notwithstanding the acts or omissions or negligence of Landlord, but Tenant shall not be required to Indemnify Landlord regarding Landlord’s intentional acts or gross negligence. This paragraph does not apply to Environmental Law and Hazardous Substances Discharges, which are covered in Section 10.8.

11.2 **No Liability of Landlord.** During the Term: (a) Tenant is and shall be in exclusive control and possession of the Premises; and (b) Landlord shall not be liable for any injury or damage to any property (of Tenant or any other Person) or to any person occurring on or about the Premises, except to the extent caused by Landlord’s intentional act or gross negligence. Landlord’s right to enter and inspect the Premises is intended solely to allow Landlord to ascertain whether Tenant is complying with this Lease and the Power Purchase Agreement and (to the extent this Lease allows) to cure any Default. Such provisions shall not impose upon Landlord any liability to third parties. Nothing in this Lease shall be construed to exculpate, relieve, or Indemnify Landlord from or against any liability of Landlord: (y) to third parties existing at or before the Commencement Date; or (z) arising from Landlord’s intentional acts or omissions or gross negligence.

11.3 **Indemnification Procedures.** Wherever this Lease requires any Indemnitor to Indemnify any Indemnitee, including, without limitation, under Sections 9.2, 10.8, 11.1, 17.5, 18.2, and 26.7 of this Lease:

11.3.1 **Prompt Notice.** Indemnitee shall promptly Notify Indemnitor of any claim. To the extent, and only to the extent, that Indemnitee fails to give prompt Notice and such failure materially prejudices Indemnitor, Indemnitor shall be relieved of its indemnity obligations for such claim.

11.3.2 **Selection of Counsel.** Indemnitor shall select counsel reasonably acceptable to Indemnitee. Even though Indemnitor shall defend the action, Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. Such counsel may attend all proceedings and meetings. Indemnitor’s counsel shall actively consult with Indemnitee’s counsel. Indemnitor and its counsel shall, however, fully control the defense.

11.3.3 **Cooperation.** Indemnitee shall reasonably cooperate with Indemnitor’s defense, provided Indemnitor reimburses Indemnitee’s actual reasonable out of pocket expenses (including Legal Costs) of such cooperation.
11.3.4 Settlement. Indemnitor may, with Indemnitee’s consent, not to be unreasonably withheld, settle the claim. Indemnitee’s consent shall not be required for any settlement by which: (w) Indemnitor procures (by payment, settlement, or otherwise) a release of Indemnitee by which Indemnitor need not make any payment to the claimant; (x) neither Indemnitee nor Indemnitor on behalf of Indemnitee admits liability; (y) the continued effectiveness of this Lease is not jeopardized in any way; and (z) Indemnitee’s interest in the Premises is not jeopardized in any way.

11.3.5 Insurance Proceeds. Indemnitor’s obligations shall be reduced by net insurance proceeds Indemnitee actually receives for the matter giving rise to indemnification.

12. RIGHT OF CONTEST

12.1 Tenant’s Right; Contest Conditions. Notwithstanding anything to the contrary in this Lease, Tenant shall have the right to contest, at its sole cost, by appropriate legal proceedings diligently conducted in good faith, the amount or validity of any Real Estate Taxes or Prohibited Lien; the valuation, assessment, or reassessment (whether proposed, phased, or final) of the Premises for Real Estate Taxes; the amount of any Real Estate Tax; the validity of any Law or its application to the Premises; the terms or conditions of, or requirements for, any Approval; or the validity or merit of any claim against which this Lease requires Tenant to Indemnify Landlord (any of the foregoing, a “Contest”). Tenant may defer payment or performance of the contested obligation pending outcome of the Contest, provided that Tenant causes the following conditions (collectively, the “Contest Conditions”) to remain satisfied:

12.1.1 No Fines. Such deferral or noncompliance shall not subject Landlord to a material risk of any fine or penalty, except civil penalties for which Tenant has given Landlord a bond, letter of credit, or other security reasonably satisfactory to Landlord (the “Contest Security”) in an amount equal to the reasonably estimated amount of such civil penalties.

12.1.2 No Liability. Such deferral or noncompliance creates no material risk of a lien, charge, or other liability of any kind against the Fee Estate, unless Tenant has given Landlord Contest Security equal to the reasonably estimated amount of such lien, charge, or other liability.

12.1.3 No Forfeiture. Such deferral or noncompliance will not place the Fee Estate in material danger of being forfeited or lost.

12.1.4 No Cost to Landlord. Such Contest shall be without cost, liability, or expense to Landlord.

12.1.5 Diligence. Tenant shall prosecute such Contest with reasonable diligence and in good faith.
12.1.6 **Payment.** If required for such Contest, Tenant shall have paid the Contested Real Estate Taxes or other matter.

12.1.7 **Collection of Real Estate Taxes.** If such Contest relates to any Real Estate Tax, then such Contest shall suspend its collection from Landlord and the Fee Estate.

12.1.8 **No Tax Deed.** If, at any time, payment of any Real Estate Taxes is necessary to prevent the imminent (i.e., within 30 days) delivery of a tax deed of the Fee Estate for nonpayment, then Tenant shall pay or cause to be paid the sums in sufficient time to prevent delivery of such deed.

12.1.9 **No Event of Default.** No Uncured Event of Default shall exist under this Lease during the pendency of such Contest.

12.1.10 **Security.** If the amount at issue in such Contest (and all other Contests then pending) exceeds an amount equal to $100,000.00, then Tenant shall, before proceeding with such Contest, give Landlord Contest Security equal to such excess (less any Contest Security otherwise provided for the same Contest).

12.1.11 **Named Parties.** If Landlord has been named as a party in any action, then Tenant shall cause Landlord to be removed as such party and Tenant substituted in Landlord’s place, if permissible under the circumstances.

12.2 **Landlord Obligations and Protections.** Landlord need not join in any Contest unless (a) Tenant has complied with the Contest Conditions; and (b) such Contest must be initiated or prosecuted in Landlord’s name. In such case, Landlord shall cooperate, as Tenant reasonably requests, to permit the Contest to be prosecuted in Landlord’s name. Landlord shall give Tenant any documents, deliveries, and information in Landlord’s control and reasonably necessary for Tenant to prosecute its Contest. Landlord shall otherwise assist Tenant in such Contest as Tenant reasonably requires. Tenant shall pay all reasonable costs and expenses, including Legal Costs, of any Contest. Tenant shall, at Landlord’s request, advance (when Landlord incurs them) such reasonable costs and expenses as Landlord incurs or reasonably anticipates incurring, for Tenant’s Contest and Landlord’s assistance with such Contest.

12.3 **Miscellaneous.** Tenant shall be entitled to any refund of any Real Estate Taxes (and penalties and interest paid by Tenant), to the extent attributable to periods within the Term, whether such refund is made during or after the Term. When Tenant concludes Tenant’s Contest of any Real Estate Taxes, Tenant shall pay the amount of such Real Estate Taxes (if any) as has been finally determined in such Contest to be due, to the extent attributable to periods within the Term, and any costs, interest, penalties, or other liabilities in connection with such Real Estate Taxes. Upon final determination of Tenant’s Contest of a Law, Tenant shall comply with such final determination. Landlord may contest any matter for which Tenant is entitled to prosecute a Contest, but only if:
(a) Landlord Notifies Tenant of Landlord’s intention to do so; and (b) Tenant fails to commence such Contest within 15 days after receipt of such Notice.

12.4 Contest Security. Landlord shall promptly release any Contest Security to Tenant after the Contest has been resolved and Tenant has performed its obligations, if any, as determined by such resolution.

13. Insurance

13.1 Tenant to Insure: Tenant, 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, at the commencement of this Lease, and continuing throughout the Term, the types and minimum amounts of insurance coverage specified herein.

13.2 Types and Minimum Amounts of Insurance.

13.2.1 Worker’s Compensation and Employers’ Liability Insurance: Workers’ Compensation and other similar insurance required by applicable State or U.S. federal laws. Limits for such coverage shall be not less than the statutory limits for Worker's Compensation and Employers’ Liability coverage with minimum limits of:
- $1,000,000 for Each Accident
- $1,000,000 Disease-Each Employee
- $1,000,000 Disease Policy Limit.

13.2.2 Commercial General Liability: Minimum limits of liability shall be a combined single limit for bodily injury and property damage of $1,000,000 each occurrence, $2,000,000 general aggregate, $2,000,000 products and completed operations aggregate; $1,000,000 Personal and Advertising Injury, $250,000 Fire Legal Liability, $5,000 any one person Medical Expense limit. Such insurance shall include Premises Operations; Products - Completed Operations; Blanket Contractual Liability; Personal and Advertising Injury; Fire Legal Liability; Employees Named as Additional Insureds; Medical Expense and coverage for independent contractors. If coverage is written on a claims-made basis, the Tenant warrants that any retroactive date applicable to coverage under the policy precedes the Term; 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. The policy and certificate of insurance shall further contain a provision that the general aggregate limit applies exclusively to the Premises and the operations conducted thereon.

13.2.3 Automobile Liability: Minimum limits of liability shall be a combined single limit for bodily injury and property damage of $1,000,000 for each occurrence and annual aggregate for any owned, leased and non-owned automobiles.

13.2.4 All Risk Property: This insurance shall provide All Risk Property Coverage (including the perils of wind including named windstorm, earthquake,
and flood) against damage to the Premise and the Facility. The amount of coverage shall be purchased on a full replacement cost basis (no coinsurance shall apply) except for earthquake and flood perils which shall be no less than 40% of the replacement value of the Facility up to Twenty Million Dollars ($20,000,000), if such insurance amounts are appropriate and available on commercially reasonable terms. Such coverage may allow for other reasonable sublimits. Tenant will, at its own expense, at all times during the Term effect and maintain coverage for Business Income with Extra Expense Insurance in an amount sufficient to insure payment of Fixed Rent and Additional Rent and other fixed costs, for a period of not less than twelve (12) months, during any interruption of Tenant’s business by reason of the Premises or Tenant's business personal property being damaged by fire or other perils covered under an All Risk Property policy.

13.2.5 Builders and Installation Risk. Tenant will at its own expense effect and maintain during the whole of the Term builder's and installation risk insurance while the Premises or any part thereof are under construction, written on the Builders Risk Completed Value form (nonreporting full coverage), including coverage on equipment, machinery, materials, etc. not yet installed but to become a permanent part of the improvements.

13.2.6 Umbrella Liability: Tenant will at its own expense effect and maintain during the whole of the Term Umbrella Liability Insurance providing excess coverage over Commercial General Liability, Employer's Liability, and Automobile Liability Insurance. The Umbrella Liability policy shall be written on an "occurrence" form with a limit of liability of not less than $20,000,000 per policy year and a self-insured retention and/or deductible no greater than $25,000.00.

13.3 Form of Policies:

13.3.1 Form and Substance: All insurance required to be furnished by Tenant hereunder shall be pursuant to policies in form and substance satisfactory to Landlord, and issued by a company authorized by law to issue such insurance in the State of Hawaii on an admitted or non-admitted basis, and with an A.M. Best Financial Strength Rating of “A-“ or better, and an A.M. Best Financial Size Category of “VII” or higher. In the event that such rating system is altered or eliminated, then the insurer shall have a rating comparable to such A-, VII from a comparable rating service that has been adopted for standard use in the insurance industry.

13.3.2 Required Provision: All insurance policies shall:

(a) Additional Insured: The insurance policies specified herein shall name Landlord, together with its affiliates, including but not limited to Lāna‘i Island Holdings, LLC, and their respective members, officers, employees, agents, successors and assigns (“Landlord Group”), 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 Tenant's performance of this Lease. All Risk Property
Insurance shall include Landlord Group as loss payee, as its interest may appear. Coverage must be primary in respect to the additional insured. Any other insurance carried by the Landlord will be excess only and not contribute with this insurance.

(b) **Severability of Interest**: Apply separately to each insured against whom claim is made or suit is brought.

(c) **Waiver of Subrogation**: Tenant shall cause its insurers to waive all rights or subrogation which Tenant or its insurers may have against Landlord Group.

(d) The policies and certificate of insurance shall also specifically provide the following or comparable language: “It is further agreed that such insurance is afforded by this policy for the benefit of the Additional Insured shall be primary insurance, and any other insurance maintained by the Additional Insured shall be excess and non-contributory.”

13.3.3 **All Insurance**: All insurance shall:

(a) **No Premiums**: Not require Landlord to pay any premiums.

(b) **No Partnership**: The inclusion of Landlord Group as Additional Insured is not intended to, and shall not make them or any of them, a partner or joint venture with Tenant in the operation of Tenant's Facility in, on, over, under or about the Premises.

(c) **Deductibles**: Any insurance required hereunder may provide for deductibles or self-insured retentions which are reasonable and prudent in relationship to the soundness of Tenant’s financial condition at the sole discretion of Landlord. Any deductibles or self-insured retention in excess of $25,000 shall be disclosed to Landlord. Any deductible shall be the responsibility of Tenant.

13.3.4 **Certificate of Insurance**: Evidence of insurance for the coverage specified herein shall be provided to Landlord before the commencement of the Lease. Within 30 Days of any change of any policy and upon renewal of any policy, Tenant shall provide certificates of insurance to Landlord. During the Term, Tenant, upon Landlord's reasonable request, shall make available to Landlord for its inspection at Tenant's designated location, certified copies of the insurance policies described herein. Receipt of any evidence of insurance showing less coverage than requested is not a waiver of Tenant’s obligations to fulfill the requirements.

13.3.5 **Notification**: In the event Tenant receives notice of cancellation or non-renewal of any insurance in accordance with policy provisions, Tenant shall immediately provide verbal and written notice to Landlord. In the event Tenant chooses to voluntarily cancel, non-renew, or reduce the scope of coverage or limits of liability,
Tenant shall notify Landlord in writing at least thirty (30) days prior to such cancellation, non-renewal, or reduction in scope of coverage or limits of liability. In any event, the cancellation or non-renewal of any insurance shall not be construed as a limitation of any kind on Tenant’s obligations to indemnify, defend, insure, and hold harmless, as may be found anywhere in this or any other document.

13.4 **Annual Review by Landlord:** The coverage limits shall be reviewed annually by Landlord and if, in Landlord’s discretion, Landlord determines that the coverage limits should be increased, Landlord shall so notify Tenant. Tenant shall, within thirty (30) Days of notice from Landlord, increase the coverage as directed in such notice and the costs of such increased coverage limits shall be borne by Tenant.

13.5 **No Limitation:** Tenant’s procurement and maintenance of insurance, or the delivery of Certificates of Insurance or other written evidence of insurance in form and substance acceptable to Landlord shall not be construed as a limitation of any kind on Tenant’s obligations to indemnify, defend, insure, and hold harmless, as may be found anywhere in this or any other document.

**No Representation of Coverage Adequacy:** By requiring insurance herein, Landlord does not represent that coverage and limits will necessarily be adequate to protect Tenant, and such coverage and limits shall not be deemed as a limitation on Tenant’s liability under the indemnities granted to Tenant in this Lease.

**Loss or Damage to Improvements.** In every case of loss or damage to any Improvements on the Land, Tenant shall with all reasonable speed, rebuild, repair or otherwise reinstate the Improvements in accordance with the original plans or such modified plans conforming to laws and regulations then in effect as approved in writing by Landlord. Approval by Landlord shall not be unreasonably withheld, delayed or conditioned. All proceeds of such insurance (excluding the proceeds of any rental value or use and occupancy insurance of Tenant), whether held by Tenant or by Insurance Trustee, shall be used for such purpose, and Lessee will make up any deficiency in the insurance proceeds from its own funds.

14. **LOSSES AND LOSS PROCEEDS**

14.1 **Notice.** If either party becomes aware of any Casualty or any actual, threatened, or contemplated Condemnation, then such party shall promptly Notify the other.

14.2 **Casualty.** If a Casualty occurs which is not a Substantial Casualty, then: (a) no Rent shall abate; (b) this Lease shall not terminate or be impaired; and (c) Tenant shall Restore with reasonable promptness regardless of cost. If the Casualty is determined to be a Substantial Casualty, then Tenant may, by Notice to Landlord, given within 10 days after such determination, terminate this Lease effective 30 days after such
Notice, provided that Tenant assigns to Landlord all proceeds from applicable property insurance policies (and rights thereto) arising from the Casualty.

14.3 **Substantial Condemnation.** If a Substantial Condemnation occurs, then this Lease (except as it relates to allocation of the Condemnation Award) shall terminate on the Condemnation Effective Date. Rent shall be apportioned accordingly. The Condemnation Award shall be allocated as follows:

14.3.1 **Prepayment Premium.** To Leasehold Mortgagee, to the extent that both (1) because of such Condemnation, any Leasehold Mortgagee imposes any fee or charge that such Leasehold Mortgagee could not have collected but for the Condemnation and the related prepayment of such Leasehold Mortgagee’s loan; and (2) the Condemnation Award was directly or indirectly increased by such fee or charge.

14.3.2 **Costs and Expenses.** To reimburse Landlord and Tenant (subject to the rights of Leasehold Mortgagees) for their actual costs and expenses, including Legal Costs, incurred in the Substantial Condemnation and determining and collecting the Condemnation Award.

14.3.3 **Tenant’s Claim.** Tenant shall, subject to the rights of Leasehold Mortgagees, receive such portion of the Condemnation Award as shall equal the lesser of (a) all sums secured by all Leasehold Mortgages; and (b) the Market Value of the Facility at the Condemnation Effective Date.

14.3.4 **Landlord’s Claim.** Landlord shall, subject to the rights of Fee Mortgagees, receive such portion of the Condemnation Award as shall equal the Market Value of the Land, at the Condemnation Effective Date.

14.3.5 **Landlord’s Residual Claim.** Landlord shall, subject to the rights of Fee Mortgagees, receive the entire remaining Condemnation Award.

14.4 **Insubstantial Condemnation.** If an Insubstantial Condemnation occurs after the Commencement Date, then any Condemnation Award(s) shall be paid to Depository and applied first toward Restoration, in the same manner as Restoration after Casualty. Whether or not the Condemnation Award is adequate, Tenant shall, at its expense, Restore in compliance with this Lease. After Tenant has completed and fully paid for Restoration, any remaining Condemnation Award shall be distributed to Landlord and Tenant as if it arose from a Substantial Condemnation that affected only the part of the Premises taken, with an equitable allocation of all elements taken into account in determining such distribution.

14.5 **Temporary Condemnation.** If a Temporary Condemnation occurs (a) no Rent shall abate; (b) this Lease shall not terminate or be impaired; and (c) Tenant shall receive any Condemnation Award (to the extent for periods within the Term), without affecting Tenant’s obligations in any way.
14.6 **Use of Loss Proceeds.**

14.6.1 **Assignment to Depository.** All Loss Proceeds shall be paid to Depository, to be disbursed by Depository, subject to the terms of the Senior Leasehold Mortgage and this Lease. If Landlord receives any Loss Proceeds, Landlord shall promptly remit them to Depository.

14.6.2 **Immaterial Loss.** If a Loss is an Immaterial Loss, then (subject to the terms of the Leasehold Mortgage on disbursement of Loss Proceeds to Restore) the Depository shall release all Loss Proceeds to Tenant, to be applied first to Restoration.

14.6.3 **Material Loss.** If a Loss is not an Immaterial Loss, then Depository shall retain the Loss Proceeds and pay them over to Tenant from time to time, upon the following terms, for Restoration. Depository shall first reimburse Landlord and Tenant from such Loss Proceeds for their actual, necessary, and proper costs and expenses in collecting such Loss Proceeds. Depository shall release Loss Proceeds to Tenant from time to time as Restoration progresses in accordance with the procedures required by the Leasehold Mortgagee. If no Leasehold Mortgage exists, then Depository shall disburse the Loss Proceeds from time to time pursuant to normal and customary disbursement procedures consistent with this Lease, but excluding any requirement for a guaranty, bond, security, or other credit enhancement or credit support measures.

14.6.4 **Loss Proceeds in Trust.** Until Tenant has completed and paid for Restoration, Tenant shall hold all Loss Proceeds in trust to be used first to Restore and for no other purpose. If any Prohibited Lien is filed against the Premises, Tenant shall not be entitled to receive any further installment of Loss Proceeds until Tenant has satisfied, bonded, or otherwise discharged such Prohibited Lien when and as this Lease requires.

14.6.5 **Remaining Loss Proceeds.** When Tenant has completed and paid for Restoration, Depository shall release to Tenant, and Tenant may retain (subject to rights of Leasehold Mortgagees) any remaining Loss Proceeds.

14.6.6 **Insufficient Restoration Funds.** If Restoration Funds are insufficient to Restore, then Tenant shall nevertheless Restore at its expense. Depository shall not release any Loss Proceeds until and unless Tenant has expended on such Restoration an amount equal to any such insufficiency.

14.7 **Disputes.**

14.7.1 **Good Faith Negotiations.** Except as otherwise expressly set forth in this Lease, before submitting any dispute about a Loss (including its characterization), Restoration, timing of Restoration, Loss Proceeds, Restoration Funds, or the use of such proceeds or funds to dispute resolution or litigation, the presidents, vice presidents, or authorized delegates from both Landlord and Tenant having full authority to settle the dispute shall personally meet in Hawaii and attempt in good faith to resolve
the dispute ("Management Meeting"). Landlord and Tenant shall endeavor to hold the Management Meeting within thirty (30) days after the date of a request for a Management Meeting. Landlord and Tenant shall not file a complaint or initiate other formal dispute resolution proceedings until ninety (90) days after the date of a request for a Management Meeting, except as might be necessary to preserve a right or claim that would expire during the ninety-day period.

15. **LANDLORD’S TRANSFERS**

15.1 **Landlord’s Right to Convey.** Landlord may Transfer the Fee Estate from time to time. Landlord will promptly Notify Tenant of a Transfer.

15.2 **Release of Landlord.** Upon any Transfer of the entire Fee Estate in compliance with this Lease, the grantor shall be automatically freed and relieved from all liability (excluding liability previously accrued) for performance of any covenants or obligations to be performed by Landlord after the Transfer, provided that such successor Landlord assumes Landlord’s past, present, and future obligations under this Lease. This Lease shall bind Landlord only while Landlord owns the Fee Estate, except as to any liabilities and obligations accrued before the date of Transfer of the Fee Estate.

16. **TENANT’S TRANSFERS**

16.1 **Tenant’s Limited Right.** Tenant may only Transfer this Lease to an assignee of all of the rights and obligations of the Seller under the Power Purchase Agreement and only after obtaining Landlord’s written consent which may be withheld in Landlord’s sole discretion. Tenant may not Transfer this Lease to any other Person, and any such Transfer shall be void. Any permitted assignee of Tenant shall assume all obligations and liabilities of Tenant under this Lease. Tenant shall pay all transfer and other taxes payable on account of any Transfer by Tenant or any holder of any Equity Interest in Tenant. Tenant shall promptly Notify Landlord of any Transfer. No Transfer shall affect any obligations of Tenant or rights of Landlord under this Lease.

16.2 **Subleases.** Tenant shall not enter into or Modify any Sublease, without Landlord’s prior written consent which may be withheld in Landlord’s sole discretion. No Sublease shall affect any obligations of Tenant or rights of Landlord under this Lease, all of which shall continue in full force and effect notwithstanding any Sublease. Any Sublease shall be subject in all respects to the terms and conditions of this Lease except that, unless terminated sooner under the terms thereof, any such Sublease shall expire no later than one hour before the Expiration Date. The fact that any Subtenant causes any Default shall not relieve Tenant of Tenant’s obligation to cure it. Tenant shall take all steps reasonable and necessary to prevent any such Default.

16.3 **Conditions to Effectiveness of Certain Transactions.** No assignment of this Lease or Sublease shall be effective or have any validity unless and until such assignment or Sublease otherwise complies with this Lease and Landlord has received:
(a) in the case of an assignment, an executed counterpart of the assignment and an assumption of this Lease by the assignee, in recordable form, effective as of the date of assignment; (b) in the case of a Sublease, a copy of the executed Sublease complying with this Lease; and (c) Notice of the assignee or Subtenant.

17. LEASEHOLD MORTGAGE

17.1 Leasehold Mortgage. Provided that any Monetary Default or material Nonmonetary Default has been, or simultaneously is, cured, Tenant may grant a Leasehold Mortgage to a Financing Party under the Power Purchase Agreement in connection with a permitted financing under the Power Purchase Agreement.

17.2 Leasehold Mortgagee’s Remedies. Without Landlord’s consent, at any time (a) any Leasehold Mortgagee may initiate and complete any Foreclosure Event and exercise any other rights and remedies against Tenant and the Leasehold Estate (but not the Fee Estate) under its Leasehold Mortgage; and (b) any transferee through a Foreclosure Event, and its successors and assigns, may assign this Lease to a Person who simultaneously assumes all of the rights and obligations of the Seller under the Power Purchase Agreement.

17.3 Lease Impairments. Any Lease Impairment made without Leasehold Mortgagee’s consent shall (at Leasehold Mortgagee’s option) be null, void, and of no force or effect, and not bind Tenant, Leasehold Mortgagee, or New Tenant.

17.4 Notices. If any Default occurs for which Landlord intends to exercise any remedy, Landlord shall promptly give Leasehold Mortgagee a Notice of Default.

17.5 Right to Cure; Indemnity. Any Leasehold Mortgagee shall have the right, but not the obligation, to perform any obligation of Tenant under this Lease and to cure any Default under the terms and conditions provided in this Section 17.5. Landlord shall accept performance by or at the instigation of a Leasehold Mortgagee in fulfillment of Tenant’s obligations, for the account of Tenant and with the same force and effect as if performed by Tenant, provided that such performance is rendered within the cure period that applies to a Leasehold Mortgagee under this Lease under this Section 17.5.

17.5.1 Opportunity to Cure. Landlord shall accept Leasehold Mortgagee’s cure of any Default at any time until 90 days after Leasehold Mortgagee has received the Notice of Default for that Default, provided Landlord has received a Notice of Intent to Cure from Leasehold Mortgagee on or by 30 days after Leasehold Mortgagee’s receipt of the Notice of Default. If Landlord does not receive a timely Notice of Intent to Cure under the preceding sentence, Landlord may terminate this Lease under Section 19.2.1 or exercise any other Remedies as may be available at law or in equity or under any terms of this Lease. If Landlord receives a timely Notice of Intent to Cure and Leasehold Mortgagee cannot reasonably cure any Nonmonetary Default within 90 days after receiving the Notice of Default for that Default, Leasehold Mortgagee shall
have such further time as it reasonably needs so long as it proceeds with the diligence expected of an experienced independent power producer willing and able to exert commercially reasonable efforts to achieve such cure, but in any event no longer than 180 days. If Leasehold Mortgagee cannot reasonably cure a Default without possession, or if any Tenant-Specific Default(s) occur(s), Leasehold Mortgagee shall be entitled to such additional time as it reasonably needs to consummate a Foreclosure Event and obtain possession, provided Leasehold Mortgagee timely exercises its cure rights for all other Defaults, and completes the Foreclosure Event within 365 days. If Leasehold Mortgagee consummates a Foreclosure Event, Landlord shall waive all Tenant-Specific Defaults, provided that all other Defaults are cured.

17.5.2 Indemnity for Cure Activities. Notwithstanding anything to the contrary in this Lease, if any Leasehold Mortgagee (or a representative of Leasehold Mortgagee) desires to enter the Premises to cure any Default, Leasehold mortgagee may enter the Premises to seek to cure a Default. This right or its exercise shall not be deemed to give Leasehold Mortgagee possession. By entering the Premises, such Leasehold Mortgagee shall be deemed to have agreed to Indemnify Landlord in the same manner as this Lease requires Tenant to Indemnify Landlord, but solely regarding direct damages that Landlord suffers as a result of any acts or omissions of such Leasehold Mortgagee or its representative on or in the Premises in seeking to cure any such Default.

17.6 Cure Rights Implementation. Whenever Leasehold Mortgagee’s time to cure a Default or consummate a Foreclosure Event has not expired, provided that Leasehold Mortgagee has timely provided Landlord with a Notice of Intent to Cure pursuant to Section 17.5.1 above, Landlord shall not terminate this Lease, accelerate any Rent, or otherwise interfere with Tenant’s or Leasehold Mortgagee’s possession and quiet enjoyment of the Leasehold Estate.

17.7 New Lease. If this Lease terminates for any reason (except with Leasehold Mortgagee’s consent or because of a Total Loss), even if Leasehold Mortgagee failed to timely exercise its cure rights for a Default, Landlord shall promptly give Leasehold Mortgagee a Lease Termination Notice. By giving notice to Landlord on or before the day that is 30 days after Leasehold Mortgagee receives Landlord’s Lease Termination Notice, Leasehold Mortgagee may require Landlord to promptly enter into a New Lease with New Tenant. Landlord need not do so, however, unless New Tenant has, consistent with the Lease Termination Notice: (a) cured all reasonably curable Defaults (except Tenant-Specific Defaults); (b) reimbursed Landlord’s reasonable costs and expenses (including reasonable attorneys’ fees and expenses) to terminate this Lease, recover the Premises, and enter into the New Lease; and (c) assumed the Power Purchase Agreement, or with Landlord’s consent, arranged for the assumption of the Power Purchase Agreement by the New Tenant.

17.8 New Lease Implementation. If Leasehold Mortgagee timely requests a New Lease in conformity with this Lease, then from the date this Lease terminates until
the parties execute and deliver a New Lease, Landlord shall not: (a) operate the Premises in an unreasonable manner; (b) terminate Sublease(s) except for the Subtenant’s default; or (c) lease any Premises except to New Tenant. When the parties sign a New Lease, Landlord shall transfer to New Tenant and New Tenant shall accept all Subleases (including any security deposits Landlord held), service contracts, and Premises operations.

17.9 **Certain Proceedings.** If Landlord or Tenant initiates any mediation, litigation, or other dispute resolution proceeding affecting this Lease, then the parties shall simultaneously Notify Leasehold Mortgagee. Leasehold Mortgagee may participate in such proceedings on Tenant’s behalf, or exercise any or all of Tenant’s rights in such proceedings, in each case (at Leasehold Mortgagee’s option) to the exclusion of Tenant.

17.10 **No Merger.** If the Leasehold Estate and the Fee Estate are ever commonly held, they shall remain separate and distinct estates (and not merge) without Leasehold Mortgagee’s and Fee Mortgagee’s consent.

17.11 **Multiple Leasehold Mortgages.** If at any time multiple Leasehold Mortgagees exist: (a) any consent by or notice to Leasehold Mortgagee refers to all Leasehold Mortgagees; (b) except under clause (a), the most senior Leasehold Mortgagee may exercise all rights of Leasehold Mortgagee(s), to the exclusion of junior Leasehold Mortgagee(s); (c) to the extent that the most senior Leasehold Mortgagee declines to do so, any other Leasehold Mortgagee may exercise those rights, in order of priority; and (d) if Leasehold Mortgagees do not agree on priorities, a written determination of priority issued by a title insurance company licensed in the State (or such insurer’s designated authorized title agent, e.g. Title Guaranty of Hawaii, Inc.), selected by Landlord in its sole discretion, shall govern.

17.12 **Further Assurances.** Upon request from Tenant or any Leasehold Mortgagee (prospective or current), Landlord shall promptly, under documentation reasonably satisfactory to the requesting party and the Landlord: (a) agree directly with Leasehold Mortgagee that it may exercise against Landlord all Leasehold Mortgagee’s rights in this Lease so long as Leasehold Mortgagee complies with all terms and conditions of this Lease in connection with the exercise of such remedies; and (b) certify (subject to any then-existing exception(s) reasonably specified) that this Lease is in full force and effect, that no Lease Impairment has occurred, that to Landlord’s knowledge no Default exists, the date through which Rent has been paid, and other similar matters as reasonably requested and mutually agreeable between Landlord and such Leasehold Mortgagee.
18. QUIET ENJOYMENT; TITLE TO CERTAIN PREMISES; CERTAIN AGREEMENTS

18.1 Quiet Enjoyment. So long as this Lease has not been terminated, Landlord covenants that Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises for the Term, subject to the terms of this Lease, without molestation, hindrance, or disturbance by or from Landlord or anyone claiming by or through Landlord or having title to the Premises paramount to Landlord, and free of any encumbrance created or suffered by Landlord, except Permitted Exceptions.

18.2 Access and Inspection. Notwithstanding anything to the contrary in this Lease, Landlord and its agents, representatives, and designees may enter the Premises upon reasonable Notice to: (a) ascertain whether Tenant is complying with this Lease and the Power Purchase Agreement; (b) cure Tenant’s Defaults; (c) inspect the Premises and any Construction; (d) perform such tests, borings, and other analyses as Landlord determines may be necessary or appropriate relating to (non)compliance with any Law or possible Hazardous Substances Discharge; or (e) show the Premises to a prospective Transferee or Fee Mortgagee. In entering the Premises, Landlord and its designees shall not unreasonably interfere with operations on the Premises and shall comply with Tenant’s reasonable instructions. Landlord shall Indemnify Tenant against any claims arising from Landlord’s entry upon the Premises (except upon termination of this Lease or an Event of Default).

18.3 Title. Notwithstanding anything to the contrary in this Lease, all Improvements located in, on, or at the Premises or otherwise constituting part of the Premises shall during the Term be owned by, and belong to, Tenant. All benefits and burdens of ownership of the foregoing, including title, depreciation, tax credits, and all other tax items, shall be and remain in Tenant during the Term.

19. EVENTS OF DEFAULT; REMEDIES

19.1 Definition of “Event of Default.” An “Event of Default” means the occurrence of any one or more of the following:

19.1.1 Monetary Default. If a Monetary Default occurs and continues for 30 days after Notice from Landlord, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment.

19.1.2 Prohibited Liens. If Tenant fails to comply with any obligation regarding Prohibited Liens and does not remedy such failure within 15 days after Notice from Landlord.

19.1.3 Power Purchase Agreement. If a Default by Tenant occurs under the Power Purchase Agreement, which continues beyond any cure or grace period allowed under the Power Purchase Agreement.
19.1.4 **Bankruptcy or Insolvency.** If Tenant ceases to do business as a going concern, ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within 180 days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Tenant’s assets or Tenant’s interest in this Lease (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within 180 days).

19.1.5 **Nonmonetary Default.** If any other Nonmonetary Default occurs and Tenant does not cure it within 30 days after Notice from Landlord describing it in reasonable detail, or, in the case of a Nonmonetary Default that cannot with due diligence be cured within 30 days from such Notice, if Tenant shall not (a) within 30 days from Landlord’s Notice advise Landlord of Tenant’s intention to take all reasonable steps to cure such Nonmonetary Default; (b) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (c) complete such cure within a reasonable time under the circumstances, but in any event within 90 days from the receipt of such Notice.

19.2 **Remedies.** If an Event of Default occurs, then Landlord shall, at Landlord’s option, have any or all of the following remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Lease. Landlord’s remedies include:

19.2.1 **Termination of Tenant’s Rights.** Landlord may terminate Tenant’s right to possess the Premises by any lawful means, in which case this Lease and the Term shall terminate, such date of termination shall be the Expiration Date, and Tenant shall immediately surrender possession to Landlord.

19.2.2 **Taking Possession.** Landlord may re-enter and take possession of the Premises with process of law, whether by summary proceedings or otherwise, and remove Tenant, with or without having terminated this Lease, and without thereby being liable for damages or guilty of trespass. This is intended to constitute an express right of re-entry by Landlord. Except as expressly provided in this Lease or prohibited by Law, Tenant, for and on behalf of itself and all persons claiming by, through or under Tenant, expressly waives any right to service of notice of intention to re-enter provided in any Law and any and all right of redemption provided by any Law, or re-entry or repossession or to restore the operation of this Lease if Tenant is dispossessed by a judgment or by writ of any court or judge or in case of re-entry or repossession by Landlord or any expiration or termination of this Lease. No re-entry by Landlord, whether had or taken under summary proceedings or otherwise, shall absolve or discharge Tenant from liability under
this Lease. The terms “enter,” “re-enter,” “entry,” and “re-entry,” as used in this Lease, are not restricted to their technical legal meanings.

19.2.3 **Suits Before Expiration Date.** Landlord may sue for damages or to recover Rent from time to time at Landlord’s election.

19.2.4 **Receipt of Moneys.** No receipt of money by Landlord from Tenant after termination of this Lease, or after the giving of any notice of termination of this Lease, shall reinstate, continue, or extend this Lease or affect any notice theretofore given to Tenant, or waive Landlord’s right to enforce payment of any Rent payable or later falling due, or Landlord’s right to recover possession by proper remedy, except as this Lease expressly states otherwise, it being agreed that after service of notice to terminate this Lease or the commencement of suit or summary proceedings, or after final order or judgment for possession, Landlord may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of use and occupation or, at Landlord’s election, on account of Tenant’s liability.

19.2.5 **No Waiver.** No failure by Landlord to insist upon strict performance of any covenant, agreement, term, or condition of this Lease or to exercise any right or remedy upon a Default, and no acceptance of full or partial Rent during continuance of any such Default, shall waive any such Default or such covenant, agreement, term, or condition. No covenant, agreement, term, or condition of this Lease to be performed or complied with by Tenant, and no Default, shall be Modified except by a written instrument executed by Landlord. No waiver of any Default shall Modify this Lease. Each and every covenant, agreement, term, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Lease.

19.2.6 **Security Devices.** Landlord may change the locks and other security devices providing admittance to the Premises and Tenant agrees that any such exercise by Landlord shall not be deemed to be unreasonable or a breach of the peace.

19.2.7 **Conditional Limitation.** Landlord may serve upon Tenant a written 30-day notice of cancellation and termination of this Lease. Upon the expiration of such 30-day period, this Lease and the Term shall automatically and without any action by anyone terminate, expire, and come to an end, by the mere lapse of time, as fully and completely as if the expiration of such 30-day period were the Expiration Date. The passage of such 30-day period constitutes the limit beyond which Tenant’s tenancy no longer exists. Tenant shall then quit and surrender the Premises to Landlord but remain liable as this Lease provides. It is a conditional limitation of this Lease that the Term shall terminate and expire as set forth in this paragraph. This paragraph is intended to establish a conditional limitation and not a condition subsequent. Nothing in this
paragraph shall limit Landlord’s right to commence and prosecute a summary possession proceeding under Chapter 666 of the Hawaii Revised Statutes.

19.2.8 **Damages.** Landlord may recover from Tenant all damages Landlord incurs by reason of Tenant’s Default, including reasonable costs of recovering possession, reletting the Premises, and any and all other damages legally recoverable by Landlord, and reimbursement of Landlord’s reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. Such damages shall include, at Landlord’s election, either (a) the present value, calculated at a discount rate equal to the then-current Prime Rate of the excess of the total Fixed Rent under this Lease over the fair market rental value of the Premises for the balance of the Term; or (b) the Rent payable to Landlord provided for in this Lease, when and as due and payable under this Lease, less (in the case of this clause (b) only) Landlord’s actual proceeds of reletting less Landlord’s actual reasonable costs of reletting. Landlord may recover such damages at any time after Tenant’s default, including after expiration of the Term. Notwithstanding any Law to the contrary, (x) Landlord need not commence separate actions to enforce Tenant’s obligations for each month’s Rent not paid, or each month’s accrual of damages for Tenant’s Default, but may bring and prosecute a single combined action for all such Rent and damages; and (y) Landlord may not recover any consequential damages for Tenant’s Default.

19.2.9 **Injunction of Breaches.** Whether or not an Event of Default has occurred, Landlord may obtain a court order enjoining Tenant from continuing any Default or from committing any threatened Default. Tenant specifically and expressly acknowledges that damages would not constitute an adequate remedy for any Nonmonetary Default.

19.2.10 **Continue Lease.** Landlord may at Landlord’s option maintain Tenant’s right to possession. In that case, this Lease shall continue and Landlord may continue to enforce it, including the right to collect Rent when due and any remedies for nonpayment.

19.2.11 **Restoration Funds.** Upon any termination of this Lease, to the extent that Landlord or Depository then holds any Restoration Funds, they shall be applied solely as Landlord directs, including as a payment toward any sums then payable to Landlord.

19.3 **Proceeds of Reletting.** Landlord shall apply any proceeds of any reletting as follows, without duplication, but including Default Interest on all such sums:

19.3.1 **Landlord’s Costs.** *First,* to pay to itself the cost and expense of terminating this Lease, re-entering, retaking, repossessing, repairing, performing any Construction, and the cost and expense of removing all persons and property therefrom,
including in such costs reasonable and customary brokerage commissions and Legal Costs;

19.3.2 Preparation for Reletting. Second, to pay to itself the cost and expense reasonably sustained in securing any new tenants and other occupants, including in such costs all brokerage commissions, Legal Costs, and any other reasonable costs of preparing the Premises for reletting;

19.3.3 Costs of Maintenance and Operation. Third, to the extent that Landlord shall maintain and operate the Premises, to pay to itself the reasonable cost and expense of doing so; and

19.3.4 Residue. Fourth, to pay to itself any balance remaining on account of Tenant’s liability to Landlord.

19.4 Tenant’s Late Payments; Late Charges. If Tenant fails to make any payment to Landlord required under this Lease within 10 days after such payment is first due and payable, then in addition to any other remedies of Landlord, and without reducing or adversely affecting any of Landlord’s other rights and remedies, Tenant shall pay Landlord within 10 days after demand Default Interest on such late payment, beginning on the date such payment was first due and payable and continuing until the date when Tenant actually makes such payment. In addition, and without limiting any other rights or remedies of Landlord, Tenant shall pay Landlord, as Additional Rent, an administrative charge equal to 3% of any payment that Tenant fails to pay within 10 days after such payment is first due and payable. Such administrative charge is intended to compensate Landlord for the inconvenience and staff time incurred by Landlord to handle the late or missed payment, shall not be deemed a penalty or compensation for use of funds, and shall not be credited against any other obligations of Tenant under this Lease.

19.5 Landlord’s Right to Cure. If Tenant at any time fails to make any payment or take any action this Lease requires, then Landlord, after 10 Business Days’ Notice to Tenant, or in an emergency with such notice (if any) as is reasonably practicable under the circumstances, and without waiving or releasing Tenant from any obligation or Default and without waiving Landlord’s right to take such action as this Lease may permit as a result of such Default, may (but need not) make such payment or take such action. Tenant shall reimburse Landlord, as Additional Rent, for an amount equal to (a) all reasonable sums paid, and reasonable costs and expenses (including Legal Costs) incurred, by Landlord in exercising its cure rights under this paragraph; and (b) Default Interest on (a).

19.6 Holding Over. If for any reason or no reason Tenant remains in the Premises after the Expiration Date, or fails to complete a Clean-up under Section 10.11.5, or fails to remove Improvements required to be removed after the Removal Period under Section 20.2, then Landlord will suffer injury that is substantial, difficult, or impossible to
measure accurately. Therefore, if Tenant remains in the Premises after the Expiration Date, or fails to complete a Clean-up under Section 10.11.5, or fails to remove Improvements required to be removed after the Removal Period under Section 20.2, for any reason or no reason, then in addition to any other rights or remedies of Landlord, Tenant shall pay to Landlord, as liquidated damages and not as a penalty, for each month (prorated daily for partial months) during which Tenant holds over after the Expiration Date, a sum equal to: twenty percent (20%) of the Land Value, together with all Additional Rent owed for such period.

19.7 Waivers. Landlord and Tenant irrevocably waive all rights to trial by jury in any action, proceeding, counterclaim, or other litigation arising out of or relating to this Lease, the relationship of Landlord and Tenant regarding the Premises, enforcement of this Lease, Tenant’s use or occupancy of the Premises, any claim of injury or damage arising between Landlord and Tenant, or any actions of Landlord in connection with or relating to the enforcement of this Lease. Tenant waives any right of redemption provided for by Law. Tenant waives any right to interpose any counterclaim in any action by Landlord to enforce this Lease or Landlord’s rights and remedies under this Lease.

19.8 Accord and Satisfaction; Partial Payments. No payment by Tenant or receipt by Landlord of a lesser amount than the amount owed under this Lease shall be deemed to be other than a partial payment on account by Tenant. Any endorsement or statement on any check or letter accompanying any check or payment of Rent shall not be deemed an accord or satisfaction. Landlord may accept any such check or payment without prejudice to Landlord’s right to recover the balance of such Rent or pursue any other remedy.

19.9 Miscellaneous. Landlord and Tenant further agree as follows with respect to any Defaults and Landlord’s rights and remedies.

19.9.1 Survival. No termination of this Lease and no taking possession of or reletting the Premises shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession, or reletting, but subject to any limitations on personal liability or recourse in this Lease.

19.9.2 Multiple Suits. Landlord may sue to recover damages, or sum(s) equal to any installment(s) of Rent payable by Tenant, from time to time at Landlord’s election. Nothing in this Lease requires Landlord to await the date when this Lease or the Term would have expired absent an Event of Default and a resulting termination of this Lease.

19.9.3 Receipt of Monies. Unless such payment shall fully cure all Monetary Defaults, no receipt of moneys by Landlord from Tenant after the giving of a termination notice or a notice to obtain possession, or after the retaking of possession by Landlord as aforesaid, shall reinstate, continue, or extend the Term or affect any notice
previously given to Tenant, waive Landlord’s right to enforcement of Rent payable by Tenant or thereafter falling due, or waive Landlord’s right to recover possession of the Premises. After the service of any such notice, or commencement of any suit or summary proceedings, or after a final order or judgment for possession of the Premises, Landlord may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit, or judgment, unless such payments fully cure all Monetary Defaults. Any sums so collected (without thereby curing all Monetary Defaults) shall instead be deemed payments on account of use and occupation of the Premises or, at Landlord’s election, to have been made on account of Tenant’s liability under this Lease.

19.9.4 **No Double Recovery.** In no event shall Landlord be entitled, directly or indirectly, to recover twice for the same element of Landlord’s damages.

20. **END OF TERM**

20.1 **Improvements.** Upon the termination of this Lease, at Landlord’s option (a) all Improvements shall become Landlord’s property; or (b) Tenant shall remove all Improvements at no cost to Landlord, and shall leave the Land in a clean and orderly condition free of all debris. Landlord shall Notify Tenant of Landlord’s election to have Tenant remove the Improvements not later than ninety (90) days before the Expiration Date.

20.2 **Tenant’s Removal of Improvements.** If Tenant is required to remove the Improvements upon termination of the Lease, Tenant shall have reasonable access to the Premises for a period of up to six (6) months after the Expiration Date to dismantle, pack and remove the Improvements from the Premises (the “Removal Period”). Tenant shall work promptly and diligently to remove the Improvements. The Removal Period shall end upon Tenant’s completion of removal of the Improvements from the Premises. If Tenant fails to remove the Improvements within the Removal Period, the Holding Over provisions of Section 19.6 of this Lease shall apply. The terms and provisions of this Lease shall apply during the Removal Period, including Tenant’s obligations to provide insurance and to Indemnify Landlord.

20.3 **Landlord’s Removal of Improvements.** If Landlord determines that Tenant is not making diligent efforts to remove the Improvements, Landlord shall Notify Tenant of Landlord’s intention to remove the Improvements at Tenant’s cost. If 30 days after such notice to Tenant Landlord in its reasonable judgment continues to believe Tenant is not diligently removing the Improvements, Landlord may remove the Improvements at Tenant’s cost.

20.4 **Actions Upon Surrender.** Upon the later of (a) any Expiration Date and (b) the expiration of the Removal Period:
20.4.1 **Condition of Premises.** Tenant shall deliver to Landlord possession of the Premises, in the condition this Lease requires, subject to any Loss that this Lease does not require Tenant to Restore.

20.4.2 **Surrender of Premises.** Tenant shall surrender any right, title, or interest in and to the Premises and deliver such evidence and confirmation thereof as Landlord reasonably requires.

20.4.3 **Free and Clear.** Tenant shall deliver the Premises free and clear of all: (a) Subleases, and (b) liens except (i) liens that Landlord or any of its agents caused, or (ii) the recorded title exceptions affecting the Fee Estate that are prior to this Lease as of the Commencement Date and listed as exceptions in Tenant’s leasehold policy of title insurance for this Lease.

20.4.4 **Assignment of Rights.** Tenant shall assign to Landlord, without recourse, and give Landlord copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Premises.

20.4.5 **Orderly Transition.** The parties shall cooperate to achieve an orderly transition of operations from Tenant to Landlord without interruption, including delivery of such books and records (or copies thereof) as Landlord reasonably requires.

20.4.6 **Real Estate Taxes.** The parties shall adjust for Real Estate Taxes and all other expenses and income of the Premises and any prepaid Rent and shall make such payments as shall be appropriate on account of such adjustment in the same manner as for a sale of the Premises (but any sums otherwise payable to Tenant shall first be applied to cure any Default).

20.4.7 **Memorandum of Lease.** The parties shall terminate the Memorandum of Lease.

20.4.8 **Deposits.** Tenant shall assign to Landlord, and Landlord shall reimburse Tenant for, all utility and other service provider deposits for the Premises.

21. **NOTICES**

21.1 **Special Notices.** All Notices of Default, Renewal Notices, and similar substantive Notices shall be in writing and addressed to Landlord and Tenant (and their designated copy recipients), and shall be deemed given to a party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid) or (b) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses and marked to the attention of the person (by name or title) designated below (or to such other address or Person as a party may designate by notice to the other party):
Landlord: Lānaʻi Resorts, LLC  
733 Bishop Street, Suite 2000  
Honolulu, HI 96813  
Attention: Kurt Matsumoto  
E-mail: kmatsumoto@pulamalanai.com

With a copy to:  
Lānaʻi Resorts, LLC  
733 Bishop Street, Suite 2000  
Honolulu, HI 96813  
Attention: Harrilynn K. Kameenui, Esq.  
E-mail: hkameenui@pulamalanai.com

Tenant:  

Attention:  
Telephone No.: (___)  
Facsimile No.: (___)  
E-mail:  

21.2 Ordinary Notices. Notices in the ordinary course of business with respect to this Lease (for example for the regular payment of Rent under this Lease as opposed to late payments) shall be in writing and addressed to Landlord and Tenant as provided in the foregoing paragraph, and may be sent by first class mail or e-mail, in which case they shall be deemed delivered three Business Days after deposit in the United States mail, provided that no postal strike (or other event likely to disrupt postal service) is then in effect.

21.3 Change of Address. Either party may change its address by Notice in compliance with this Lease. Notice of such a change shall be effective only upon receipt.

21.4 Acknowledgment; Notice by Counsel. Any party giving a Notice may request the recipient to acknowledge receipt of such Notice. The recipient shall promptly comply with any such request, but failure to do so shall not limit the effectiveness of any Notice. Any attorney may give any Notice on behalf of its client.

22. NONRECOUPSE

Notwithstanding anything to the contrary in this Lease, the liability under this Lease of Landlord and its parent, subsidiary(ies), or affiliated corporations or other entities, for damages or otherwise, shall be enforceable against, and shall not extend
beyond, their interests in the Premises (including the proceeds thereof). No property or assets whatsoever, except Landlord’s interest in the Premises (including the proceeds thereof), shall be subject to levy, execution or any other enforcement procedure for the satisfaction of any remedies (monetary or otherwise) of the other party arising under or in connection with this Lease. The limitation of liability and limitation of remedy in this paragraph shall not apply in any way to, and shall not be construed to limit or preclude, personal liability (if any) arising under any Supplementary Agreement. No shareholder, officer, member, manager, director, agent, or employee of Tenant or Landlord shall have any liability under this Lease, but this shall not limit any liability arising under the express terms of any Supplementary Agreement. (This Lease sometimes refers to this paragraph as the “Nonrecourse Clause.”)

23. ADDITIONAL DELIVERIES; THIRD PARTIES

23.1 Estoppel Certificates. Up to twice a year, each party to this Lease (a “Requesting Party”) may require the other party (a “Certifying Party”) to execute, acknowledge, and deliver to the Requesting Party (or directly to a designated third party) up to four original counterparts of an Estoppel Certificate. The Certifying Party shall sign, acknowledge, and return such Estoppel Certificate within 15 days after request, even if the Requesting Party is in Default. Any Estoppel Certificate shall bind the Certifying Party.

23.2 Further Assurances. Each party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the parties’ intent in entering into this Lease.

23.3 Memorandum of Lease. Upon request by either, the parties shall promptly execute, acknowledge, and deliver duplicate originals of a Memorandum of Lease. Either party may record such Memorandum of Lease. Any taxes and fees imposed upon such recording shall be paid by Tenant. If the parties amend this Lease, then the parties shall have the same rights and obligations regarding a memorandum of such amendment as they do for the Memorandum of Lease.

23.4 Modification. Any Modification of this Lease must be in writing signed by the party to be bound.

23.5 Successors and Assigns. This Lease shall bind and benefit Landlord and Tenant and their successors and assigns, but this shall not limit or supersede any Transfer restrictions.

23.6 No Third-Party Beneficiaries. Nothing in this Lease confers on any Person (except Landlord, Tenant, Leasehold Mortgagees, and Fee Mortgagees) any right to insist upon, or to enforce against Landlord or Tenant, the performance or observance by either party of its obligations under this Lease.
24. **GUARANTY**

24.1 **Guaranty.** Concurrently with the execution and delivery of this Lease, Tenant shall deliver to Landlord a Guaranty in the form attached hereto as **Exhibit C** executed by Guarantor and acknowledged.

25. **ARCHAEOLOGICAL AND HISTORICAL ITEMS**

25.1 **Discovery of Items.** In the event any human remains, artifacts, historical items, or any of them (collectively the “**Discovered Items**”) are discovered on the Premises, Tenant shall, at Tenant’s sole expense and subject to the approval of Landlord, be responsible to: (a) cause all excavation in the immediate area which may damage the Discovered Items and the potential historic site to cease; (b) cause the site to be stabilized and secured to temporarily protect the Discovered Items against damage, theft, or both; (c) cause the Discovered Items to be left untouched so that their archaeological or historical context may be accurately documented; and (d) cause the discovery to be reported immediately to Landlord and to Government 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, Tenant 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.

25.2 **Human Remains.** In the case of the discovery of human remains, Tenant shall, at Tenant’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 Landlord and to Government possessing jurisdiction over such matters. Tenant shall also be responsible to obtain written verification that the mitigation plan has been successfully implemented.

25.3 **Landlord’s Reservation.** If any Discovered Items are discovered, then Landlord shall have the right at all reasonable times to enter the Premises for the purposes of searching for, exploring for, and removing any of the Discovered Items for preservation as permitted by Law. All objects, antiquities and specimens of Hawaiian or other ancient art or handicraft or of prehistoric, historic or archaeological interest found on the Premises belong to and shall remain the property of Landlord.

25.4 **Studies by Tenant.** In the event any archaeological studies or historic preservation studies are sought to be conducted in or on the Premises, by Tenant or anyone acting by or through Tenant, Tenant shall not permit such studies to be commenced without the prior written consent of Landlord, unless Tenant is required by applicable Law to permit such studies, in which case Landlord’s consent shall not be required but Tenant shall provide Landlord with prior Notice of the commencement of such studies and shall advise Landlord of the applicable Law mandating such studies. In
any event, Tenant shall upon completion of such studies cause a complete copy of the results of such studies to be provided to Landlord at the earliest opportunity.

26. MISCELLANEOUS

26.1 Confidential Information. Without limitation of the promises in Section 10.12, each party agrees that, except as otherwise provided by applicable Laws, or in connection with proceedings before the State of Hawaii Public Utilities Commission or other governmental body with jurisdiction over the Premises, or in connection with the evaluation for financing of the Premises, or as part of disclosure to its affiliates, attorneys, consultants, and advisers in order to conduct its business or proceedings to enforce this Lease or the Power Purchase Agreement, or to record a Memorandum of Lease under Section 23.3 of this Lease, such party (including its officers, directors, employees, representatives, brokers, attorneys and advisers) shall keep the contents of this Lease and any information related to the Premises, Tenant and the transaction contemplated by this Lease 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 Lease, or any of their respective officers, directors, employees, representatives, brokers, attorneys or advisers. Tenant may retain possession of all or any part of the Confidential Information to the extent such Confidential Information relates solely to the Property and Tenant’s operations thereon.

26.2 Costs and Expenses; Legal Costs. In the event of any litigation or dispute between the parties, or claim made by either party against the other, arising from this Lease or the landlord-tenant relationship under this Lease, or Landlord’s enforcement of this Lease upon a Default, or to enforce or interpret this Lease or seek declaratory or injunctive relief in connection with this Lease, or to exercise any right or remedy under or arising from this Lease, or to regain or attempt to regain possession of the Premises or terminate this Lease, or in any Bankruptcy Proceeding affecting the other party to this Lease, the prevailing party shall be entitled to reimbursement of its Legal Costs with Default Interest and all other reasonable costs and expenses incurred in enforcing this Lease or curing the other party’s default.

26.3 No Consequential Damages. Whenever either party may seek or claim damages against the other party (whether by reason of a breach of this Lease by such party, in enforcement of any indemnity obligation, for misrepresentation or breach of warranty, or otherwise), neither Landlord nor Tenant shall seek, nor shall there be awarded or granted by any court, arbitrator, or other adjudicator, any speculative, consequential, collateral, special, punitive, or indirect damages, whether such breach shall be willful, knowing, intentional, deliberate, or otherwise. The parties intend that any damages awarded to either party shall be limited to actual, direct damages sustained by the aggrieved party. Neither party shall be liable for any loss of profits suffered or claimed to have been suffered by the other.
26.4 **No Waiver by Silence.** Failure of either party to complain of any act or omission on the part of the other party shall not be deemed a waiver by the noncomplaining party of any of its rights under this Lease. No waiver by either party at any time, express or implied, of any breach of this Lease shall waive such breach or any other breach.

26.5 **Performance Under Protest.** If a dispute arises about performance of any obligation under this Lease, the party against which such obligation is asserted shall have the right to perform it under protest, which shall not be regarded as voluntary performance. A party that has performed under protest may institute appropriate proceedings to recover any amount paid or the reasonable cost of otherwise complying with any such obligation, with interest at the Prime Rate.

26.6 **Survival.** All rights and obligations that by their nature are to be performed after any termination of this Lease shall survive any such termination.

26.7 **No Broker.** Each party: (a) represents and warrants that it did not engage or deal with any broker or finder in connection with this Lease and no person is entitled to any commission or finder’s fee on account of any agreement or arrangement made by such party; and (b) shall Indemnify the other party against any breach of such representation.

26.8 **Unavoidable Delay.** Each party’s obligation to perform or observe any nonmonetary obligation under this Lease shall be suspended during such time as such performance or observance is prevented or delayed by Unavoidable Delay.

27. **INTERPRETATION, EXECUTION, AND APPLICATION OF LEASE**

27.1 **Captions.** The captions of this Lease are for convenience and reference only. They in no way affect this Lease.

27.2 **Counterparts.** This Lease may be executed in counterparts.

27.3 **Delivery of Drafts.** Neither party shall be bound by this Lease unless and until such party shall have executed and delivered at least one counterpart of this Lease. The submission of draft(s) or comment(s) on drafts shall bind neither party in any way. Such draft(s) and comment(s) shall not be considered in interpreting this Lease.

27.4 **Entire Agreement.** This Lease contains all terms, covenants, and conditions about the Premises. The parties have no other understandings or agreements, oral or written, about the Premises or Tenant’s use or occupancy of, or any interest of Tenant in, the Premises.

27.5 **Governing Law.** This Lease, its interpretation and performance, the relationship between the parties, and any disputes arising from or relating to any of the
foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State, without regard to principles of conflict of laws.

27.6 **Partial Invalidity.** If any term or provision of this Lease or its application to any party or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to persons or circumstances except those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Lease shall be valid and be enforced to the fullest extent Law allows.

27.7 **No Party Deemed Drafter.** No inference in favor of or against any party shall be drawn from the fact that such party has drafted any part of this Lease. The parties have both participated substantially in its negotiation, drafting, and revision, with advice from counsel and other advisers.

27.8 **Reasonableness.** Wherever this Lease states that a party shall not unreasonably withhold approval: (a) such approval shall not be unreasonably delayed or conditioned; (b) no withholding of approval shall be deemed reasonable unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and indicating specific reasonable changes in the proposal under consideration that would make it acceptable; and (c) if a party grants its consent (or fails to object) to any matter, this shall not waive its rights to require such consent for any further or similar matter.

**IN WITNESS WHEREOF,** Landlord and Tenant have executed this Lease as of the Commencement Date.

**LĀNAʻI RESORTS, LLC**
By its Member, Lanai Island Holdings, LLC
By its Manager, LIH Corporation

By Kurt Matsumoto
Its: Vice President

Landlord

By

Its

Tenant

K-54
DRAFT REQUEST FOR PROPOSALS

FOR

VARIABLE RENEWABLE DISPATCHABLE GENERATION
PAIRED WITH ENERGY STORAGE

ISLAND OF LĀNAʻI

NOVEMBER 27, 2019

Docket No. 2019-0178

Appendix G – Self Build Option and
Self Build Option Team Certification Form

Maui Electric
Appendix G - Self Build Option

Overview

To the extent that there are Self Build Option ("SBO") Proposals to the RFP, the Company will endeavor to evaluate these SBO Proposals on a fair basis compared to third party Proposals. As described in Section 1.9.1 of the RFP, ‘[t]he Competitive Bidding Framework allows the Company the option to offer a Proposal(s) in response to this RFP ("Self-Build Option" or “SBO”). Accordingly, the Company must follow certain requirements and procedures designed to safeguard against and address concerns associated with: (1) preferential treatment of the SBO or members, agents or consultants of the Company formulating the SBO (the “Self-Build Team”); and (2) preferential access to proprietary information of the Self-Build Team.” Any Proposal from the Self-Build Team will be required to comply with the provisions in the Framework for Competitive Bidding (“Framework”) as well as this RFP.

As described in Section 1.9.3 of the RFP, “[t]his RFP will permit only one (1) Proposal from the Self-Build Team, which will be submitted under seal and evaluated only upon certain conditions identified in Chapter 4. This Sealed SBO Proposal will be not be submitted through the Electronic Procurement Platform, but rather must be submitted to the Company in hard copy to the contact and address identified in Section 1.8.3. A hard copy of the Sealed SBO Proposal must also be filed confidentially with the PUC and submitted to the Independent Observer to the contact and address identified in Section 1.4.3.” As described in Section 4.1 of the RFP, the Sealed SBO Proposal will only be opened if one of the following conditions arise: “(1) there are no IPP or Affiliate Proposals received in response to this RFP, (2) there are no Eligible Proposals that remain after reviewing the Eligibility and Threshold Requirements, (3) all Eligible Proposals fail to pass the fatal flaws analysis during the Non-Price criteria evaluation, or (4) all Eligible Proposals that pass the fatal flaws analysis do not provide a customer benefit in the form of a tangible rate reduction as determined through consultation with the Independent Observer.”

Pursuant to Section 4.1 of the RFP, the Sealed SBO Proposal will need to meet the RFP’s Eligibility and Threshold Requirements, pass the fatal flaws analysis, and provide a customer benefit in the form of a tangible rate reduction, as determined through consultation with the Independent Observer, in order to be selected to the Final Award Group.

In addition to its Proposal, the Self-Build Team will be required to submit Attachment 1 to this Appendix G, Self-Build Option Team Certification Form, acknowledging it has followed the rules and requirements of the RFP to the best of its ability and has not engaged in any collusive actions or received any preferential treatment or information providing an impermissible competitive advantage to the Self-Build Team over other proposers responding to this RFP, as well as adherence to PPA terms and milestones required of all proposers and the SBO’s proposed cost protection measures.
Pursuant to the Framework and as set forth in the RFP Schedule, the Company will require that the Sealed SBO Proposal be submitted in hard copy to the Company and Independent Observer and filed in hard copy confidentially with the PUC a minimum of one (1) Day before other Proposals are due.

Except where specifically noted, a Sealed SBO Proposal must adhere to the same price and non-price Proposal requirements as required of all Proposers.

As described in Section 3.8.3 of the RFP, if selected, a Self-Build Proposer will not be required to enter into a PPA with the Company. However, the SBO will be held to the same performance metrics and milestones set forth in the RDG PPA to the same extent as all Proposers, as attested to in the SBO’s Appendix G Attachment 1 Self Build Option Certification submittal. If liquidated damages are assessed, they will be paid from shareholder funds and returned to customers through the Purchased Power Adjustment Clause (“PPAC”),

In lieu of price components, the SBO will need to provide their total project capital costs, any associated annual O&M costs, as well as annual revenue requirements by year. (See Appendix B Section 2.0.) The SBO shall submit revenue requirement worksheets with their Proposal that support their annual revenue requirements estimates. (See Appendix B Section 2.1.) A starter revenue requirements template example is attached as Attachment 2 to this Appendix G. The revenue requirements worksheets submitted will be customized to reflect the details of the Project’s Proposal. All assumptions used will be reflected in an assumptions input tab.

**SBO Total Project Capital Cost**

The following is a high-level breakdown followed by a narrative explanation of the total capital cost estimate for a potential Sealed SBO Proposal. The total project capital cost (and annual O&M costs) will be used to calculate the Revenue Requirement, which will then be used to calculate a LEP for Proposal comparison purposes. The categories of costs include:

- Facility
  - EPC Contract
  - Allowance for Change Orders
  - Equipment
  - Owner’s Cost
- Outside Services
- Interconnection
- Overheads
- AFUDC

These costs will be identified in Section 2.3.2.2 of the Sealed SBO Proposal. (See Appendix B Section 2.3.2.2.)

- Facility (including any generation and storage components) - This line item, to the extent applicable, should include costs such as:

  **Engineering, Procurement, and Construction (“EPC”) Contract**
  
  The total cost estimate of the facility is the projected EPC contract cost including the design of the facility up to the high-voltage terminals of the step-up
transformers, procurement of all the equipment, and services necessary to build the facility and construction and commissioning of the facility.

**Allowance for Change Orders**
This allocation accounts for items such as additional requirements resulting from unforeseen conditions, unexpected permitting requirements, force majeure events, unanticipated interferences, different interpretations of design requirements, material unavailability, and longer than normal delivery times.

**Equipment**
This cost includes the generator and the facility equipment that support the operation of the generator and the distribution of electrical power around the station, as applicable. Engineering and testing services required to ensure that the equipment is properly functioning at the site, training and documentation necessary to operate and maintain the equipment, and performance guarantees may also be included here.

**Owner’s Cost**
Owner’s costs for the facility are all the costs necessary for the design, permitting, procurement, construction, and commissioning of the facility and for the preparation of the Proposal that are not included in the major contracts (i.e. EPC). The Companies’ Labor includes Project Management, Station Operator training and commissioning, Environmental, Safety, Legal, Corporate Communications, Community and Government Relations, Engineering, and Regulatory Affairs. Company Labor for the preparation of the Proposal is also included here. For purposes of recovery, only the incremental costs of Labor will be subject to separate recovery.

- **Outside Services** - This line item, to the extent applicable, should include costs such as:
  - Construction Management to oversee the EPC contractor
  - Legal for the preparation of the Environmental Impact Statement and PUC process
  - Engineering for development and evaluation of the project technical specifications, Interconnection Requirements Study (IRS), and emissions testing
  - Environmental to conduct the Environmental Impact Statement (EIS) and Air Permit consulting
  - General Services such as surveys, land appraisals, Environmental Condition Reports, public relations, office trailer rental, archeological services, landscaping, miscellaneous permits, builder’s risk insurance, switchgear testing, hazard analysis, painting, monitoring services, and moving costs.
  - Material costs including spare parts, furnishings, IT equipment, appliances, generator system initial fills (fuels, oils, water), and telecommunications equipment for the station.
• Travel costs required to inspect other similar facilities, observe final acceptance testing of critical equipment, and station operators’ factory training

• **Interconnection** – This line item covers all interconnection costs that a similarly situated IPP would be responsible for as described in RFP Section 2.3.5, and to the extent applicable, should include costs such as:

  **Transmission Line**
  The cost estimate includes the design, procurement, and construction of any new transmission infrastructure needed to interconnect with the designated substation.

  **Switchyard**
  Work at the switchyard will include design, procurement, and construction of the switchyard and the interfaces between the high voltage terminals of the generator step-up transformers and the transmission line to which it will be connected. Site preparation of the switchyard and the design, procurement, and installation of the step-up transformers located in the switchyard, are typically included in the EPC contract.

  **Substation**
  Work at the designated substation that will include the design, procurement, and construction of the interfaces between the new transmission line and the substation buswork to which it will be connected.

  **Telecom**
  Accounts for direct labor, materials, and outside services to install telecommunication requirements for the project.

  **Project Management**
  Cost estimate of the project management design, procurement, contracting, and scheduling efforts for the interconnection only. Project management costs for the facility are included in the Owner’s Cost estimate above.

• **Overhead Costs**

Overhead costs for the proposed facility will be estimated by the Company’s budgeting software (UI Planner) and represent an allocation for those Company costs that are not attributable to any particular project or operation, but are essential nonetheless. Overheads are comprised of non-productive wages (such as holiday, sick, and vacation pay), employee benefits, payroll taxes, corporate administrative costs, and clearing costs.

• **Allowance for Funds Used During Construction (“AFUDC”)**

The AFUDC will be calculated using the Company’s budgeting software (UI Planner) and represents the cost of capital funding for the Project. The Company strives to minimize the
cost of the AFUDC by ensuring that Project elements that are used or useful are placed in service as soon as possible, as well as minimizing the amount of time that AFUDC can accumulate, by minimizing the amount of time between expenditures on Project elements and their placement in service.

The Sealed SBO Proposal will include a Revenue Requirement for each year, which is calculated from the total project capital cost to determine the revenues needed to recover the cost of the project. The value of the Revenue Requirement Calculation for the Total SBO Project Capital Cost will be included in the Levelized Price calculation described below.

**Annual O&M**

The cost for ongoing O&M (fixed and variable) will be a component of the Revenue Requirement. All O&M should be included in this category, unless captured elsewhere in the Revenue Requirement Calculation, including but not limited to annual O&M expense to maintain facility; property taxes (if applicable), and insurance. As described in RFP Appendix G, a Sealed SBO Proposal will be required to cap its O&M costs at the amount included in the Proposal. Only actual costs will be recovered if such actual costs are lower than the maximum amounts in the Proposal.

**Annual Revenue Requirement**

The Sealed SBO Proposal will include a Revenue Requirement for each year, which is calculated from the total project capital cost to determine the revenues needed to recover the cost of the project. The value of the Revenue Requirement Calculation for the Total SBO Project Capital Cost will be included in the Levelized Price calculation.

The following is a narrative description of the proposed revenue requirement calculation and significant assumptions that the Sealed SBO Proposal should account for. The objective of a revenue requirement analysis is to illustrate the annual revenue requirements (ARR) for a utility Sealed SBO Proposal.

Revenue Requirement is defined as a calculated value which represents the estimated revenues needed from ratepayers which would allow the Company to recover its capital investment and expenses, honor its debt obligations, pay its revenue and income tax liabilities, and pay its preferred shareholders while providing a fair return to its common shareholders for their investment. Specific factors or assumptions related to that particular project will be included in the analysis.

The purpose of a revenue requirement calculation is to determine the annual and total revenue requirements of a capital investment and annual O&M expense needed from customers. The ratemaking formula for revenue requirements is shown below.

\[
RR = O + T + D + r(RB)
\]

Where:  
RR = Revenue Requirements  
O = Operating and Maintenance Expense  
T = Tax Expense (Income and Revenue)
D = Depreciation Expense  
r = Rate of Return on Rate Base  
RB = Rate Base

The Company, in conjunction with the Independent Observer, may also conduct a risk assessment of the Sealed SBO Proposal to ensure an appropriate level of customer cost protection measures are included in such proposal.
APPENDIX G ATTACHMENT 1 - SELF BUILD OPTION TEAM CERTIFICATION

Name of SBO Team Contact: ______________________________________________________

Unique Name of Facility: ________________________________________________________

This Certification of the Self Build Option (SBO) Team’s Sealed SBO Proposal for Hawaiian Electric Company, Inc., Maui Electric Company, Ltd, and Hawai‘i Electric Light Company, Inc.’s (the “Hawaiian Electric Companies”) Variable Renewable Dispatchable Generation Paired with Energy Storage Request for Proposal (RFP) is made as of the date stated below.

A. COMPLIANCE WITH THE RFP AND CODE OF CONDUCT

The SBO Team certifies and acknowledges that it will/has:

1. Adhered to the terms of the RFP applicable to the SBO Team, including but not limited to: Section 1.7.1 (proposal submittal requirements), Section 1.7.3 (certification of non-collusion), Section 1.9 (Procedures for the Self-Build or Affiliate Proposals), and Section 3.4.4 (authorized signatory);

2. Adhered to the technical requirements of the RFP, excluding however those requirements inapplicable to the SBO Team such as execution of the Model PV RDG PPA), pricing formula requirements for independent power producer proposals, submission of a Proposal Fee, dispute resolution, and credit requirements;

3. Complied with the Company’s Code of Conduct Procedures Manual, attached as Appendix C to this RFP, with particular attention to the Communications Protocols described in Section C therein with respect to communication with the Company RFP Team.

B. INDEPENDENT INVESTIGATION

The SBO Team further certifies and acknowledges that it will/has:

1. Submitted the Sealed SBO Proposal based on its own investigations, examinations, and determinations, including assessments of any risks that could have an effect on its obligations under the Sealed SBO Proposal.

2. Carefully examined the Hawaiian Electric Companies’ Renewable Dispatchable Generation Paired with Energy Storage RFP documents and its appendices and has a clear and comprehensive knowledge of what is required of a Proposer under the RFP, and correspondingly, what is required of the SBO Team.
3. Examined and understands the technical requirements, schedule, and evaluation process as it is laid out under the Variable Renewable Dispatchable Generation Paired with Energy Storage RFP.

C. COST PROPOSAL ACKNOWLEDGEMENTS

The Self Build Team acknowledges and agrees that:

1. Recovery for Project capital costs and O&M costs will be capped at the amount included in the Sealed SBO Team’s Proposal.

2. Only actual capital costs and O&M costs will be recovered even if such actual costs are lower than the SBO Team’s proposed maximum amounts.

3. Costs of developing the proposal must be included in the SBO for evaluation purposes only. Only the incremental costs of developing the SBO Team’s proposal will be charged to the project and passed through to customers. Incremental costs for the Sealed SBO Proposal not serving as the Parallel Plan and which are not selected to the Final Award Group will not be recoverable from the Companies’ customers.

D. ADHERENCE TO PPA REQUIREMENTS AND MILESTONES

The Self Build Team acknowledges and agrees that:

1. The Sealed SBO Proposal will be consistent with the scope of work and responsibilities of the “Seller” under the terms of the applicable Model PPA excluding inapplicable terms related to commercial and legal interactions between the Seller and the Company.

2. The SBO Facility will be designed and constructed to:

   a. Achieve the Performance Standards identified in Section 3 - Performance Standards, in Attachment B of the Model PV RDG PPA as modified by the IRS (subject to reasonable adjustment agreeable to the Company consistent with the Company’s negotiation of such performance standards that would be completed with an independent power producer under similar circumstances);

   b. Meet the performance metrics as specified in Article 2 of the Model PV RDG PPA.

      b.1. For the photovoltaic generation component of the facility, (i) PV System Equivalent Availability Factor, and (ii) Measured Performance Ratio;

      b.2. For the storage component of the facility, (i) Storage Annual Equipment Availability Factor, (ii) Storage Annual Equivalent Forced Outage Factor, and (iii) Storage Capacity Ratio;

   c. Pass the Acceptance Test specified in Attachment N – Acceptance Test General Criteria of the Model PV RDG PPA.
d. Pass the Control System Performance Test specified in Attachment O – Control System Acceptance Test Criteria of the Model PV RDG PPA;

e. Pass the On-line Performance Test specified in Attachment W – BESS Capacity Test of the Model PV RDG PPA;

f. Achieve a Demonstrated Capacity equal to or greater than that indicated in the Sealed SBO Proposal as measured pursuant to Attachment W – BESS Capacity Test of the Model PV RDG PPA;

g. Meet the project milestones identified in the Sealed SBO Proposal no later than the dates specified therein, which shall be consistent with the guaranteed project milestones required in Attachment K – Guaranteed Project Milestones of the Model PV RDG PPA (subject to reasonable adjustment agreeable to the Company consistent with the Company’s negotiation of such milestones that would be completed with an independent power producer under similar circumstances). Notice of completion of milestones and any delay will be provided to PUC and Consumer Advocate.

h. Achieve the reporting milestones identified in the Sealed SBO Proposal no later than the dates specified therein, which shall be consistent with the reporting milestones required in Attachment L – Reporting Milestones of the Model PV RDG PPA (subject to reasonable adjustment agreeable to the Company consistent with the Company’s negotiation of such milestones that would be completed with an independent power producer under similar circumstances). Notice of completion of milestones and any delay will be provided to PUC and Consumer Advocate.

i. Will be subject to the applicable liquidated damages for the Model PV RDG PPA provisions above. These liquidated damages would be paid from shareholder funds and would be passed through to customers through the Companies’ Power Purchase Adjustment Clause. Notice of any liquidated damages assessed and amounts of such liquidated damages will be provided to PUC and Consumer Advocate.

j. Will reconfirm requirements in GO7 application and any resulting approval order for such application.

k. Will provide annual report to PUC and Consumer Advocate on performance metrics.

E. DECLARATION AND SIGNATURE

1. The individual(s) that has (have) signed this Self Build Option Team Certification is (are) duly authorized by the SBO Team to execute such on behalf of the SBO Team; and

2. All statements, specifications, data, confirmations, and other information set out in this Self Build Option Team Certification are complete and accurate in all material respects.
IN WITNESS WHEREOF, the SBO TEAM hereby makes the certifications, acknowledgements, and agreements stated herein as of the date stated under the signature of its authorized representative:

Dated at ________________, ______ this ___________ day of ________________ 20______.

_____________________________________
Signature of SBO Team Representative

_____________________________________
Name of SBO Team Representative (please print)

_____________________________________
Title of SBO Team Representative (please print)
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Total 1,992

NPV @ 3.00% 1,531
NPV @ 7.03% 1,127
NPV @ 12.00% 821
## Project Name
Revenue Requirements Model

### Assumptions

#### Manual input

**HECO TY2017 Rate Case Dkt 2016-0328 Final D&O 35545**

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<th>Weighted Average</th>
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#### Tax Assumptions

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| State Investment Tax Credit (ITC) | 4.00% |
| Accelerated State ITC Amortization Period | 10 |
| Public Service Company Tax | 5.885% |
| PUC Fee | 0.500% |
| Franchise Tax | 2.500% |
| Composite Revenue Tax Rate | 6.885% |
|                        | 1.09751  |

### Project Assumptions

- **Capital Investment**: $1,000

#### Depreciation

- **Expected Useful Life**: 20
- **MACRS Tax Life ("Tax Life")**: 15, half-year convention, table A-1
- **Tax Class Life ("Class Life")**: 20, half-year convention, table A-8

#### O&M

- **O&M**: $-

#### Escalation Rate

- **2.0%**

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<th>Tax Depreciation Factors</th>
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Source: IRS Publication 946, Table A-8

| Tax Depreciation Rates (MACRS) |       |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |
| -            |       |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |
| 3            |       | 33.3% | 44.5% | 14.8% | 7.4% |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |
| 5            |       | 20.0% | 32.0% | 19.2% | 11.5% | 11.5% | 5.8% |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |
| 7            |       | 14.3% | 24.5% | 17.5% | 12.5% | 8.9% | 8.9% | 8.9% | 4.5% |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |
| 10           |       | 10.0% | 18.0% | 14.4% | 11.5% | 9.2% | 7.4% | 6.6% | 6.6% | 6.6% | 3.3% |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |
| 15           |       | 5.0% | 9.5% | 8.6% | 7.7% | 6.9% | 6.2% | 5.9% | 5.9% | 5.9% | 5.9% | 5.9% | 5.9% | 5.9% | 5.9% | 5.9% | 5.9% | 5.9% | 5.9% | 3.0% |     |     |     |     |     |
| 20           |       | 3.8% | 7.2% | 6.7% | 6.2% | 5.7% | 5.3% | 4.9% | 4.5% | 4.5% | 4.5% | 4.5% | 4.5% | 4.5% | 4.5% | 4.5% | 4.5% | 4.5% | 4.5% | 4.5% | 2.2% |     |     |     |     |     |

Source: IRS Publication 946, Table A-1

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**Notes:**
- IRS Publication 946, Table A-1
- IRS Publication 946, Table A-8

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**Legend:**
- Manual input
- Project Name
- Tax Depreciation Factors
- Tax Depreciation Rates (Straight Line)
- Tax Depreciation Rates (MACRS)
| Manual input | Years | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 |
|--------------|-------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| Tax Depreciation Rates | -     | 3  |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
|              | 5     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
|              | 7     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
|              | 10    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
|              | 15    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
|              | 20    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
|              | 25    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
|              | 28    | 3.6% | 3.6% | 1.8% |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
|              | 30    | 3.3% | 3.3% | 3.3% | 3.3% | 1.7% |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
|              | 35    | 2.9% | 2.9% | 2.9% | 2.9% | 2.9% | 2.9% | 2.9% | 2.9% | 1.4% |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
|              | 50    | 2.0% | 2.0% | 2.0% | 2.0% | 2.0% | 2.0% | 2.0% | 2.0% | 2.0% | 2.0% | 2.0% | 2.0% | 2.0% | 2.0% | 2.0% | 2.0% | 2.0% | 2.0% | 2.0% | 2.0% | 2.0% | 2.0% | 2.0% | 1.0% |

Source: IRS Publication 946, Ta

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Source: IRS Publication 946, Ta
### Project Name

Revenue Requirements Model - Calculations

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#### Plant Asset Depreciation

**Book Depreciation**

- **Book Depreciation Rates**: 0.000% 5.263% 5.263% 5.263% 5.263% 5.263% 5.263% 5.263%
- **Depreciation Expense**: - 53 53 53 53 53 53 53 53 53
- **Accumulated Depreciation**: - 53 105 158 211 263 316 368 421 474

**Tax Depreciation**

- **Tax Depreciation Rates (Straight Line)**: 20 2.500% 5.000% 5.000% 5.000% 5.000% 5.000% 5.000% 5.000% 5.000%
- **Tax Basis (S/L)**: 0.0% - - - - - - - - -

**State Investment Tax Credit (ITC)**

- **State ITC Amortization Rate**: 0.000% 10.000% 10.000% 10.000% 10.000% 10.000% 10.000% 10.000% 10.000% 10.000%
- **Amortization of State ITC**: 4.00% - 4 4 4 4 4 4 4 4
- **Accumulated Amortization**: - 4 8 12 16 20 24 28 32 36
- **Deferred ITC**: 40 36 32 28 24 20 16 12 8 4

**Deferred Tax Calculation**

- **Book Accumulated Depreciation**: - 53 105 158 211 263 316 368 421 474
- **Tax Accumulated Depreciation**: 50 145 231 308 377 439 498 557 616 675
- **Book/Tax Acc Depr Difference**: (50) (92) (125) (150) (166) (176) (182) (189) (195) (202)
- **Deferred ITC**: 40 36 32 28 24 20 16 12 8 4
- **Net Deferred Tax Asset (Liability)**: (3) (15) (24) (31) (37) (40) (43) (45) (48) (51)

**Deferred Tax Base**: 10 46 37 28 21 14 10 10 10 10

**Deferred Taxes - Federal**: 2 9 7 6 4 3 2 2 2 2
## Revenue Requirements Model - Calculations

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## Revenue Requirement Calculation

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## Book Financial Statements

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REQUEST FOR PROPOSALS

FOR

VARIABLE RENEWABLE DISPATCHABLE GENERATION

PAIRED WITH ENERGY STORAGE

ISLAND OF LĀNA‘I

NOVEMBER 27, 2019

Docket No. 2019-0178

Appendix H – Interconnection Facilities and Cost Information
Tariff Rule No. 19, approved by the PUC, establishes provisions for Interconnection and Transmission Upgrades (see Appendix I). The tariff provisions are intended to simplify the rules regarding who pays for, installs, owns, and operates interconnection facilities in the context of competitive bidding. Tariff Rule No. 19 will be utilized as the basis for addressing interconnection and transmission upgrades for any projects developed through this RFP. Bidders will comply with the terms and conditions as specified therein.

To assist Bidders in assessing the impacts of location on potential projects, the per unit cost figures provided in the tables below are to be used to provide an approximate estimated cost for interconnecting, including communications and distribution line cost to the existing Lānaʻi Electric System. The per-unit cost figures below should not be used to create a detailed project estimate. A detailed project estimate typically requires a certain level of engineering to assess project site conditions and to factor in other parameters specific to the project.

The Bidder should identify the components assumed for their project and the quantity assumed for each. Each table below provides notes on the assumptions for each of the unit cost estimates. If a Bidder’s project requirements are different than what is assumed in the notes, the Bidder should identify each difference and provide an estimated additional cost or savings resulting from those different requirements.

**2.1 Distribution Line Interconnection Costs**

Figure 1 shows a simple overhead interconnection diagram for generation only proposals or generation coupled with energy storage connecting to a 12 kV circuit.

![Diagram](image)
Figure 2 shows a simple overhead interconnection diagram for generation only proposals or generation coupled with energy storage connecting to a 34.5 kV circuit.

![34.5 kV OH Line Diagram](image)

Figure 2

Figure 3 shows a simple underground interconnection diagram for generation only proposals or generation coupled with energy storage connecting to a 12 kV circuit.

![12 kV UG Line Diagram](image)

Figure 3

### Component Description and Cost Information

<table>
<thead>
<tr>
<th>Component</th>
<th>Description</th>
<th>Cost per Mile</th>
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<tbody>
<tr>
<td>1</td>
<td>New 12kV Overhead line (accessible 250' spans)</td>
<td>$400,000</td>
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### Notes:

1. New 12kV Overhead line (accessible) consists of 45’ height wood poles (39’ above / 6’ below grade).
2. New 34.5kV Overhead line (accessible) consists of 55’ height wood poles (48’ above/ 7’ below grade).
3. Component 3 - based on 1000 KCM AL 15kV (600A) cable includes duct bank and MH installation.
4. Note: Exclusions to these rough costs are as follows but not limited to:
   a. Development of the PUC application/proceedings timeline
   b. State or County right-of-way permitting and SMA
   c. Environmental studies cost
   d. Survey proposed line extension route
   e. Easement/Land Issues if discovered in the course of final design
   f. Archaeological survey and monitoring cost/duration (if needed)
   g. Clearing/grading along power line corridor and access road
   h. Final design adjustments required to negotiate terrain, physical landmarks, existing utilities and access
   i. Construction of permanent roadways/truck access
   j. Helicopter services
   k. Traffic Control
   l. Removals (MECO & HTCOM as applicable)
   m. Salvage and depreciation credits
   n. Street lights
   o. Delays due to weather and material acquisitions
5. All estimates are provided in 2019 dollars.

### 2.2 Miki Basin Interconnection Costs

#### 2.2.1 Substation 12kV Interconnection Costs FIRM and VARIABLE Projects
## Notes:

1. Substation land has been graded per Maui Electric’s civil and structural requirements. No costs for excavation and fill are included in the estimates.
2. Permits are not included in indicated costs.
3. Costs are in 2019 dollars.
4. Estimate does not contain any of the following costs:
   a. Telecommunication infrastructure
   b. Relay Coordination Study
   c. Land Cost
   d. Environmental Assessment/Environmental Impact Statement
   e. Project Management
   f. Any required upgrades to existing substations to integrate the new generating facility into the system.
5. Substation relay protection requirements have not been identified, so costs are based upon typical line protection relaying requirements.
6. Local SCADA equipment are included in cost estimates.
7. The estimate does not contain any line extension cost.
8. Projects shall be designed to limit the maximum loss-of-generation contingency to 3.3 MW for Lāna‘i. Additionally, in meeting this requirement, the Facility must be segmented in equally sized capacities (MW).

### 2.3 Telecommunications

1. Point-to-point microwave: $1,162,000 with the following assumptions:
Maui Electric Company

APPENDIX H- INTERCONNECTION FACILITIES AND COST INFORMATION 2019

a. There is line-of-sight between the communications endpoints.
b. FCC licensed Microwave Frequencies are available.
c. There are existing structures/buildings and available space on either end to house the radio equipment.
d. Telecommunications grounding standards are up-to-date at both sites.
e. 48V DC power with 12-hour battery backup is available.
f. This estimate does not include any special site-specific permit/approval that may be required.
g. Space is available to locate antenna towers/structures at both ends. Meets category 5 hurricane wind loading.
h. Interconnection to Maui Electric’s existing communications is not included.

2. Fiber with overbuild and new construction: $269,000 per mile with the following assumptions:
   a. The poles are in good condition and do not need replacing.
   b. The poles are not overloaded.
   c. The poles and the attachments are in accordance with NESC 2002 and no work is required to upgrade the poles to current standards.
DRAFT REQUEST FOR PROPOSALS

FOR

VARIABLE RENEWABLE DISPATCHABLE GENERATION

PAIRED WITH ENERGY STORAGE

ISLAND OF LĀNAʻI

NOVEMBER 27, 2019

Docket No. 2019-0178

Appendix I – Rule 19 Tariff
RULE NO. 19

Interconnection and Transmission Upgrades

A. GENERAL

1. Definitions

a. "Betterment" means and includes any upgrading to a facility made solely for the benefit of and at the election of the Company, not attributable to the interconnection requirements. The Betterment includes any provisions for future expansion which cannot be charged to replacement. It also includes any related system work beyond that required for interconnection. If an existing facility is replaced with one of greater functional capacity or capability, the difference between the upgraded facility and a replacement facility of equivalent functional capacity is considered Betterment. It does not mean the substitution of a replacement facility for an existing facility, that is, an underground facility for an overhead facility, unless otherwise provided for in the RFP.

Example 1: A substation with a three breaker scheme is required to connect the Generating Facility to the grid. If the Company installs a substation with a six breaker ring bus scheme, the difference between installing a substation with a three breaker scheme and one with a six breaker scheme would be the Betterment.

Example 2: A transmission line needs to be upgraded to accommodate a new Generating Facility. The existing line is designed to withstand a 56 mph wind speed. The project includes upgrading the facilities to withstand a 100 mph wind speed. The increase in the design to the 100 mph wind speed criteria would be the Betterment.

Example 3: A transmission line needs to be upgraded to accommodate a new Generating Facility. In response to the Company’s application to upgrade the line, the Commission orders that the line be placed underground. The cost difference between the overhead upgrade and the installation of the underground facilities would not be considered Betterment.

b. "Company's Dispatch" means the Company’s sole and absolute right to control, from moment to moment, through Supervisory Control, or otherwise, and in accordance with good engineering and operating practices in the electric utility industry, the rate of delivery of energy offered by the bidder to the Company.

c. "Company's System" means the electric system owned and operated by the 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.

MAUI ELECTRIC COMPANY, LIMITED

Docket No. 03-0372, D&O No. 23799, Dated November 5, 2007
Transmittal Letter Dated November 9, 2007
RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

d. “Distribution System” means all electrical wires, equipment, and other facilities at the distribution voltage levels (such as 25kV, 12kV, or 4kV) owned or provided by the Company, through which the Company provides electrical service to its customers.

e. “Framework” means the Framework for Competitive Bidding dated December 8, 2006, adopted by the Commission in Docket No. 03-0372, Decision and Order No. 23121, which provides the mechanism for acquiring a future energy generation resource or a block of generation resources by the Company.

f. “Generating Facility” means a bidder or utility-owned electrical energy generation resource that is interconnected to the Company electrical grid.

g. “Grid Connection Point” means the point at which Interconnection Facilities connect to the Company’s System, normally the Company’s transmission grid. Facilities from the Generating Facility to the Grid Connection Point shall be considered Interconnection Facilities (see examples given in Attachment A). The Grid Connection Point will be identified in the IRS.

h. “Interconnection Agreement” means a contract with the bidder that specifies the terms and conditions under which Interconnection Facilities (and, in some cases, certain System Upgrades) will be designed, installed, paid for, owned, operated and/or maintained. In some instances, such terms and conditions may be included in the PPA with a bidder, instead of in a separate Interconnection Agreement.

i. “Interconnection Facilities” means the equipment and devices required to permit a Generating Facility to operate in parallel with and deliver electric energy to Company’s System and provide reliable and safe operation of, and power quality on, the Company’s System (in accordance with applicable provisions of the Commission’s General Order No. 7, Company tariffs, operational practices and planning criteria), such as, but not limited to, transmission and distribution lines, transformers, switches, and circuit breakers.

Example 1: A wind farm facility constructed on a neighbor island (e.g. Molokai) that exports to the Company the energy it produces would be required to install undersea transmission lines to interconnect the Generating Facility to the Company’s System. The undersea transmission lines and related facilities would be considered Interconnection Facilities.

MAUI ELECTRIC COMPANY, LIMITED

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Transmittal Letter Dated November 9, 2007
RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

Example 2: A proposed Generating Facility is remotely located in a region of the island where there are no existing Transmission System facilities. In this case, if the size of the Generating Facility requires that it be tied to the existing Transmission System, the new Transmission System facilities (i.e. all electrical wires, equipment, and other facilities at the transmission voltage level) constructed from the Generating Facility to the Company’s existing Transmission System facilities would be considered Interconnection Facilities.

j. “Interconnection Requirements Study (IRS)” means a study, performed in accordance with the terms of the IRS Letter Agreement and with the applicable terms of the RFP and any resulting PPA, to identify the Interconnection Facilities, System Upgrades and other system requirements and all associated costs to integrate the proposed Generating Facility with the Company’s System, and includes a detailed steady-state and a dynamic analysis. The IRS is conducted by the Company or its consultant and the bidder is responsible for the cost of conducting the IRS.

k. “Interconnection Requirements Study Letter Agreement (IRS Letter Agreement)” means the letter agreement and any written, signed amendments thereto, between the Company and the bidder that describes the scope, schedule, and payment arrangements for the IRS.

l. “IRP” means an electric utility’s Integrated Resource Plan that has been submitted to the Commission for review and approval in the utility’s IRP proceeding, in accordance with the Commission’s IRP Framework.


n. “Point of Interconnection” means the point of delivery of Energy and/or Capacity supplied by the bidder to the Company, where the facilities owned by the bidder interconnect with the facilities owned or to be owned by the Company. The bidder shall own and maintain the facilities from the Generating Facility to the Point of Interconnection. The Company shall own and maintain the facilities from the Point of Interconnection to the Company’s System (see examples given in Attachment A). The Point of Interconnection will be identified in the IRS.

o. “PPA” means a power purchase agreement or contract by the Company to purchase firm capacity, energy, or both.

MAUI ELECTRIC COMPANY, LIMITED

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Transmittal Letter Dated November 9, 2007
RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

p. "Renewable Energy Facility" means a Generating Facility that generates electricity using renewable energy as the source.

q. "RFP" means a written request for proposal issued by the Company to solicit bids from interested third-parties, and where applicable from the Company or its affiliate, to supply a future generation resource or a block of generation resources to the Company pursuant to a competitive bidding process.

r. "Subtransmission System" means all electrical wires, equipment, and other facilities at the subtransmission voltage levels (such as 46kV, 35kV, or 23kV) owned or provided by the Company, through which the utility provides electrical service to its customers.

s. "Supervisory Control" means remote monitoring and/or control of a Generating Facility's power output and interrupting device status by means of a communication channel that is acceptable to the Company. For Generating Facilities intending to export power with an aggregate export capacity greater than 250kW, computerized supervisory control may be required to ensure the safety of working personnel and prompt response to system abnormalities in case of islanding of the Generating Facility. The Company shall determine the need for supervisory control based upon the results of the initial technical screening and/or IRS. Supervisory control shall include at a minimum monitoring of: (a) gross generation by the Generating Facility; (b) feedback of Watts, Vars, WattHours, current and voltage; (c) Vars furnished by the utility; and (d) status of the interrupting device. In addition, the supervisory control will allow the Company to trip the interrupting device during emergency conditions. Monitoring will be performed by system dispatchers or operators at the Company's control center.

t. "System Benefit" means a material increase in power flow capability or in the reliability of the Company's electrical system from a system-wide perspective.

u. "System Upgrades" means improvements made to the Company's System, other than the Interconnection Facilities, required to provide reliable and safe operation of, and power quality on, the Company's System (in accordance with applicable provisions of the Commission's General Order No. 7, Company tariffs, operational practices and planning criteria) when the Generation Facility is interconnected with the Company's System (see Attachment A). Such improvements may include, but are not limited to, new transmission or distribution lines, reconstruction or reconductoring of existing lines, circuit breakers, switches, transformers, buses, protective devices, communications, and substation equipment and facilities.
RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

v. “Transmission System” means all electrical wires, equipment, and other facilities at the transmission voltage levels (such as 138kV or 69kV) owned or provided by the utility, through which the utility provides electrical service to its customers.

2. Application of Tariff

This Tariff shall apply to an RFP issued pursuant to the Framework and Interconnection Requirement Studies arising from the RFP process. In the event that there is a conflict between any provision of this Tariff and that of an RFP issued pursuant to the Framework and reviewed by the Commission in accordance with Sections III.B.2 and IV.B.6.e. of the Framework, the provisions of the RFP shall prevail. The terms and conditions established in a PPA arising from the RFP and approved by the Commission shall ultimately control over the requirements and terms of both this Tariff and the RFP.

3. Independent Observer

As established in the Framework, the duties and responsibilities of an Independent Observer (IO) include, among other duties and responsibilities, reviewing and monitoring the Company’s communications, methods, and implementation of this Tariff, the RFP and related IRS processes.

B. INTERCONNECTION STUDY PROCESS FOR COMPETITIVE BIDDING

1. RFP Package Data -- available to all prospective bidders.

RFP packages issued by the Company shall contain general and regional system information to provide prospective bidders with high level guidance relating to the Company’s existing transmission infrastructure. For example, RFP packages may include information in the form of an island map with areas of the Transmission System identified that are at or near their loading limits to provide high level guidance to bidders on areas of the island with transmission constraints. These constraints may include “load pockets”, which are load-driven transmission constraints as well as areas of generation-driven transmission constraints. Because transmission impacts are to a large extent specific to the characteristics of supply-side proposals, definitive transmission information cannot be provided in these maps. Detailed geographic maps of the transmission system may not be part of this information due to security concerns. Rather, a map of the island with areas of the map shaded to identify areas (rather than circuits) of transmission constraints, may be provided.

MAUI ELECTRIC COMPANY, LIMITED

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Transmittal Letter Dated November 9, 2007
Interconnection and Transmission Upgrades

In addition, the RFP shall include applicable transmission planning criteria that will be used in the determination of interconnection requirements and potential Transmission System impacts. The information in the bid package will provide bidders with information (a) that should help in the selection of the proposed project's characteristics, including project site, project size, and project mode of operation, and (b) to estimate the interconnection requirements associated with their Generating Facilities and the opportunity to reflect the costs of the interconnection requirements in their bids.

2. Information Requests During Bidding Process - available to all prospective bidders.

During the bidding process, if a prospective bidder requires clarification or additional technical or operational information pertaining to the Company's System, a written request with specific questions may be submitted to the Company in accordance with the requirements set forth in the RFP. The written request, specific questions, and written Company response will be provided to all bidders.

3. RFP Requirements and Threshold Criteria Screening - evaluation performed on all bids received

Each bid received will be reviewed to ensure that it satisfies all of the RFP and threshold criteria requirements. The Company will determine whether each bid conforms to the specified RFP requirements and meets the minimum threshold criteria. Applicable performance standards may be part of the threshold criteria. These performance standards may vary depending upon factors such as the size of the generating resource(s) being acquired in the RFP, the Company's ability to dispatch the Generating Facility, the operational status (e.g., as-available vs. firm) of the Generating Facility, and the fuel type of the Generating Facility (e.g., run-of-the-river hydro may have different performance standards from wind power).

4. High Level Evaluation -- performed on all bids that pass threshold screening in RFP process

a. All bids which pass the threshold screening in the RFP process will undergo a high level evaluation consistent with the requirements identified in the RFP, which will focus primarily on basic steady-state analyses (e.g., identifying thermal line impacts, voltage impacts, and any obvious "fatal flaws").
RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

b. For each bid, a high level estimate of the costs of Interconnection Facilities and required System Upgrades will be developed based solely on the high level evaluation identified in Section B.4.a. of this Tariff and on unitized cost estimates (e.g., $/mile for 138kV line, $/transformer).

c. Results of the high level evaluation and high level estimate of the costs of Interconnection Facilities and required System Upgrades will be factored into the determination of which bids make the short list based on the requirements specified in the RFP.

d. Basic curtailment analysis of the proposed Generating Facility and related impacts to operations of existing Generating Facilities may also be factored into the determination of which bids make the short list based on the requirements specified in the RFP.

5. Full Interconnection Requirements Study - performed only on short list bids.

a. An IRS shall be performed only for bid(s) that have met the RFP requirements, passed the threshold criteria, and made the short list, or as otherwise specified in the RFP.

b. An IRS would be performed either serially starting with the bid evaluated as the most competitive at the point of the evaluation process, then proceeding to the next most competitive bid on the short list or in parallel on all or some of the short list bidders simultaneously. The determination of whether or not IRS work is to be performed serially, in parallel, or a combination of the two will be based upon factors such as resource availability, number of short list bids, RFP schedule, and relative competitiveness of one bid to others, and the availability of all information and data from bidders necessary to perform the IRS work.

c. The Company may if practicable “bundle” IRS work for multiple short list bids into a single IRS if the bids are, among other factors, technically, operationally, and geographically (e.g., size, location, technology, timing, operating characteristics, etc.) identical or sufficiently similar to each other.

d. The results of the IRS, including identified Interconnection Facilities, System Upgrades, Point of Interconnection, and Grid Connection Point, will be provided to the bidder.

e. Bidders shall be responsible for incorporating the costs of their Interconnection Facilities into their bids. The RFP may provide bidders with an opportunity to revise their pricing proposals under certain circumstances. Any pricing change, if permitted under the terms of the RFP, will prompt a re-evaluation of short list bidders in the selection of the winning bid as provided for in the RFP.

MAUI ELECTRIC COMPANY, LIMITED

Docket No. 03-0372, D&O No. 23799, Dated November 5, 2007
Transmittal Letter Dated November 9, 2007
RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

f. The Company may perform the analyses included in the IRS, or the IRS or parts of the IRS may be contracted to an outside consultant specializing in such analyses for complex situations or in situations where the Company does not have available resources to conduct the analyses in a time frame agreeable to the Company.

g. The scope and cost of the IRS will depend on the complexity of the Company’s System and Generating Facility that must be modeled, and the degree to which the Generating Facility will affect the Company’s System.

h. The bidder will be responsible for the cost of the IRS (or such lesser amount as the Company may specify to facilitate the processing of interconnection requests for similarly situated facilities) to be performed in order to evaluate the impacts of the Generating Facility’s interconnection to the Company’s System.

C. INTERCONNECTION COST AND SYSTEM UPGRADE COST ALLOCATION FOR COMPETITIVE BIDDING

1. The bidder shall be responsible for the cost of Interconnection Facilities and shall be responsible for the installation and maintenance of Interconnection Facilities from the Generating Facility to the Point of Interconnection, unless otherwise specified in the RFP.

2. Interconnection Facilities from the Generating Facility to the Point of Interconnection shall be built by the bidder, unless the Company agrees otherwise.

3. Interconnection Facilities from the Point of Interconnection to the Grid Connection Point shall be built by the Company and paid for by the bidder, unless the Company agrees or determines otherwise. The Company may elect to include Betterments to Interconnection Facilities from the Point of Interconnection to the Grid Connection Point, and such Betterments shall be paid for by the Company. The cost of Betterments to such Interconnection Facilities will not be considered in the bid evaluations. The bidder shall acquire the necessary land and easements for Interconnection Facilities from the Point of Interconnection to the Grid Connection Point, unless the Company agrees otherwise. Interconnection Facilities from the Point of Interconnection to the Grid Connection Point, if built by the bidder, shall be transferred to the Company upon completion, along with the necessary land rights and easements.

MAUI ELECTRIC COMPANY, LIMITED

Docket No. 03-0372, D&O No. 23799, Dated November 5, 2007
Transmittal Letter Dated November 9, 2007
RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

4. The Company shall install and maintain the identified System Upgrades arising from the interconnection of the Generating Facility and shall be responsible for the cost of such System Upgrades.

a. The Company’s cost for System Upgrades will be considered as a factor in the bid evaluations.

b. The degree to which the System Upgrades provide System Benefits and/or Betterments will be considered in the bid evaluations.

5. Standards and Interconnection Agreements

a. Interconnection Facilities and System Upgrades owned or to be owned by the Company shall be constructed in accordance with the Company’s applicable standards and in accordance with the PPA or the Interconnection Agreement, if there is a separate Interconnection Agreement.

b. Generating Facilities and Interconnection Facilities owned by the bidder shall be constructed in accordance with applicable State and County code requirements and in accordance with the PPA or the Interconnection Agreement, if there is a separate Interconnection Agreement.

c. The bidder’s Generating Facility may be interconnected and operated in parallel with the Company’s System in accordance with the terms and conditions of the PPA between the Company and the bidder, and/or the terms and conditions of an Interconnection Agreement between the Company and the bidder, if there is a separate Interconnection Agreement.

d. The bidder will be required to furnish, install, operate, and maintain suitable and sufficient equipment, to maintain adequate records, and to follow such operating procedures, as may be specified by the Company to protect the Company’s System from damage resulting from the parallel operation of the Seller’s Facility, including the equipment, records and operating procedures more fully described in the PPA and/or Interconnection Agreement, if there is a separate Interconnection Agreement.

e. Interconnection Facilities shall be designed, installed operated and maintained in accordance with good interconnection practice. The objectives of good interconnection practice include, but are not limited to,

1. Safety - To protect the safety of utility personnel, utility customers, and the public.

MAUI ELECTRIC COMPANY, LIMITED

Docket No. 03-0372, DcO No. 23799, Dated November 5, 2007
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RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

2. Reliability - To maintain the reliability of the utility system for all utility customers.

3. Power Quality - To provide for acceptable power quality and voltage regulation on the utility system and for all utility customers.

4. Restoration - To facilitate restoration of power on the utility system.

5. Protect Utility and Customer Equipment - To protect utility and customer equipment during steady state and faulted system operating conditions.

6. Protect Generating Facilities - To protect generating facilities from operation of utility protective and voltage regulation equipment.

7. Utility System Overcurrent Devices - To maintain proper operation of the utility system’s overcurrent protection equipment.

8. Utility System Operating Efficiency - To ensure operation at appropriate power factors and minimize system losses.

f. The bidder shall obtain, at its expense, any and all authorizations, approvals, permits, and licenses required for the construction and operation of its Generating Facility and the interconnection of its Generating Facility with the Company's System, including but not limited to environmental permits, building permits, rights of way, or easements.

g. Where any Company-owned Interconnection Facilities are to be located on the site of the bidder’s Generating Facility, the bidder shall provide, at no expense to the Company, a location and access acceptable to the Company for all such facilities.

6. Renewable Energy Facilities

a. In its IRP process, the Company may propose System Upgrades, to be paid for, owned and maintained by the utility, to encourage the development of Renewable Energy Facilities.

b. In its IRP process, the Company may propose to pay for Interconnection Facilities between the Point of Interconnection and the Grid Connection Point, in order to encourage the development of Renewable Energy Facilities.

MAUI ELECTRIC COMPANY, LIMITED

Docket No. 03-0372, D&O No. 23799, Dated November 5, 2007
Transmittal Letter Dated November 9, 2007
RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

Attachment A

[Diagram showing interconnection and transmission lines, substations, grid connection point, and generating facility.

MAUI ELECTRIC COMPANY, LIMITED

Docket No. 03-0372, D&O No. 23799, Dated November 5, 2007
Transmittal Letter Dated November 9, 2007
DRAFT REQUEST FOR PROPOSALS

FOR

VARIABLE RENEWABLE DISPATCHABLE GENERATION

PAIRED WITH ENERGY STORAGE

ISLAND OF LĀNAʻI

NOVEMBER 27, 2019

Docket No. 2019-0178

Appendix J – Lānaʻi Community Comments
Lāna‘i Community Meeting Feedback
(written comments received by Maui Electric Co., Ltd.)

On July 23, 2019, the Company held a community meeting on Lāna‘i to provide residents information on its plans to conduct a Request for Proposals (“RFP”) for Variable Renewable Dispatchable Generation. During the meeting, the Company gave a presentation to explain the objective of the RFP and overall process. Approximately 40 residents attended the meeting. The Company solicited written feedback from the Lāna‘i community based on the following question:

1: Do you have any feedback/comments you want developers to be aware of?

The following written responses were received:

Comment 1:
Suggest bidders be strongly encouraged to meet w public before submitting bid for consideration to better inform public engagement process if selected~

Comment 2:
Please pronounce the name of our island correct Lāna‘i.

Comment 3:
Price and reliability are major considerations.
What are the plans for restoring power should there be failures, e.g., spare parts readily available on island, technicians on island or can be on island quickly.

Comment 4:
Is the location of the new solar going to take away hunting designated land.
Tell the PUC to bring back net metering?
Can the grid handle the increase in power?

Comment 5:
Is it possible to hire/train Lāna‘i residents to fill these new jobs please?

Will you consider including students at Lāna‘i High & Elem if they would like to learn more about renewable energy?

Comment 6:
So glad MECO incorporated significant opportunities for lots of community input.
Exhibit 3

Redline of Final RFP for the Island of Molokaʻi against August 6, 2019 Proposed Final Draft RFP
REQUEST FOR PROPOSALS
FOR
VARIABLE RENEWABLE DISPATCHABLE GENERATION
PAIRED WITH ENERGY STORAGE
ISLAND OF MOLOKA‘I

AUGUST 6–NOVEMBER 27, 2019

Docket No. 2017-03522019-0178

This Request for Proposals ("RFP") is a DRAFT only. Maui Electric Company, Ltd. ("Maui Electric" or "Company") will employ a competitive bidding process to select variable renewable dispatchable generation and energy storage projects consistent with the State of Hawai‘i Public Utilities Commission’s ("PUC") Competitive Bidding Framework. Under the Competitive Bidding Framework, Maui Electric will file the initial draft RFP with the PUC. Then, Maui Electric will seek input from prospective Proposers and other stakeholders and will modify the draft RFP to the extent feasible to address input received in order to foster a robust competitive process. The proposed final RFP will be submitted to the PUC for approval and is subject to further revision based upon direction received from the PUC. After approval by the PUC, Maui Electric will issue the final RFP.
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Chapter 1: Introduction and General Information

Maui Electric Company, Ltd. (“Maui Electric” or the “Company”) seeks proposals for the supply of qualified variable renewable dispatchable generation paired with energy storage for the Maui Electric System on the island of Moloka‘i in accordance with this Request for Proposals (“RFP”). The total amount of variable renewable dispatchable generation being solicited in this RFP is the capability to provide 8,500 megawatt hours (“MWh”) annually.

Affiliates of the Company may submit a Proposal in response to this RFP subject to the requirements of this RFP. The Company may submit a sealed Proposal in response to this RFP (“Sealed SBO Proposal”) subject to the requirements of this RFP.

The Company seeks variable renewable dispatchable photovoltaic (“PV”) or wind (100 kW per turbine or less) generation projects paired with energy storage systems in this RFP. The Company intends to contract for variable renewable dispatchable generation projects paired with energy storage systems through this RFP using its Model Renewable Dispatchable Generation Power Purchase Agreement (“RDG PPA”), which treats variable generation facilities as fully dispatchable. The Company has created a photovoltaic (“PV”) version (the “PV RDG PPA”) and a wind version (the “Wind RDG PPA”) of its RDG PPA attached as Appendix K and Appendix L respectively.1 If the proposed Project contains components that are not encompassed by the RDG PPA, then the terms of the RDG PPA will be modified to address the specific technology and/or component.

Each successful Proposer will provide variable renewable dispatchable generation paired with energy storage to the Company pursuant to the terms of an RDG PPA, which will be subject to review and approval by the State of Hawai‘i Public Utilities Commission (“PUC”).

The Company will evaluate Proposals using the evaluation and selection process described in Chapter 4. The Company will evaluate and select Proposals based on both price and non-price factors that impact the Company, its customers, and communities affected by the proposed Projects. The amount of generation and storage that the Company may acquire from this RFP depends on, among other things, the quality and cost-effectiveness of bids received in response to this RFP; economic comparison to other RFP responses; updates to the Company’s forecasts; distribution availability; and changes to regulatory or legal requirements. If attractive Proposals are received that will provide energy in excess of the targeted amounts, the Company will consider selecting such Proposal(s) if benefits to customers are demonstrated.

All requirements necessary to submit a Proposal(s) are stated in this RFP. A description of the technical requirements for Proposers is included in the body of this RFP, Appendix B, and in the RDG PPA attached as Appendix K and L.

All capitalized terms used in this RFP shall have the meaning set forth in the glossary of defined terms attached as Appendix A. Capitalized terms that are not included in Appendix A shall have the meaning ascribed in this RFP.

---

1 The RDG PPAs for PV and Wind are available on the Company’s RFP website and through the PowerAdvocate platform for the RFP.
1.1 Authority and Purpose of the Request for Proposals

1.1.1 This RFP is issued in response to Order No. 36356 issued on June 10, 2019 in Docket No. 2017-03522019-0178 as part of a procurement process established by the PUC.

1.1.2 This RFP is subject to Decision and Order (“D&O”) No. 23121 in Docket No. 03-0372 (To Investigate Competitive Bidding for New Generating Capacity in Hawai‘i), which sets forth the PUC’s Framework for Competitive Bidding (“Framework” or “Competitive Bidding Framework”).

1.1.3 Proposers should review the Hawaiian Electric Companies’ Power Supply Improvement Plans, filed in Docket No. 2014-0183 on December 23, 2016 (“PSIP Update Report: December 2016” or “PSIP”). Consistent with the PSIP, the primary purpose of this RFP is to obtain variable renewable energy and energy storage so that the Company can continue to transform Moloka‘i’s power supply portfolio from fossil fuel-based generation to renewable-based generation to meet Hawai‘i’s 100% RPS requirement.

1.2 Scope of the RFP

1.2.1 The Company will only accept Proposals that utilize PV or wind (100 kW per turbine or less) generation technologies, and all Proposals must be paired with energy storage.

1.2.2 Each Proposal submitted in response to this RFP must represent a Project that is capable of meeting the requirements of this RFP without having to rely on the completion or implementation of any other Project.

1.2.3 Proposals that will require system upgrades and the construction of which, in the reasonable judgment of the Company (in consultation with the Independent Observer), creates a significant risk that their Project’s Guaranteed Commercial Operations Date (“GCOD”) will not be met will not be considered in this RFP.

1.2.4 Projects submitted in response to this RFP must be located on the Island of Moloka‘i.

1.2.5 Proposers will determine their Project Site. Proposers have the option of submitting a Proposal using potential Sites offered and described in Section 3.11. Proposers must locate all Project infrastructure within areas of their Site that are outside the 3.2 feet sea level rise exposure area (SLR-XA) as described in the Hawai‘i Sea Level Rise Vulnerability and Adaptation Report (2017) and are not located within a Tsunami Evacuation Zone.

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3 See Hawai‘i Sea Level Rise Viewer at https://pacific.hawaii.edu/shoreline/slr-hawaii/, and National Oceanic and Atmospheric Administration (NOAA) interactive map in partnership with the State of Hawai‘i at https://tsunami.coast.noaa.gov/#/.
1.2.6 Projects must interconnect to the Company’s Electric System on the Island of Moloka‘i.

1.2.7 Projects must be greater than 4 (or equal to 0.5) MW (500 kW). No single point of failure from the Facility shall result in a decrease in net electrical output greater than 2.7 MW AC. Additionally, in meeting this requirement, the Facility must be segmented in equally sized capacities (MW). Each segment must have its own point of interconnection into the Moloka‘i Electric System that can be independently dispatched via the Company’s energy management system. Revisions would need to be made to the RDG PPA to account for multiple points of interconnection.

1.2.8 Contracts for projects selected through this RFP shall use the RDG PPA, as described in Section 3.8. Under the RDG PPA, the Company will maintain exclusive rights to fully direct dispatch of the Facility, subject to the availability of the resource, and Section 1.2.10 below.

1.2.9 Generation proposals must be submitted with an energy storage component. The energy storage component can be charged during periods when full potential export of the generation Facility is not being dispatched by the Company, and the storage component can be used to provide energy to the Company during other times that are beneficial to the system. The energy storage component must be sized to support the Facility’s Allowed Capacity (in MW) for a minimum of four (4) continuous hours throughout the term of the PPA.

For example, for a 5 MW facility, the energy storage component must be able to store and discharge at least 20 MWh of energy in a cycle throughout the term of the PPA.

1.2.10 The energy storage component must also be able to be charged from the grid at the direction of the Company as described in this section. During the period that allows the Project to maximize and capture the benefits of the Investment Tax Credit (“ITC”) for the energy storage system, grid charging of the energy storage system is not required. After the 5-year ITC recapture period has lapsed, the energy storage component must be capable of being 100% charged from the grid at the direction of the Company.

Energy storage components that are incapable of claiming the ITC must be capable of being 100% charged from the grid from the Guaranteed Commercial Operations Date (“GCOD”).

1.2.11 The amount of energy discharged from the energy storage component in a year will be limited to the energy storage contract capacity (in MWh) multiplied by the number of Days in that year.

1.2.12 Proposals must specify a GCOD no later than December 31, 2023. Preference will be given to Proposals that specify an earlier GCOD during the non-price evaluation.

1.2.13 A Proposer’s GCOD set forth in its Proposal will be the GCOD in any resulting PPA if such Proposal is selected to the Final Award Group. Proposers will not be able to request a change in the GCOD set forth in their Proposals.
1.2.14 If selected, Proposers will be responsible for all Project costs throughout the term of the PPA, including but not limited to Project development, completion of an Interconnection Requirements Study (“IRS”), the cost of conducting a greenhouse gas analysis, land acquisition, permitting, financing, construction of the Facility and all Interconnection Facilities, and operations and maintenance (“O&M”).

1.2.15 If selected, Proposers will be solely responsible for the decommissioning of the Project and the restoration of the Site upon the expiration of the PPA, as described in Attachment G, Section 7 of the RDG PPA.

1.2.16 If selected, Proposers shall pursue all available applicable federal and state tax credits. Proposal pricing must be set to incorporate the benefit of such available federal tax credits. However, to mitigate the risk on Proposers due solely to potential changes to the state’s tax credit law before a selected project reaches commercial operations, Proposal pricing shall be set without including any state tax credits. If a Proposal is selected, the PPA for the project will require the Proposer to pursue the maximum available state tax credit and remit tax credit proceeds to the Company for customers’ benefit as described in Attachment J of the RDG PPA. The PPA will also provide that the Proposer will be responsible for payment of liquidated damages for failure to pursue the state tax credit.

1.2.17 Each Proposal submitted in response to this RFP must represent a Project that is capable of meeting the requirements of this RFP without having to rely on a proposed change in law, rule, or regulation.

1.3 Competitive Bidding Framework
Consistent with the Framework, this RFP outlines the Company’s requirements in relation to the resources being solicited and the procedures for conducting the RFP process. It also includes information and instructions to prospective Proposers participating in and responding to this RFP.

1.4 Role of the Independent Observer
1.4.1 Part III.C.1 of the Framework sets forth the circumstances under which an Independent Observer is required in a competitive bidding process. The PUC has retained an Independent Observer both to advise and monitor the process for this RFP. All phases of the RFP process will be subject to the Independent Observer’s oversight, and the Independent Observer will coordinate with PUC staff throughout the RFP process to ensure that the RFP is undertaken in a fair and unbiased manner. In particular, the Company will review and discuss with the Independent Observer decisions regarding the evaluation, disqualification, non-selection, and selection of Proposals.

1.4.2 The role of the Independent Observer, as described in the Framework, will include but is not limited to:
- Monitor all steps in the competitive bidding process
- Monitor communications (and communications protocols) with Proposers
- Monitor adherence to the Company’s Code of Conduct
• Submit comments and recommendations, if any, to the PUC concerning the RFP
• Review the Company’s Proposal evaluation methodology, models, criteria, and assumptions
• Review the Company’s evaluation of Proposals
• Advise the Company on its decision-making
• Participate in dispute resolution as set forth in Section 1.10
• Monitor contract negotiations with Proposers
• Report to the PUC on monitoring results during each stage of the competitive bidding process
• Provide an overall assessment of whether the goals of the RFP were achieved

1.4.3 The Independent Observer for this RFP is:

Navigant Consulting, Inc.
685 Third Avenue, 14th Floor
New York, NY 10017
Attn: Dia Dean Koujak

1.5 Communications Between the Company and Proposers – Code of Conduct Procedures Manual

1.5.1 Communications and other procedures under this RFP are governed by the “Code of Conduct Procedures Manual,” (also referred to as the “Procedures Manual”) developed by the Company as required by the Framework, and attached as Appendix C.

1.5.2 All pre-Proposal communication with prospective Proposers will be conducted via the Company’s RFP website, Electronic Procurement Platform, and/or electronic mail (“Email”) through the address specified in Section 1.6 (the “RFP Email Address”). Frequently asked questions submitted by prospective Proposers and the answers to those questions may be posted on the Company’s RFP website, or sent through either Email or the Electronic Procurement Platform to registered individuals. The Company reserves the right to respond only to comments and questions it deems are appropriate and relevant to the RFP. Proposers are advised to submit questions no later than fifteen Days before the Proposal Due Date (RFP Schedule in Section 3.1, Items 10 and 11). The Company will endeavor to respond to all questions no later than five Days before the Proposal Due Date.

1.5.3 After Proposals have been submitted, the Company may contact individual Proposers for purposes of clarifying their Proposal(s).

1.5.4 Any confidential information deemed by the Company, in its sole discretion, to be appropriate to share, will only be transmitted to the requesting party after receipt of a fully executed Mutual Confidentiality and Non-Disclosure Agreement (“NDA”). See Appendix E.
1.5.5 Except as expressly permitted and in the manner prescribed in the Procedures Manual, any unsolicited contact by a Proposer or prospective Proposer with personnel of the Company pertaining to this RFP is prohibited.

1.6 Company Contact for Proposals

The primary contact for this RFP is:

Jasmine Wong
Joseph Streeter
Energy Contract Manager
Hawaiian Electric Company, Inc.
Central Pacific Plaza Building, Suite 2100
220 South King Street
Honolulu, Hawai‘i 96813
96732

RFP Email Address: molokaicompetitivebidding@mauelectric.com

1.7 Proposal Submission Requirements

1.7.1 All Proposals must be prepared and submitted in accordance with the procedures and format specified in the RFP. Proposers are required to respond to all questions and provide all information requested in the RFP, as applicable, and only via the communication methods specified in the RFP.

1.7.2 Detailed requirements regarding the form, submission, organization, and information for the Proposal are set forth in Chapter 3 and Appendix B.

1.7.3 In submitting a Proposal in response to this RFP, each Proposer certifies that the Proposal has been submitted in good faith and without fraud or collusion with any other unaffiliated person or entity. The Proposer shall acknowledge this in the Response Package submitted with its Proposal.

1.7.3 Without limiting the foregoing, unaffiliated Proposers are prohibited from using shared legal counsel to prepare their Proposals or for contract negotiations with the Company where counsel is an individual person. If counsel is a law firm with multiple attorneys, unaffiliated Proposers may use the same firm only if (1) such firm assigns separate attorney(s) to each Proposer, (2) the attorney(s) are prohibited from (i) sharing a Proposer’s confidential information or the Company’s confidential information associated with such Proposer with others, or (ii) accessing another Proposer’s confidential information or Company’s confidential information associated with such Proposer from another attorney in the firm, (3) the law firm has appropriate procedures, safeguards and policies in place to ensure that separations exist so that attorney(s) assigned to a Proposer do not share or have access to confidential information of another Proposer or of the Company which was obtained through another attorney’s representation of a Proposer, and (4) an authorized signatory of the law firm shall provide
Company with a written certification in the form attached as Appendix B Attachment 1. Furthermore, in executing the NDA provided as Appendix E, the Proposer agrees on behalf of its Representatives (as defined in the NDA) that the Company’s negotiating positions will not be shared with other Proposers or their respective Representatives.

In addition, in submitting a Proposal, a Proposer will be required to provide Company with its legal counsel’s written certification in the form attached as Appendix B Attachment 1 certifying in relevant part that irrespective of any Proposer’s direction, waiver, or request to the contrary, that the attorney will not share a Proposer’s confidential information associated with such Proposer, including, but not limited to, information such as a Proposer’s or Company’s negotiating positions with third parties unaffiliated with Proposer (by contract or organizational structure), including other proposers responding to the RFP. If legal counsel represents multiple unaffiliated Proposers whose Proposals are selected for the Final Award Group, such counsel will also be required to submit a similar certification at the conclusion of power purchase agreement negotiations that he or she has not shared a Proposer’s confidential information or the Company’s confidential information associated with such Proposer, including but not limited to, a Proposer’s or Company’s negotiating positions, with third parties unaffiliated with such Proposer (by contract or organizational structure), including other Proposers responding to the RFP.

1.7.4 Proposals must be submitted by 2:00 pm Hawai‘i Standard Time (HST) on the Proposal Due Date shown in the RFP Schedule in Section 3.1. IPP and Affiliate proposals must be submitted via the Electronic Procurement Platform. No hard copies of these Proposals will be accepted by the Company. The Sealed SBO Proposal must be submitted in accordance with the instructions in Section 1.9.

It is the Proposer’s sole responsibility to ensure that complete and accurate information has been submitted on time and consistent with the instructions of this RFP. With this assurance, Company shall be entitled to rely upon the completeness and accuracy of every Proposal. Any errors identified by the Proposer or Company after the Proposal Due Date has passed may jeopardize further consideration and success of the Proposal. If an error or errors are later identified, Company, in consultation with the Independent Observer, may permit the error(s) to be corrected without further revision to the Proposal, or may require Proposer to adhere to terms of the Proposal as submitted without correction. Additionally, and in Company’s sole discretion, if such error(s) would materially affect the Priority List or Final Award Group, Company reserves the right, in consultation with the Independent Observer, to remove or disqualify a Proposal upon discovery of the material error(s). The Proposer of such Proposal shall bear the full responsibility for such error(s) and shall have no recourse against Company’s decision to address Proposal error(s), including removal or disqualification. The Energy Contract Manager, in consultation with the Independent Observer, will confirm that the Sealed SBO Proposal is either delivered or postmarked by, and that any Affiliate Proposals are timestamped by, milestone (492) Sealed SBO Proposal and Affiliate Proposal Due Date.

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4 Affiliate Proposals have additional submission requirements to the PUC specified in Section 1.9 below.
1.8 **Proposal Fee**

1.8.1 IPP and Affiliate proposers are required to tender a non-refundable Proposal Fee of $105,000 for each Proposal submitted.

1.8.2 Proposers may submit multiple Proposal variations for a Project. If such Proposals are on different Sites or for different generation technologies, a separate Proposal Fee must be paid for each Proposal. The method of submitting multiple Proposals within this RFP is described in Appendix B.

1.8.3 Proposers may also submit up to three (3) minor variations of their original Proposal. Variations of pricing terms or Facility size can be offered. All variations within a Proposal must be proposed on the same Site using the same generation technology to avoid paying a separate Proposal Fee for each variation. Whether or not a separate Proposal Fee is required, all unique information for each variation of a Proposal, no matter how minor such variation is, must be clearly identified and separated by following the instructions in Appendix B Section 3.

1.8.4 The Proposal Fee must be in the form of a cashier’s check or equivalent from a U.S.-chartered bank made payable to “Maui Electric Company, Ltd.” and must be delivered and received by the Company by 2:00 pm (HST) on the Proposal Due Date shown in the RFP Schedule in Section 3.1. The check should include a reference to the Proposal(s) for which the Proposal Fee is being provided. Proposers are strongly encouraged to utilize a delivery service method that provides proof of delivery to validate delivery date and time.

If the Proposal Fee is delivered by U.S. Postal Service (with registered, certified, receipt verification), the Proposer shall address it to:

**Jasmine Wong**  
**Joseph Streeter**  
Energy Contract Manager  
**Hawaiian Maui Electric Company, Inc.-Limited**  
Mail Code CP21-LUKBY-JC  
PO Box 2250398  
HonoluluKahului, Hawai‘i 9684096733

If the Proposal Fee is delivered in person, or via an alternative registered, certified delivery service, the Proposer shall use the address specified in Section 1.6.

1.9 **Procedures for the Self-Build or Affiliate Proposals**

1.9.1 The Competitive Bidding Framework allows the Company the option to offer a Proposal in response to this RFP (“Self-Build Option” or “SBO”). Accordingly, the Company must follow certain requirements and procedures designed to safeguard against and address concerns associated with: (1) preferential treatment of the SBO or members,
agents, or consultants of the Company formulating the SBO (the “Self-Build Team”); and
(2) preferential access to proprietary information of the Self-Build Team. These
requirements are specified in the Code of Conduct required under the Framework and
implemented by certain rules and procedures found in the Procedures Manual submitted
to the PUC in Docket No. 2017-0352 on July 10, 2019. A copy of the Procedures
Manual is attached as Appendix C.

The Competitive Bidding Framework also allows Affiliates of the Company to submit
Proposals to RFPs issued by the Company. All Sealed SBO Proposals and Affiliate
Proposals are subject to the Company’s Code of Conduct and the Procedures Manual.
Affiliate Proposals are also subject to any applicable Affiliate Transaction Requirements
issued by the PUC in Decision and Order No. 35962 on December 19, 2018, and
subsequently modified by Order No. 36112, issued on January 24, 2019, in Docket No.
2018-0065. Affiliate Proposals will be treated identically to an IPP Proposal, except that
they are due at the same time as the Sealed SBO Proposal.

The Independent Observer will monitor adherence to the Company’s Code of Conduct
and the Procedures Manual.

1.9.2 Pursuant to the Framework and as set forth in the RFP Schedule, the Company will
require that Affiliate Proposals be submitted electronically through the Electronic
Procurement Platform and filed with the PUC in hard copy a minimum of one (1) Day
before IPP Proposals are due. Affiliate Proposals will be uploaded into the Electronic
Procurement Platform in the same manner IPP Proposals from other Proposers are
uploaded. The Energy Contract Manager, in consultation with the Independent Observer,
will confirm that the Affiliate Proposals are timestamped by Milestone (10) Sealed SBO
Proposal and Affiliate Proposal Due Date in RFP Table 1.

1.9.3 This RFP will permit only one (1) Proposal from the Self-Build Team, which will be
submitted under seal and evaluated only upon certain conditions identified in Chapter 4.
This Sealed SBO Proposal will be not be submitted through the Electronic Procurement
Platform, but rather must be submitted to the Company in hard copy to the contact and
address identified in Section 1.8.4. A hard copy of the Sealed SBO Proposal must also be
filed confidentially with the PUC and submitted to the Independent Observer to the
contact and address identified in Section 1.4.3. Pursuant to the Framework and as set
forth in the RFP Schedule, these hard copies must be delivered or postmarked by the date
and time identified in Milestone (10) Sealed SBO Proposal and Affiliate Proposal Due
Date in RFP Table 1.

Detailed requirements for a Sealed SBO Proposal can be found in Appendix G. These
requirements are intended to provide a level playing field between the Sealed SBO
Proposal and third-party Proposals. Except where specifically noted, the Sealed SBO
Proposal must adhere to the same price and non-price Proposal requirements as required
of all Proposers, as well as certain PPA requirements, such as milestones and liquidated
damages, as described in Appendix G. In addition to its Sealed SBO Proposal, the Self-
Build Team will be required to submit Appendix G Attachment 1, Self-Build Option
Team Certification Form, acknowledging it has followed the rules and requirements of
the RFP to the best of its ability and has not engaged in any collusive actions or received any preferential treatment or information providing an impermissible competitive advantage to the Self-Build Team over other proposers responding to this RFP, as well as adherence to PPA terms and milestones required of all proposers and the SBO’s proposed cost protection measures.

The cost recovery methods between a regulated utility Sealed SBO Proposal and IPP Proposals are fundamentally different due to the business environments they operate in. As a result, the Company has instituted a process to compare the two types of proposals for the initial evaluation of the price related criteria on a ‘like’ basis through comparative analysis.

At the core of a Sealed SBO Proposal are its total project capital cost and any associated annual operations and maintenance (“O&M”) costs. If the Sealed SBO Proposal is evaluated, its capital costs and O&M costs will be used in a revenue requirement calculation to determine the estimated revenues needed from ratepayers which would allow the Company to recover the total cost of the project. The SBO revenue requirements are then used in a levelized price calculation to determine a Levelized Energy Price (“LEP”) ($/MWh).

The Company, in conjunction with the Independent Observer, may also conduct a risk assessment of the Sealed SBO Proposal to ensure an appropriate level of customer cost protection measures are included in such Proposal.

The SBO will be permitted to submit a shared savings mechanism with its Proposal to share in any cost savings between the amount of cost bid in the Sealed SBO Proposal and the actual cost to construct the Project. If the Sealed SBO Proposal is selected to the Final Award Group, the proposed shared savings mechanism will need to be approved by the PUC. Submission of a shared savings mechanism is not required and will not be considered in the evaluation of the Sealed SBO Proposal.

1.10 Dispute Resolution Process

1.10.1 If disputes arise under the RFP, the provisions of Section 1.10 and the dispute resolution process established in the Framework will control. See Part V of the Framework.

1.10.2 Proposers who challenge or contest any aspect of the RFP process must first attempt to resolve their concerns with the Company and the Independent Observer (“Initial Meeting”). The Independent Observer will seek to work cooperatively with the parties to resolve any disputes or pending issues and may offer to mediate the Initial Meeting to resolve disputes prior to such issues being presented to the PUC.

5 The Sealed SBO Proposal will be required to provide a table identifying project costs by year. These capital costs should be all inclusive, including but not limited to costs associated with equipment, Engineering, Procurement, and Construction (EPC), interconnection, overhead, and Allowance for Funds Used During Construction (AFUDC).
1.10.3 Any and all disputes arising out of or relating to the RFP which remain unresolved for a period of twenty (20) Days after the Initial Meeting takes place may, upon the agreement of the Proposer and the Company, be submitted to confidential mediation in Honolulu, Hawai’i, pursuant to and in accordance with the Mediation Rules, Procedures, and Protocols of Dispute Prevention Resolution, Inc. (“DPR”) (or its successor) or, in its absence, the American Arbitration Association then in effect (“Mediation”). The Mediation will be administered by DPR. If the parties agree to submit the dispute to mediation, the Proposer and the Company 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 Mediation costs and attorneys’ fees.

1.10.4 If settlement of the dispute is not reached within sixty (60) Days after commencement of the Mediation, or if after the Initial Meeting, the parties do not agree to submit any unresolved disputes to Mediation, then as provided in the Framework, the Proposer may submit the dispute to the PUC in accordance with the Framework.

1.10.5 In accordance with the Framework, the PUC will serve as the arbiter of last resort for any disputes relating to this RFP involving Proposers. The PUC will use an informal expedited dispute resolution process to resolve the dispute within thirty (30) Days, as described in Parts III.B.8 and V of the Framework. There will be no right to hearing or appeal from this informal expedited dispute resolution process.

1.10.6 If any Proposer initiates a dispute resolution process for any dispute or claim arising under or relating to this RFP, other than that permitted by the Framework and Section 1.10 (e.g., a court proceeding), then such Proposer shall be responsible for any and all attorneys’ fees and costs that may be incurred by the Company or the PUC in order to resolve such claim.

1.11 **No Protest or Appeal**

Subject to Section 1.10, no Proposer or other person will have the right to protest or appeal any award of a Project made by the Company.

By submitting a Proposal in response to the RFP, the Proposer expressly agrees to the terms and conditions set forth in this RFP.

1.12 **Modification or Cancellation of the Solicitation Process**

1.12.1 Unless otherwise expressly prohibited, the Company may, at any time up to the final execution of an RDG PPA, as may be applicable, in consultation with the Independent Observer, postpone, withdraw, and/or cancel any requirement, term, or condition of this...
RFP, including deferral of the award or negotiation of any contract, and/or cancellation of the award all together, all of which will be without any liability to the Company.

1.12.2 The Company may modify this RFP subject to requirements of the Framework, whereby the modified RFP will be reviewed by the Independent Observer and submitted to the PUC thirty (30) Days prior to its issuance, unless the PUC directs otherwise. See Framework Part IV.B.10. The Company will follow the same procedure with regard to any potential postponement, withdrawal, or cancellation of the RFP or any portion thereof.

1.13 Community Outreach

The Company held a community meeting on Molokaʻi to explain the RFP process and the Company’s intent to procure a variable renewable dispatchable generation with energy storage project on the island of Molokaʻi. At the community meeting, the Company solicited feedback from the community of Molokaʻi regarding the RFP process and planned procurement. The Company has provided the comments received at the meeting as in Appendix J. Proposers are encouraged to review such comments and take such comments into account when developing Proposals in response to this RFP.

Chapter 2: Resource Needs and Requirements

2.1 Performance Standards

Proposals must meet the attributes set forth in this RFP and the requirements of the RDG PPA. This RFP and the RDG PPA set forth the minimum requirements that all Proposals must satisfy to be eligible for consideration in this RFP. Additional Performance Standards may be required based on the results of the IRS.

Facilities must be able to operate in grid-forming mode when directed by the Company as defined in the RDG PPA.

Black start capability is preferred. Proposals will need to identify any incremental costs to enable their facility to be black start capable, if not already enabled.

The functionality and characteristics of the storage must be maintained throughout the term of the PPA. To be clear, Proposers may not propose any degradation in storage capacity or storage efficiency in their Proposals.

2.2 Distribution System Information

2.2.1 Company information regarding an initial assessment of potential MW capacity of the Molokaʻi System (including interconnection at the Palaʻau Generating Station) providing

\[\text{If black start is not already enabled for the Proposal, any additional costs necessary to enable black start will be identified in the submission instructions defined in Appendix B.}\]
possible points of interconnection has been developed for Sites included in the Land Request for Information ("Land RFI") as described in Section 3.11 and will be made available to Proposers only after execution of a NDA. Proposers should perform their own evaluation of project locations, and the Company does not guarantee any project output or ability to connect based on such information. Prior to submitting a proposal, Proposers are encouraged to inquire about the viability of interconnecting a proposed Project at a specific location. Please direct questions to the RFP Email Address in Section 1.6.

2.2.2 A detailed IRS, when performed, may reveal other adverse system impacts that may further limit a Project’s ability to interconnect and/or further limit the net output of the Facility without upgrades.

2.3 **Interconnection to the Company System**

2.3.1 The Interconnection Facilities include both: (1) Seller-Owned Interconnection Facilities; and (2) Company-Owned Interconnection Facilities.

2.3.2 All Proposals must include a description of the Proposer’s plan to transmit power from the Facility to the Company System. The proposed Interconnection Facilities must be compatible with the Company System. In the design, Projects must adequately consider Company requirements to address impacts on the performance and reliability of the Company System.

2.3.2.1 In addition to the Performance Standards and findings of the IRS, the design of the Interconnection Facilities, including power rating, Point(s) of Interconnection with the Company System, and scheme of interconnection, must meet Company standards. The Company will provide its construction standards and procedures to the Proposer (Engineer, Procure, Construct Specifications for Hawaiian Electric Power Lines and Substations) if requested via the RFP Email Address in Section 1.6 and upon the execution of a NDA as specified in Section 3.12.1. These specifications are intended to illustrate the scope of work typically required to administer and perform the design and construction of a Maui Electric substation and power line.

2.3.2.2 Interconnection Facilities must be designed such that, with the addition of the Facility, the Company System can meet all relevant Distribution Planning Criteria and any amendments thereto.

2.3.3 Tariff Rule No. 19, a copy of which is attached as Appendix I, establishes provisions for Interconnection and Transmission Upgrades. While the Moloka’i System does not have a traditional Transmission System, the tariff provisions are intended to simplify the rules regarding who pays for, installs, owns, and operates interconnection facilities in the context of competitive bidding. Proposers will be required to build the Company-Owned Interconnection Facilities, including any potential line extensions, except for any work in

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*Appendix E contains the Mutual Confidentiality and Non-Disclosure Agreement for this RFP.*

*MECO – Criteria for Distribution Substation and Feeder Planning.*
the Company’s existing energized facilities and the final tap. Construction of Company-Owned Interconnection Facilities by the Proposer must comply with industry standards, laws, rules, and licensing requirements, as well as the Company’s specific construction standards and procedures that the Company will provide upon request. (See Section 2.3.1.) Attachment A of Appendix I is provided to illustrate certain defined terms in Appendix I and does not represent the Company’s design requirements. The design of all Interconnection Facilities will be subject to the requirements outlined in Section 2.3.2.1.

2.3.4 The Proposer shall be responsible for all costs required to interconnect a Project to the Company System, including all Seller-Owned Interconnection Facilities and Company-Owned Interconnection Facilities.

2.3.5 Proposers are required to include in their pricing proposal all costs for interconnection and distribution equipment expected to be required between their Facility and their proposed Point of Interconnection. Appendix H includes information related to Company-Owned Interconnection Facilities and costs that may be helpful to Proposers.

Selected Proposers shall be responsible for the actual final costs of all Seller-Owned Interconnection Facilities and Company-Owned Interconnection Facilities, whether or not such costs exceed the costs set forth in a Proposer’s Proposal. No adjustments will be allowed to the proposed price in a Proposal if actual costs for Interconnection Facilities exceed the amounts proposed.

2.3.6 Proposers are required to include in their pricing proposal all costs for distribution-level service interconnection for station power.

2.3.7 All Projects will be screened for general readiness to comply with the requirements for interconnection. Proposals selected to the Final Award Group will be subject to further study in the form of an IRS. The IRS process is further described in Section 5.1. The results of the completed IRS, as well as any mitigation measures identified, will be incorporated into the terms and conditions of a final executed PPA.

Chapter 3: Instructions to Proposers

3.1 Schedule for the Proposal Process

Table 1 sets forth the proposed schedule for the proposal process (the “RFP Schedule”). The RFP Schedule is subject to PUC approval. The Company reserves the right to revise the RFP Schedule as necessary. Changes to the RFP Schedule prior to the RFP Proposal Due Date will be posted to the RFP website. Changes to the RFP Schedule after the Proposal Due Date will be communicated via Email or via the Electronic Procurement Platform to the Proposers.
Table 1
Proposed RFP Schedule

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Schedule Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Draft RFP is filed</td>
<td>August 6, 2019</td>
</tr>
<tr>
<td>(2) PUC Opened Docket No. 2019-0178</td>
<td>August 29, 2019</td>
</tr>
<tr>
<td>(2)/(4) PUC Status Conference</td>
<td>August 29, 2019</td>
</tr>
<tr>
<td>(4) Stakeholder Comments submitted to PUC Consumer Advocate and Company</td>
<td>August 29, 2019</td>
</tr>
<tr>
<td>(5) Companies’ Response to Stakeholder Comments</td>
<td>September 6, 2019</td>
</tr>
<tr>
<td>(7) Commission’s comments on Order Approving Draft RFP, with Modifications</td>
<td>September 20, November 15, 2019</td>
</tr>
<tr>
<td>(8) Company’s submission of Proposed Final RFP</td>
<td>October 11, November 27, 2019</td>
</tr>
<tr>
<td>(9) Completion of Commission review period of Proposed Final RFP</td>
<td>November 12, 2019</td>
</tr>
<tr>
<td>(12) Final RFP is Issued and Opened in Power Advocate</td>
<td>November 18, December 2, 2019</td>
</tr>
<tr>
<td>(13) Proposer’s Conference Webinar (posted to Company website)</td>
<td>November 22, December 9, 2019</td>
</tr>
<tr>
<td>(14) Sealed SBO Proposal and Affiliate Proposal Due Date</td>
<td>January 4, 2020 at 2:00 pm HST</td>
</tr>
<tr>
<td>(15) IPP Proposal Due Date</td>
<td>January 4, 2020 at 2:00 pm HST</td>
</tr>
<tr>
<td>(16) Selection of Priority List</td>
<td>March 4, 2020</td>
</tr>
<tr>
<td>(17) BAFOs Due</td>
<td>March 24, April 7, 2020</td>
</tr>
<tr>
<td>(18) Selection of Final Award Group</td>
<td>July 4, 2020</td>
</tr>
<tr>
<td>(19) Contract Negotiations Start</td>
<td>July 4, 2020</td>
</tr>
</tbody>
</table>

3.2 Company RFP Website/Electronic Procurement Platform

3.2.1 The Company has established a website for general information to share with potential Proposers. The RFP website is located at the following link:

http://www.mauielectric.com/molokaicompetitivebidding

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24 Per Section IV.B.6.e.ii of the Competitive Bidding Framework “[t]he utility shall have the right to issue the RFP if the Commission does not direct the utility to do otherwise within thirty (30) days after the Commission receives the proposed RFP and the Independent Observer’s comments and recommendations.” November 18, 2019 is based on this thirty (30) day timeline. However, this date and all dates in the proposed schedule are dependent on any further guidance provided by the PUC.

25 An SBO or Affiliate Proposal must also be filed in hard copy form with the PUC a minimum of one (1) Day before other Proposals are due.
The Company will provide general notices, updates, schedules, and other information on the RFP website throughout the process. Proposers should check the website frequently to stay abreast of any new developments. This website will also contain the link to the Electronic Procurement Platform employed by the Company for the receipt of Proposals.

“The Sourcing Intelligence” developed by Power Advocate is the Electronic Procurement Platform that the Company has licensed and will utilize for this RFP. Proposers who do not already have an existing account with PowerAdvocate and who intend to submit a Proposal for this RFP will need to register as a “Supplier” with PowerAdvocate.

3.2.2 There are no license fees, costs, or usage fees to Proposers for the use of the Electronic Procurement Platform.

See Appendix D for user information on and screenshots of PowerAdvocate’s Sourcing Intelligence procurement platform.

3.3 Status Conference and Proposers’ Conference

If provided for by the PUC, Companies to propose plans for the Company will participate in a Status Conference with draft Lānaʻi and Molokaʻi RFPs and to respond to questions from the PUC for prospective Proposers, Commission, the PUC, and other stakeholders to learn about the provisions and requirements of this RFP. Following the Status Conference, if provided for by the PUC, prospective Proposers, Consumer Advocate and stakeholders may submit. The Companies’ presentation was made available on the Companies’ RFP Website. The Commission also solicited comments to the PUC regarding this draft RFP, from stakeholders on the Companies’ Draft Lānaʻi and Molokaʻi RFPs on September 6, 2019 before releasing its Order No. 36776 approving the draft RFPs for with modifications on November 15, 2019.

Following issuance of the RFP, the Company will also post a prerecorded webinar (“Proposers’ Conference Webinar”) for prospective Proposers to learn about the provisions and requirements of the Company’s final RFP. Prospective Proposers may submit clarifying questions to better understand the Company’s proposed competitive bidding process and draft documents. General responses webinar will be posted on the RFP’s website.

Prospective Proposers may submit written questions regarding the RFP to the RFP Email Address set forth in Section 1.6. The Company will endeavor to address all questions that will be helpful to prospective Proposers via a Q&A section on the RFP website.

Prospective Proposers should review the RFP Website’s Q&A section prior to submission of their Proposal. Duplicate questions will not be answered.
3.4 Preparation of Proposals

3.4.1 Each Proposer shall be solely responsible for reviewing the RFP (including all attachments and links) and for thoroughly investigating and informing itself with respect to all matters pertinent to this RFP, the Proposer’s Proposal, and the Proposer’s anticipated performance under the RDG PPA. It is the Proposer’s responsibility to ensure it understands all requirements of the RFP, to seek clarification if the RFP’s requirements or Company’s request is not clear, and to ask for any confirmation of receipt of submission of information. Under Section 1.7.4, the Proposer is solely responsible for all errors in its Proposal(s). The Company will not accept any explanation by a Proposer that it was incumbent on the Company to catch any error.

3.4.2 Proposers shall rely only on official information provided by the Company in this RFP when preparing their Proposal. The Company will rely only on the information included in the Proposals and additional information solicited by the Company to Proposers in the format requested, to evaluate the Proposals received. Evaluation will be based on the stated information in this RFP and on information submitted by Proposers in response to this RFP. Proposal submissions should not reference previous RFP submissions for support. Proposers also should not assume that any previous RFP decisions/preferences will also pertain to this RFP.

3.4.3 Each Proposer shall be solely responsible for, and shall bear all of its costs incurred in the preparation of its Proposal and/or its participation in this RFP, including, but not limited to, all costs incurred with respect to the following: (1) review of the RFP documents; (2) meetings with the Company; (3) Site visits; (4) third-party consultant consultation; and (5) investigation and research relating to its Proposal and this RFP. The Company will not reimburse any Proposer for any such costs, including the selected Proposer(s).

3.4.4 Each Proposal must contain the full name and business address of the Proposer and must be signed by an authorized officer or agent of the Proposer.

3.5 Organization of the Proposal

The Proposal must be organized as specified in Appendix B. It is the Proposer’s responsibility to ensure the information requested in this RFP is submitted and contained within the defined Proposal sections as specified in Appendix B.

3.6 Proposal Limitations

Proposers expressly acknowledge that Proposals are submitted subject to the following limitations:

The RFP does not commit or require the Company to award a contract, pay any costs incurred by a Proposer in the preparation of a Proposal, or procure or contract for

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12 Proposer’s officer or agent must be authorized to sign the Proposal. Such authorization must be in writing and may be granted via Proposer’s organizational documents (i.e., Articles of Incorporation, Articles of Organization, By-laws, etc.), resolution, or similar documentation.
products or services of any kind whatsoever. The Company reserves the right, in consultation with the Independent Observer, to accept or reject, in whole or in part, any or all Proposals submitted in response to this RFP, to negotiate with any or all Proposers eligible to be selected for award, or to withdraw or modify this RFP in whole or in part at any time.

- The Company reserves the right, in consultation with the Independent Observer, to request additional information from any or all Proposers relating to their Proposals or to request that Proposers clarify the contents of their Proposals. Proposers who are not responsive to such information requests may be eliminated from further consideration upon consultation with the Independent Observer.

- The Company reserves the right, in consultation with the Independent Observer, to solicit additional Proposals from Proposers after reviewing the initial Proposals. Other than as provided in this RFP, no Proposer will be allowed to alter its Proposal or add new information to a Proposal after the Proposal Due Date.

- All material submitted in response to this RFP will become the sole property of the Company, subject to the terms of the NDA.

3.7 Proposal Compliance and Bases for Disqualification

Proposers may be deemed non-responsive and/or Proposals may not be considered for reasons including, but not limited to, the following:

- Any unsolicited contact by a Proposer or prospective Proposer with personnel of the Company pertaining to this RFP as described in Section 1.5.5.

- Any illegal or undue attempts by or on behalf of the Proposer or others to influence the Proposal Review process.

- The Proposal does not meet one or more of the Eligibility Requirements specified in Section 4.2.

- The Proposal does not meet one or more of the Threshold Requirements specified in Section 4.3.

- The Proposal is deemed to be unacceptable through a fatal flaws analysis as described in Section 4.4.2.

- The Proposer does not respond to a Company request for additional information to clarify the contents of its Proposal within the timelines specified by the Company.

- The Proposal contains misrepresentations or errors.
3.8 **Power Purchase Agreement**

3.8.1 The Power Purchase Agreement for proposals selected under this RFP will be in the form of the RDG PPA, attached as Appendix K and Appendix L.

3.8.2 If selected, any Affiliate Proposers will be required to enter into the RDG PPA with the Company.

3.8.3 If selected, a Self-Build Proposer will not be required to enter into a PPA with the Company. However, the Sealed SBO Proposal will be held to the same performance metrics and milestones set forth in the RDG PPA to the same extent as all Proposers, as attested to in the -Appendix G, Attachment 1, Self-Build Option Certification submittal. If liquidated damages are assessed, they will be paid from shareholder funds and returned to customers through the Purchased Power Adjustment Clause (“PPAC”) or other appropriate rate adjustment mechanisms.

To retain the benefits of operational flexibility for a Company-owned facility, the Sealed SBO Proposal will be permitted to adjust operational requirements and performance metrics with the approval of the PUC. The process for adjustment would be similar to a negotiated amendment to a PPA with PUC approval.

3.8.4 In general, under the RDG PPA, payment to the Seller contains two parts: a Lump Sum Payment component to cover the fixed costs of the Project and a Price for Purchase of Electric Energy component ($/MWh component) to cover variable operations and maintenance costs (if applicable, depending on the resource). In return, the Seller shall guarantee minimum performance and availability metrics to ensure that the Facility is maintained and available for energy storage and dispatch, as well as provide an indication of the available energy in near real-time for the Company’s dispatch. Company shall not be obligated to accept, nor shall it be required to pay for, test energy generated by the Facility during acceptance testing or other test conditions.

3.8.5 As described in Section 2.1, the Performance Standards identified in the applicable RDG PPA establish the minimum requirements a Proposal must satisfy to be eligible for consideration in this RFP. A proposed Facility’s ability to meet these Performance Standards is both a Threshold Requirement and a Non-Price Related Criteria under Sections 4.3 and 4.4.2, respectively. As such, the Performance Standards included in the RDG PPAs are non-negotiable. Proposers may propose modifications to other sections of the RDG PPA but are encouraged to accept such terms as written in order to expedite the overall RFP process and potential contract negotiations. As a component of their Proposals, Proposers who elect to propose modifications shall provide a Microsoft Word red-line version of the relevant document identifying specific proposed modifications to the model language that the Proposer is agreeable to, as well as a detailed explanation and supporting rationale for each modification.

3.8.5.1 General comments, drafting notes, and footnotes such as “parties to discuss” are unacceptable and will be considered non-responsive. Proposed modifications to the RDG PPA will be evaluated as a non-price evaluation criterion as further described in
Section 4.4.2  In order to facilitate this process, the Company will make available electronic versions of the model agreements on the RFP website and through the PowerAdvocate platform for the RFP. Any proposed modifications to the RDG PPA will be subject to negotiation between the Company and the Final Award Group. As stated above, since general comments, drafting notes, and footnotes without accompanying specific proposed language modifications are unacceptable and non-responsive, the Company will not negotiate provisions simply marked by such general comments, drafting notes, and footnotes.

3.8.5.2 The Company has an interest in maintaining consistency for certain provisions of the RDG PPA, such as the calculation of availability and payment terms. Therefore, for such provisions, the Company will endeavor to negotiate similar and consistent language across PPAs for the Final Award Group.

3.8.6 Proposals that do not include specific proposed modifications to the attached RDG PPAs will be deemed to have accepted the RDG PPA in its entirety.

3.9 Pricing Requirements

3.9.1 Proposers must submit pricing for each of their variations associated with each Proposal (if variations as described in Section 1.8.2 and 1.8.3 are submitted). Proposers are responsible for understanding the terms of the RDG PPA. Pricing cannot be specified as contingent upon other factors (e.g., changes to federal tax policy or receiving all Investment Tax Credits assumed).

3.9.2 Escalation in pricing over the term of the RDG PPA is prohibited.

3.9.3 Pricing information must only be identified within specified sections of the Proposal instructed by this RFP’s Appendix B Proposer’s Response Package (i.e., Proposal pricing information must be contained within defined Proposal sections of the Proposal submission). Pricing information contained anywhere else in a Proposal will not be considered during the evaluation process.

3.9.4 The Proposer’s Response Package must include the following prices for each Proposal (and variation):

For IPP or Affiliate proposals:

- **Lump Sum Payment ($/year):** Payment amount for full dispatchability of the Facility. Payment will be made in monthly increments.

- **Price for Purchase of Electric Energy ($/MWh):** Payment for delivery of net energy sourced from the variable generation resource, if applicable. No Energy Payment will be provided for any energy delivery that is sourced originally from the grid (Company’s System).
• **Black Start ($):** If the Facility is not already black start enabled, the incremental cost required to enable black start.

For the Sealed SBO Proposal:

• **Total Project Capital Costs ($/year):** Total capital costs for the project (identified by year).

• **Annual O&M Costs ($/year):** Initial year operations and maintenance costs, annual escalation rate.

• **Annual Revenue Requirement ($/year):** Annual revenue requirements (ARR) calculated for each year.

• **Black Start ($):** If the Facility is not already black start enabled, the incremental cost required to enable black start.

Additional description and detail on the Total Project Capital Costs, Annual O&M Costs, and Annual Revenue Requirement for the Sealed SBO Proposal is located in Appendix G.

3.9.5 As identified in the Schedule of Defined Terms in the PPA under “BESS Allocated Portion of the Lump Sum Payment”, the allocated portion of the Lump Sum Payment specified for energy storage for the Facility is 50% and shall be a non-negotiable percentage in the PPA.

3.10 **Project Description**

3.10.1 Proposals are required to provide a NEP RFP Projection for the Project. The NEP RFP Projection associated with the proposed Project represents the estimated annual net energy (in MWh) that could be produced by the Facility and delivered to the Point of Interconnection over a ten-year period with a probability of exceedance of 95%. The proposed Project’s energy storage component should not be factored into the NEP RFP Projection. Any losses that may be incurred from energy being stored and then discharged from the energy storage component or any energy that may be diverted to the energy storage component due to generation in excess of the Facility’s Allowed Capacity should not be factored into the NEP RFP Projection. The NEP RFP Projection should assume that all energy is being directly exported to the Maui Electric Molokai System.
The NEP RFP Projection will be used in the RFP evaluation process and therefore Proposers will be held to their provided value.\textsuperscript{13}

3.10.2 Proposers must provide all information pertaining to the design, development, and construction of the Interconnection Facilities as specified in Appendix B.

3.10.3 Each Proposer must also agree to provide Project financial information, including proposed Project finance structure information specified in Appendix B. Such information will be used to evaluate Threshold Requirements and non-price criteria (e.g., Financial Viability of Proposer, Financial Strength and Financing Plan, State of Project Development and Schedule) set forth in Sections 4.3 and 4.4.2. Upon selection, the Final Award Group may be requested to provide further detailed cost information if requested by the PUC or the Consumer Advocate as part of the PPA approval process. If requested, such information would be provided to the PUC, Consumer Advocate, and Company pursuant to a protective order in the docket.

3.10.4 The Proposer agrees that no material changes or additions to the Facility from what is submitted in its Proposal will be made without the Proposer first having obtained prior written consent from the Company. Evaluation of all Proposals in this RFP is based on the information submitted in each Proposal at the Proposal Due Date. If any Proposer requests any Proposal information to be changed after that date, the Company, in consultation with the Independent Observer, and in consideration of whether the evaluation is affected, will determine whether the change is permitted.

3.11 Sites Identified by the Company

3.11.1 As an alternative to a Site identified by the Proposer, the Company has identified potential Sites where landowners have expressed a willingness to negotiate a lease or purchase of the land to support a renewable energy project. These Sites were identified through a Land RFI. Proposers will be responsible for working directly with the land owner and must secure Site Control with such land owner prior to submitting a Proposal. Land RFI information is available to interested parties who sign an NDA. The Land RFI is further described in Appendix F.

Proposers are not required to select a Site identified in the Land RFI and as noted above may propose any Site for a Project. A Proposer may ask the Company questions as set forth in Section 2.2.1 if it would like to obtain similar information about the viability of interconnection at its proposed Site as identified for the Land RFI parcels.

\textsuperscript{13} If a Proposal is selected to the Final Award Group and a PPA is executed between the Company and the Proposer, the NEP RFP Projection will be further evaluated at several steps throughout the process as set forth in the RDG PPA, and adjustments to the Lump Sum Payment will be made accordingly. Additionally, because the Company will rely on an accurate representation of the NEP RFP Projection in the RFP evaluation, a one-time liquidated damage as described in the RDG PPA will be assessed if the First NEP benchmark is less than the Proposer’s NEP RFP Projection. After the Facility has achieved commercial operations, the performance of the Facility will be assessed on a continuing basis against key metrics identified in the RDG PPA. See Article 2 and Attachment U of the RDG PPA.
3.11.2 Additionally, a Company-owned Site is being offered to Proposers for their consideration. An approximately 17-acre area within the Pala‘au Generating Station property west of Kaunakakai town, referred to as the Pala‘au Site, is further described in Appendix F.

Proposers proposing to use the Pala‘au Site shall be required to agree to specific terms and conditions for such use as provided for in an Attachment Z (Company-Owned Sites) of the RDG PPA. Provisions providing for access to the site during construction and thereafter, during commercial operations, will be subject to current Company security policies and procedures. Physical, communication, and internet security will be required consistent with Company policy. Additional measures may be required to limit or eliminate interference between Seller and Company facilities and infrastructure. Such policies, procedures, and requirements may change as necessary during the term of the PPA to reflect changes in Company policies or to remain in compliance with current applicable laws, rules, or regulations. Limited sections of Attachment Z (Company-Owned Sites) (Section 4 Seller's Investigations of the Company-Owned Site, Section 5 Construction and Maintenance, Section 7 Hazardous Substances, and Section 8 Archeological and Historic Items) shall be negotiable.

The Company has contracted with Fewell Geotechnical Engineering, Ltd and Cultural Services Hawai‘i to perform preliminary investigations at the Pala‘au Site and is willing to share the geotechnical and the archaeological field investigation reports (“Information”) with interested Proposers. The Information will be available no later than December 6, 2019. Requests for copies of these reports must be sent to the RFP email address, and the reports will be made available to Proposers only after a Proposer’s submission of an executed NDA. More information regarding these reports and the Pala‘au Site can be found in Appendix F of this RFP.

The Company is offering potential Proposers the opportunity to visit the Pala‘au Site. The date, time, on December 18, 2019. Additional details and requirements for this site visit will be posted to the Company’s RFP website.

3.12 Confidentiality

3.12.1 Each prospective Proposer must submit an executed NDA (specific to the Moloka‘i Variable Renewable Dispatchable Generation Paired With Energy Storage RFP) in the form attached as Appendix F by the Proposal Due Date specified in the RFP Schedule in Section 3.1. The form of the NDA is not negotiable. Information designated as confidential by the Company will be provided on a limited basis, and only those prospective Proposers who have submitted an executed NDA will be considered. Proposers must clearly identify all confidential information in their Proposals. However, Proposers should designate as confidential only those portions of their Proposals that genuinely warrant confidential treatment. The Company discourages the practice of marking every page of a Proposal as confidential. The Company will make reasonable efforts to protect any such information that is clearly marked as confidential. Consistent
with the terms of the NDA, the Company reserves the right to share any information, even if marked confidential, with its agents, contractors, or the Independent Observer for the purpose of evaluating the Proposal and facilitating potential contract negotiations.

3.12.2 Proposers, in submitting any Proposal(s) to Company in response to this RFP, certify that such Proposer has not shared its Proposal(s), or any part thereof, with any other Proposer of a Proposal(s) responsive to this RFP.

3.12.3 The Company will request that the PUC issue a Protective Order to protect confidential information provided by Proposers to the Company and to be filed in a proceeding before the PUC. A copy of the Protective Order, once issued by the PUC, will be provided to Proposers. Proposers should be aware that the Company may be required to share certain confidential information contained in Proposals with the PUC, the State of Hawai‘i Department of Commerce and Consumer Affairs, Division of Consumer Advocacy, and the parties to any docket instituted by the PUC, provided that recipients of confidential information have first agreed in writing to abide by the terms of the Protective Order. Notwithstanding the foregoing, no Proposer will be provided with Proposals from any other Proposer, nor will Proposers be provided with any other information contained in such Proposals or provided by or with respect to any other Proposer.

3.13 Credit Requirements Under the PPA

3.13.1 Proposers with whom the Company concludes PPA contract negotiations must post Development Period Security and Operating Period Security in the form of an irrevocable standby letter of credit from a bank chartered in the United States as required and set forth in Article 14 of the RDG PPA.

3.13.2 The Development Period Security and Operating Period Security identified in the RDG PPAs are minimum requirements. Proposers shall not propose an amount lower than that set forth in the RDG PPAs.

3.13.3 Each Proposer shall be required to provide a satisfactory irrevocable standby letter of credit in favor of the Company from a bank chartered in the United States to guarantee Proposer’s payment of interconnection costs for all Company-Owned Interconnection Facilities in excess of the Total Estimated Interconnection Costs and/or all relocation costs in excess of Total Estimated Relocation Costs that are payable to Company as required and set forth in Attachment G to the RDG PPAs.

3.13.4 Proposers may be required to provide an irrevocable standby letter of credit in favor of the Company from a bank chartered in the United States in lieu of the required Source Code Escrow in an amount and as required and set forth in Attachment B to the RDG PPAs.
Chapter 4: Evaluation Process and Evaluation Criteria

4.1 Proposal Evaluation and Selection Process

As set forth in Section 1.9.3 above, the Company’s Sealed SBO Proposal will only be unsealed and evaluated if certain conditions arise. In the absence of any one of these conditions, the Company will evaluate the other IPP and Affiliate Proposals received in response to this RFP in accordance with this Chapter 4 in determining the Final Award Group and will not open or evaluate the Sealed SBO Proposal. Should one of the following conditions arise, the Company’s Sealed SBO Proposal will be opened and evaluated in the same manner as described in this Chapter 4. These conditions are that:

1) there are no IPP or Affiliate Proposals received in response to this RFP, (2) there are no Eligible Proposals that remain after reviewing the Eligibility and Threshold Requirements, (3) all Eligible Proposals fail to pass the fatal flaws analysis during the Non-Price criteria evaluation, or (4) all Eligible Proposals that pass the fatal flaws analysis do not provide a customer benefit in the form of a tangible rate reduction as determined through consultation with the Independent Observer. The Company’s Sealed SBO Proposal will need to meet the RFP’s Eligibility and Threshold Requirements, pass the fatal flaws analysis, and provide a customer benefit in the form of a tangible rate reduction, as determined through consultation with the Independent Observer, in order to be selected to the Final Award Group.

The Company will employ a multi-step evaluation process. Once the Proposals are received, the Proposals will be subject to a consistent and defined review, evaluation, and selection process. This Chapter provides a description of each step of the process, along with the requirements of Proposers at each step. Figure 1 sets forth the flowchart for the proposal evaluation and selection process.

Upon receipt of the Proposals, the Company will ensure that the Proposals meet the Eligibility Requirements, and if so, will review the Proposals to ensure that the Threshold Requirements have been met. The Company, in coordination with the Independent Observer, will determine if a Proposer is allowed to cure any aspect of its Proposal or whether the Proposal would be eliminated based on failure to meet either Eligibility or Threshold Requirements. If a Proposer is provided the opportunity to cure any aspect of its Proposal, the Proposer shall be given three (3) business Days to cure from the date of notification to cure. Proposals that have successfully met the Eligibility and Threshold Requirements will then enter a two-phase process for Proposal evaluation, which includes the Initial Evaluation resulting in the development of a Priority List, followed by the opportunity for Priority List Proposals to provide Best and Final Offers, and then a Detailed Evaluation process to arrive at a Final Award Group.

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14 As a general rule, if a Proposer does not include a requested document, inadvertently excludes minor information, or provides inconsistencies in its information, it may be given a chance to cure such deficiency. If a Proposer fails to provide material required information in its Proposal and providing the Proposer an opportunity to cure is deemed by the Company, in consultation with the Independent Observer, as an unfair advantage to such Proposer, the Proposal could be classified as non-conforming and eliminated for failure to meet the Eligibility Requirements.
4.2 Eligibility Requirements Assessment

Upon receipt of the Proposals, each Proposal will be reviewed to ensure that it meets the following Eligibility Requirements.

- The Proposal, including required uploaded files, must be received on time via the PowerAdvocate Platform.
- The Proposal Fee must be received on or before the Proposal Due Date. ¹⁵

¹⁵ Proposal Fees will not be required for the Sealed SBO Proposal.
• The Proposal must not contain material omissions.
• The Proposal must be signed and certified by an officer or other authorized person of the Proposer.
• The Proposer must fully execute the agreements or other documents required pursuant to this RFP.
• The Proposer must provide a certificate of good standing from the State of Hawai‘i Department of Commerce and Consumer Affairs.
• The Proposer must provide federal and state tax clearance certificates for the Proposer.
• The Proposer must not be contingent upon changes to existing county, state, or federal laws or regulations.
• The proposed Project must be located on the island of Moloka‘i.
• Project size must be 40.5 MW (500 kW) or greater.
• No single point of failure from the Facility shall result in a decrease in net electrical output greater than 2.7 MW. Additionally, in meeting this requirement, the Facility must be segmented in equally sized capacities (MW).
• Project infrastructure and point of interconnection must be located outside the 3.2 feet sea level rise exposure area (SLR-XA) as described in the Hawai‘i Sea Level Rise Vulnerability and Adaptation Report (2017), and not located within a Tsunami Evacuation Zone.
• Proposals must meet the grid-charging requirements of Section 1.2.10.
• Proposals must specify a GCOD no later than December 31, 2023.

4.3 Threshold Requirement Assessment

Proposals that meet all the Eligibility Requirements will then be evaluated to determine compliance with the Threshold Requirements, which have been designed to screen out Proposals that are insufficiently developed, lack demonstrated technology, or will impose unacceptable execution risk for the Company. Proposers are responsible to provide explanations and supporting information demonstrating how and why they believe the Project they are proposing meets each of the Threshold Requirements. Proposals that fail to provide this information or meet a Threshold Requirement will be eliminated from further consideration upon concurrence with the Independent Observer. The Threshold Requirements for this RFP are the following:

• **Site Control:** The Proposal must demonstrate that the Proposer has Site Control for all real property required for the successful implementation of a specific Proposal at a Site not controlled by the Company, including any Interconnection Facilities for which the Proposer is responsible. The need for a firm commitment is necessary to ensure that Proposals are indeed realistic and can be relied upon as the Company moves through the remainder of the RFP process. In addition, developmental requirements and restrictions such as zoning of the Site and the status of easements must be identified and will be considered in determining whether the Proposal meets the Site Control threshold.

To meet this Site Control requirement, Proposers must do one of the following:
• Provide documentation confirming (1) that the Proposer has an existing legally enforceable right to use and control the Site, either in fee simple or under leasehold, for a term at least equal to the term of the PPA (“Site Control”) as specified in the Proposer’s Proposal (taking into account the timelines set forth in this RFP for selection, negotiation, and execution of a PPA and PUC approval), and (2) the applicable zoning for the Site and that such zoning does not prohibit the development of the Site consistent with the Proposal; or

• Provide documentation confirming, at a minimum, (1) that the Proposer has an executed binding letter of intent, memorandum of understanding, option agreement, or similar document with the land owner (a “binding commitment”) which sets forth the general terms of a transaction that would grant the Proposer the required Site Control, and (2) the applicable zoning for the Site and that such zoning does not prohibit the development of the Site consistent with the Proposal. The binding commitment does not need to be exclusive to the Proposer at the time the Proposal is submitted and may be contingent upon selection of the Proposal to the Final Award Group. If multiple Projects are provided a binding commitment for the same Site, the documents granting the binding commitments must not prevent the Company from choosing the Proposal that otherwise would have been selected.

• Government/Public Lands Only: The above two bullet points may not be feasible where government or publicly-owned lands are part of the Site or are required for the successful implementation of the Proposal. In such a case, at a minimum the Proposer must provide a credible and viable plan, including evidence of any steps taken to date, to secure all necessary Site Control for the Proposal, including but not limited to evidence of sufficient progress toward approval by the government agency or other body vested with the authority to grant such approval (as demonstrated by records of the agency). The Proposer will still be required, however, to demonstrate Site Control as required in the applicable RDG PPA should the Proposal be selected to the Final Award Group.

• **Performance Standards:** The proposed Facility must be able to meet the performance attributes identified in this RFP and the Performance Standards identified in the applicable RDG PPA. Proposals should include sufficient documentation to support the stated claim that the Facility will be able to meet the Performance Standards. The Proposal should include information required to make such a determination in an organized manner to ensure this evaluation can be completed within the evaluation review period.

• **Proven Technology:** This criterion is intended as a check to ensure that the technology proposed is viable and can reasonably be relied upon to meet the objectives of this RFP. The Company will only consider Proposals utilizing technologies that have successfully reached commercial operations in commercial applications (i.e., a PPA) at the scale being proposed. Proposals should include any
supporting information for the Company to assess the commercial and financial maturity of the technology being proposed.

- **Experience of the Proposer:** The Proposer, its affiliated companies, partners, and/or contractors and consultants on the Proposer’s Project team must have experience in financing, designing, constructing, interconnecting, owning, operating, and maintaining at least one (1) electricity generation project, including all components of the project (i.e., storage or other attributes), similar in size, scope, technology, and structure to the Project being proposed by Proposer. The Company will consider a Proposer to have reasonably met this Threshold Requirement if the Proposer can provide sufficient information in its Proposal’s RFP Appendix B Section 2.13 tables demonstrating that at least one member of the Proposer’s team (identified in the Proposal) has specific experience in each of the following categories: financing, designing, constructing, interconnecting, owning, operating, and maintaining projects similar to the Project being proposed.

- **Credit/Collateral Requirements:** Proposers shall agree to post Development Period Security and Operating Period Security as described in Section 3.13.

- **Available Circuit Capacity:** The output capacity of the proposed Project must not exceed the available capacity of the circuit to which it will interconnect.

- **Viability of Proposer’s Financial Plan:** Proposers must provide a basic financial plan for the Project with details on the sources of debt and equity, capital structure, etc. Evidence must be provided of general support for Project financing.

- **Financial Compliance:** The proposed Project must not cause the Company to be subject to consolidation, as set forth in Financial Accounting Standards Board (“FASB”) Accounting Standards Codification Topic 810, Consolidation (“ASC 810”), as issued and amended from time to time by FASB. Proposers are required to state to the best of their knowledge, with supporting information to allow the Company to verify such conclusion, that the Proposal will not result in the Seller under the PPA being a Variable Interest Entity (“VIE”) and result in the Company being the primary beneficiary of the Seller that would trigger consolidation of the Seller’s finances on to the Company’s financial statements under FASB ASC 810. The Company will perform a preliminary consolidation assessment based on the Proposals received. The Company reserves the right to allow a Proposal to proceed through the evaluation process through selection of the Priority List and work with the Proposer on this issue prior to or during PPA negotiations.

- **Community Outreach:** Gaining community support is an important part of a Project’s viability and success. A comprehensive community outreach and communications plan (“Community Outreach Plan”) is an essential roadmap that guides a developer as they work with various communities and stakeholders to gain their support for a Project. Proposers must include a Community Outreach Plan that describes the Proposer’s commitment to work with the neighboring community and stakeholders and to provide them timely Project information during all phases of the Project. The Community Outreach Plan shall include, but not be limited to,
the following information: Project description, community scoping (including stakeholders and community concerns), Project benefits, government approvals, development process (including Project schedule), and a comprehensive communications plan.

4.4 Initial Evaluation – Price and Non-Price Analysis

Proposals that meet both the Eligibility and Threshold Requirements are Eligible Proposals which will then be subject to a price and non-price assessment. Two teams have been established to undertake the Proposal evaluation process: a Price Evaluation Team and Non-Price Evaluation Team. The results of the price and non-price analysis will be a relative ranking and scoring of all Eligible Proposals. Price-related criteria will account for sixty percent (60%) of the total score and non-price-related criteria will account for forty percent (40%) of the total score. The non-price criteria and methodology for applying the criteria are explained in Section 4.4.2.

The Company will employ a closed-bidding process for this solicitation in accordance with Part IV.H.3 of the Framework where the price and non-price evaluation models to be used will not be provided to Proposers. However, the Company will provide the Independent Observer with all necessary information to allow the Independent Observer to understand the evaluation models and to enable the Independent Observer to observe the entire analysis to ensure a fair process. The evaluation models will be finalized prior to the receipt of Proposals.

4.4.2 4.4.1 Initial Evaluation of the Price Related Criteria

For the initial price analysis, an equivalent energy price (Levelized $/MWh) will be calculated for each proposal based on information provided in the Proposal including the Lump Sum Payment ($/year), Price for Purchase of Electric Energy ($/MWh), and the Net Energy Potential (“NEP”) RFP Projection (MWh) information defined in RFP Sections 3.9 and 3.10.

In order to fairly evaluate Proposals with different technologies and characteristics while using an equivalent energy price in Levelized $/MWh at this stage in the evaluation, the Company will group Proposals into technology-based evaluation categories, as applicable. For example: (1) Wind generation (MWh) and Energy storage; and (2) Solar generation (MWh) and Energy storage.

The Eligible Proposal with the lowest LEP in each evaluation category will receive 600 points. All other Eligible Proposals in that evaluation category will receive points based on a proportionate reduction using the percentage by which the Eligible Proposal’s LEP exceeds the lowest LEP in that evaluation category. For example, if a Proposal’s LEP is ten percent (10%) higher than the lowest LEP in that evaluation category, the Proposal will be awarded 540 points (that is, 600 points less 10%). The result of this assessment will be a ranking and scoring of each Proposal within each evaluation category.
4.4.2 Initial Evaluation of the Non-Price Related Criteria

For the non-price analysis, each Proposal will be evaluated on each of the eight (8) non-price criteria categories set forth below:

- Community Outreach and Cultural Resource Impacts
- State of Project Development and Schedule
- Performance Standards
- Environmental Compliance and Permitting Plan
- Experience and Qualifications
- Financial Strength and Financing Plan
- RDG PPA Contract Exceptions
- Guaranteed Commercial Operations Date

Each of the first three criteria – Community Outreach and Cultural Resource Impacts, State of Project Development and Schedule, Performance Standards – will be weighted twice as heavily as the others to reflect the impact these categories have to achieve a successful and timely procurement. The non-price criteria are generally scored on a scale of 1 (poor) to 5 (highly preferable).

The total non-price score will be the sum of the scores for each of the individual non-price criteria. The Company will then award non-price evaluation points in accordance with the relative ranking of scores within each evaluation category. The Proposal in each evaluation category with the highest total non-price score will receive 400 points, and all other Proposals will receive points equal to the Proposal’s score divided by the top score, multiplied by 400.

During the non-price criteria evaluation, a fatal flaws analysis will also be conducted such that any Proposal that is deemed not to meet the minimum standards level\(^\text{16}\) for four (4) or more non-price criteria will be disqualified given that the Proposal has failed to meet a majority of non-price factors that are indicative as to the general feasibility and operational viability of a proposed Project.

The Companies’ evaluation of the non-price criteria will be based on the materials provided by a Proposer in its Proposal. Acceptance of any Proposal into the Final Award Group shall not be assumed or construed to be an endorsement or approval that the materials provided by Proposer are complete, accurate, or in compliance with applicable law. The Companies assume no obligation to correct, confirm, or further research any of the materials submitted by Proposers. Proposers retain sole responsibility to ensure their Proposals are accurate and in compliance with all laws.

The non-price criteria are:

- **Community Outreach and Cultural Resource Impacts** – Gaining community support is an important part of a Project’s viability and success. An effective Community Outreach Plan will call for early meaningful communications with

\(^{16}\) A score of 3 is the “meets minimum standards” level that a Proposal must achieve in at least five (5) criteria.
stakeholders and will reflect a deep understanding and respect for the community’s desire for information to enable them to make informed decisions about future projects in their communities. Therefore, Proposals will be evaluated on the quality of the Community Outreach Plan to inform the Project’s impacted communities. Proposers need to also be mindful of the Project’s potential impacts to historical and cultural resources. Proposers will be evaluated on their proposed plan to select and engage with a consultant to assess if there are any historical and cultural resources at the Site, including the extent to which traditional and customary native Hawaiian rights are exercised in the area, and how any potential historical or cultural resource issues that arise during the term will be addressed.

At a minimum, Proposals should include a Community Outreach Plan that describes the Proposer’s commitment to work with the neighboring community and stakeholders and to provide timely Project information during project development, construction, and operation. The Community Outreach Plan shall include, but not be limited to, the following:

1) **Project description.** A thorough description including a map of the location of the Project. This information will help the community understand the impact that the Project may have on the community.

2) **Community scoping.** Identify stakeholders (individuals, community leaders, organizations), community issues and concerns, and community sentiment.

3) **Project benefits.** An explanation of the need for the Project. This will help the community to understand how the Project might benefit their community.

4) **Government approvals.** Required government permits and approvals, public hearings, and other opportunities for public comment. This information will help the community to understand the level of public scrutiny and participation that might occur for the Project and the opportunities to provide public comments.

5) **Development process.** A Project schedule that identifies key milestones will facilitate the community’s understanding of the development process.

6) **Communications Plan.** A communications plan including a detailed community outreach schedule that will keep the affected communities and stakeholders informed about the Project’s outreach efforts during the early Project development period through construction and operations.

Preference will be given to Proposers who have already identified established contacts to work with the local community, have proposed a community benefits package (including details of the community recipients and benefits package), or have community consultants as part of the Project team doing business in Hawai‘i that have successfully worked with communities in Hawai‘i on the development of two or more energy projects or projects with similar community issues. These criteria are aligned with the Companies’ community engagement expectation whereby all developers will be required to engage in community outreach prior to signing a PPA with the Companies. This process is also outlined
in RFP Section 5.3.

At a minimum, Proposers should provide a plan to select and engage with a consultant to assess if there are any historical and/or cultural resources at the Site, and how any potential historical or cultural resource issues that arise during the term will be addressed including the extent to which traditional and customary native Hawaiian rights are exercised in the area. Preference will be given to Proposals that are able to provide a mitigation/action plan or are able to provide a date for when a mitigation/action plan will be available that addresses any identified cultural resource issues.

- **State of Project Development and Schedule** – Projects that are further along in development generally have lower project execution risk and a greater probability of being able to be successfully placed into service prior to the GCOD (specifically identified in each Proposal). At a minimum, Projects should demonstrate how they plan to capture any ITC safe harbor and reach their GCOD specified, including identification of risks and schedule assumptions. (Schedules must identify the IRS completion date and PUC approval dates assumed.) Proposals should also demonstrate, via a detailed critical path schedule, that there is a high likelihood that the Project will be able to reach commercial operations as specified. Proposals shall include a Gantt chart that clearly illustrates the overall schedule and demonstrates achievement of any ITC safe harbor, if applicable, and commercial operations by their specified GCOD. The Gantt chart shall include task durations and dependencies, identify tasks that will be fast tracked, and identifies slack time and contingencies.

This criterion will also look at the high-level Project costs set forth in the Proposal including: costs for equipment, construction, engineering, Seller-Owned Interconnection Facilities, Company-Owned Interconnection Facilities, land, annual O&M, the reasonableness of such costs, and the assumptions used for such costs. Project costs that do not appear reasonable for a project of the size proposed may result in a lower ranking for this criterion if the Company reasonably determines that the cost information is unrealistic based on prior experience in the market which may result in a risk that the Project can be built on time and for the price proposed by the Proposer. The Company reserves the right to discuss any cost and financial information with a Proposer to ensure the information provided is accurate and correct.

- **Performance Standards**: The proposed Facility must be able to meet the performance attributes identified in this RFP and the Performance Standards identified in the RDG PPA. The Company will review the Proposal information received, including design documents and operating procedures materials provided in the Proposal, and evaluate whether the Project as designed is able to meet the Performance Standards identified in the RDG PPA and in this RFP. At a minimum, in addition to meeting the Performance Standards, the Proposals should include sufficient documentation, provided in an organized manner, to support the stated claim that the Facility will be able to meet the Performance Standards. The
Proposal should include information required to make such a determination in an organized manner to ensure this evaluation can be completed on a timely basis. Preference will be given to Proposals that provide detailed technical and design information showing how each standard can be met by the proposed Facility. Preference will also be provided to proposed Projects that offer additional capabilities (e.g., Black-Start).

- **Environmental Compliance and Permitting Plan** – This criterion relates to the potential (short- and long-term) environmental impacts associated with each project, the quality of the plan offered by the Proposer to mitigate and manage any environmental impacts (including any pre-existing environmental conditions), and the plan of Proposers to remain in environmental compliance over the term of the contract. These impacts are reflected on a technology-specific basis. Completing any necessary environmental review and obtaining the required permitting in a timely manner is also important and Proposals will be evaluated on their plan to identify, apply for, and secure the required permits for the Project, any permitting activity that has been completed to date, including having initial discussions with U.S. Fish and Wildlife and the State of Hawai‘i Department of Land and Natural Resources’ Division of Forestry and Wildlife, to the extent applicable, prior to submitting a Proposal, and the degree of certainty offered by the Proposer in securing the necessary permits.

At a minimum, proposed Projects should be expected to have minimal environmental impact for most areas and Proposals should provide a comprehensive plan to mitigate the identified potential or actual significant environmental impacts to remain in environmental compliance. The proposed mitigation plans should be included in the Project timeline. Preference will be given to Proposals that provide a more detailed plan as well as those that have proactively taken steps to mitigate potential environmental impacts.

Also, this criterion requires that, at a minimum, Proposers should have identified, and disclosed in their Proposal(s), all major permits, approvals, appurtenances, and entitlements (including applicable access, rights of way and/or easements) (collectively, the “permits”) required and have a preliminary plan for securing such permits. Preference will be given to Proposals that are able to provide a greater degree of certainty that its plan to secure the required permits is realistic and achievable, or have already received all or a majority of the required permits. The Proposer should disclose all identified (a) discretionary permits required, i.e., those regarding public or contested case hearings and/or review and discretionary approval by an appropriate governmental agency and (b) ministerial permits required, i.e., those requiring the submission of documents or other ministerial conditions without discretionary approval conditions. In all cases, the Proposer must provide a credible and viable plan, including evidence of any steps taken to date, to secure all necessary and appropriate permits necessary for the project. For example, if the project is located within an agricultural district, the Proposer shall provide evidence of Proposer’s verification with the appropriate government.
agency that the project complies with HRS Section 205-2 and Section 205-4.5, relating to solar energy facilities placed on agricultural land, provided, however, that where a special use permit (under Section 205-6), exemption (under Section 205-6), or amendment to land use district boundary lines (under Section 205-4) is required to secure such compliance, Proposer shall identify the need for such permit, exemption, or amendment and provide a list of required prerequisites and/or conditions and a realistic timeline necessary to obtain such permit, exemption, or amendment satisfactory for Proposer to still meet its designated GCOD.

- **Experience and Qualifications** – Proposals will be evaluated based on the experience of the Proposer in financing, designing, constructing, interconnecting, owning, operating, and maintaining projects (including all components of the project) of similar size, scope and technology. At a minimum, Proposals must show via the table format specified in RFP Appendix B Section 2.13 that at least one (1) member must have specific experience in each of the following categories: financing, designing, constructing, interconnecting, owning, operating, and maintaining at least one electricity generation project including all components of the project similar to the Project being proposed. Preference will be given to Proposers with experience in successfully developing multiple projects that are similar to the one being proposed and/or that have prior experience successfully developing and interconnecting a utility scale project to the Company’s System.

- **Financial Strength and Financing Plan** – This criterion addresses the comprehensiveness and reasonableness of the financial plan for the Project as well as assesses the financial strength and capability of the Proposer to develop the Project. A complete financial plan addresses the following issues: Project ownership, capital cost and capital structure, sources of debt and equity, and evidence that credit-worthy entities are interested in financing the Project. The financial strength of Proposers or their credit support providers will be considered, including their credit ratings. The financing participants are expected to be reasonably strong financially. Developers and their sources of capital that have investment grade credit ratings from a reputable credit rating agency (S&P, Moody’s, Fitch) will also be given preference, with those that have higher credit ratings ranked higher.

- **RDG PPA Contract Proposed Modifications** – Proposers are encouraged to accept the contract terms identified in the model agreements in their entirety in order to expedite the overall RFP process and potential contract negotiations. Proposers who accept the model agreements without edits will receive a higher score and will be the only proposals that can achieve the highest scoring for this non-price evaluation. Technology-specific or operating characteristic-required modifications, with adequate explanation as to the necessity of such modifications, will not jeopardize a project’s ability to achieve the highest score. Proposers who elect to propose modifications to the model agreements shall provide a Microsoft Word red-line version of the applicable document identifying...
specific proposed modifications to the model agreement language, as well as a
detailed explanation and supporting rationale for each modification. General
comments without proposed alternate language, drafting notes without
explanation or alternate language, footnotes such as “parties to discuss,” or a
reservation of rights to make additional modifications to the model agreements at
a later time are unacceptable, will be considered unresponsive, and will result in a
lower score. The Company and Independent Observer will evaluate the impact
that the proposed modifications will have on the overall risk assessment
associated with the evaluation of each Proposal.

- **Guaranteed Commercial Operations Date:** The Company is procuring
resources and incorporating projects onto its System in Stages as part of its long-
term plan to meet RPS goals. Proposers will be held to the Guaranteed
Commercial Operations Date identified in their Proposal. The GCOD will be a
Guaranteed Milestone and will be inserted without amendment into the RDG
PPAs or ESPPA, as applicable. Proposers that are able to design for and commit
to an earlier GCOD will be given more favorable scoring. Proposers must have
met the GCOD requirements of RFP Section 1.2.14 prior to being evaluated in
this non-price criterion.

4.5 **Selection of a Priority List**

At the conclusion of both the price and non-price analysis, a total score will be calculated
for each Proposal using the 60% price-related criteria / 40% non-price-related criteria
weighting outlined above. The price and non-price analysis, and the summation of both
price and non-price scores described above, will result in a ranking of proposals within
each technology-based evaluation category.

The Company will determine a Priority List from the highest scoring Proposals for each
technology-based evaluation category. Each Priority List will include a sufficient
number of projects, but not less than two (2) Proposals per technology-based evaluation
category, such that the Company can assemble portfolio combinations that meet or
exceed the Renewable Energy MWh target for comparison in the Detailed Evaluation.
The Companies will develop the Priority Lists in consultation with the Independent
Observer. The Companies reserve the right, in consultation with the Independent
Observer, to limit the projects allowed for further consideration in the initial evaluation to
projects that fall within 15% of the lowest price proposed per technology-based
evaluation category. Selection to the Priority List does not assure an Eligible Project’s
inclusion in the selection of the Final Award Group.

4.6 **Best and Final Offer (BAFO)**

4.6.1 The Company will solicit a Best and Final Offer from Proposers selected to a Priority
List in a technology-based evaluation category. If the Sealed SBO Proposal is selected to
a Priority List, the Self-Build Team will not be eligible to provide a Best and Final Offer
and the original pricing submitted in its Sealed SBO Proposal will be used in the Detailed
Evaluation. All other Proposers selected to a Priority List will have the opportunity to
update (downward only)\textsuperscript{17} the pricing elements in their Proposal to improve the competitiveness of their Proposal prior to being further assessed in the Detailed Evaluation phase. At this time, updates may only be made to the following pricing elements:

- Lump Sum Payment ($/year) amount
- Price for Purchase of Electric Energy ($/MWh) amount. Payment for delivery of net energy sourced from the variable generation resource, if applicable. No Energy Payment will be provided for any energy delivery that is sourced originally from the grid (Company’s System).

Proposers will not be allowed to increase their price\textsuperscript{18} but may elect to maintain the same pricing submitted in their original Proposal. Proposers will not be allowed to make any other changes to their Proposal during the Best and Final Offer.

4.6.2 If a Proposer does not propose improvements to their pricing elements during the Best and Final Offer solicitation, the original Proposal pricing elements will be deemed its Best and Final Offer.\textsuperscript{19}

4.7 **Detailed Evaluation**

The Best and Final Offers of the Priority List Proposals, as well as original Self-Build Proposals if advanced to the Priority Listed Proposals, will be further assessed in the Detailed Evaluation to identify the Priority List Proposals that meet the variable renewable dispatchable generation MWh target to determine the Proposals selected to the Final Award Group.

The Company intends to use a computer model for this analysis. The evaluation will be based on the Total Net Cost (Costs and Benefits) to the Company of integrating the combination of Priority List Proposals onto the Company’s System which includes:

1. The cost to dispatch the combination of Projects and the energy and storage purchased;

2. The fuel cost savings (benefits) and any other direct savings (IPP savings from dispatchable fossil fuel savings) resulting from the displacement of generation by the Priority List Proposals, including consideration of round-trip efficiencies;

3. The estimated increase (or decrease) in operating cost, if any, incurred by the Company to maintain system reliability; and

\textsuperscript{17} Proposers will only be allowed to adjust pricing elements downward. No upward adjustment to the pricing elements will be permitted or considered. All other characteristics of the Proposal and Facility capabilities must remain valid and unchanged (e.g., NEP, GCOD, etc.)

\textsuperscript{18} Proposers will not be allowed to increase the pricing in their Proposals to address interconnection and/or system upgrade costs or for any other reason.

\textsuperscript{19} The Company reserves the right, in consultation with the Independent Observer, to adjust the parameters of the BAFO, in the unlikely event that system needs have evolved in a way that the Proposals received do not fully address.
4. The cost of imputed debt, if applicable.

As noted, the Company will take into account the cost of rebalancing its capital structure resulting from any debt or imputed debt impacts associated with each Proposal (including any costs to be incurred by the Company, as described above, that are necessary in implementing the Proposal). The Company proposes to use the imputed debt methodology published by S&P that is applicable to the Proposal being evaluated. S&P views long-term PPAs as creating fixed, debt-like financial obligations that represent substitutes for debt-financed capital investments in generation capacity. By adjusting financial measures to incorporate PPA fixed obligations, greater comparability of utilities that finance and build generation capacity and those that purchase capacity to satisfy new load are achieved.

During the Detailed Evaluation and before the Proposals advance to the Final Award Group, the Company will perform load flow analyses to determine if certain Project combinations introduce circuit constraints that will factor into the selection process. This is to address the possibility that even though sufficient line capacity was identified for an individual Project, large Projects on separate circuits that are in close proximity with each other could introduce additional circuit constraints. The Projects selected must not have any additional constraints imposed based on the load flow analysis to advance to the Final Award Group. However, the Company reserves the right, in consultation with the Independent Observer, to allow minor modifications to a Proposal to avoid such additional constraints. If such modification resulted in a reduced size of the Facility, the pricing proposed would also need to be revised. Under no circumstances would a Proposer be allowed to increase their price as a result of such minor modification. In addition, the Company will ensure Projects selected to the Final Award Group are not on the same distribution circuit (multiple projects may interconnect at the Pala‘au Generating Station).

Also in the Detailed Evaluation, other factors will be validated to ensure that the final combination of Projects provides the contemplated benefits that the Company seeks. The Company will evaluate the collateral consequences of the implementation of a combination of Projects, including consideration of the geographic diversity, resource diversity, interconnection complexity, and flexibility and latitude of operation control of the Projects.

The Company may assess additional combinations of Projects if requested by the Independent Observer and if the time and capability exist to perform such analyses.

4.8 Selection of the Final Award Group

Based on the results of the Detailed Evaluation and review of the results with the Independent Observer, the Company will select a Final Award Group from which to begin contract negotiations. The Company intends to select projects that meet the targeted needs and provide customer benefits. All Proposers will be notified at this stage of the evaluation process whether their Proposal is included in the Final Award Group.
Selection to the Final Award Group and/or entering into contract negotiations does not guarantee execution of a PPA.

Further, if at any time during the evaluation process it is discovered that a Proposer’s Proposal contains incorrect or misrepresented information that have a material effect on any of the evaluation processes, including selection of the Priority List or the Final Award Group, the Company reserves the right, at any time prior to submission of the PPA Application with the PUC application, in consultation with the Independent Observer, to disqualify the Proposer from the RFP. If discovery of the incorrect or misrepresented information is made after the Company has filed its PUC application for approval of the PPA with the Proposer, the Company will disclose the incorrect or misrepresented information to the PUC for evaluation and decision as to whether such Proposer should be disqualified and the Company’s application dismissed.

Following any removal of a Proposal from the Final Award Group, either by disqualification noted immediately above, or via any other removal or withdrawal of a Proposal, including failure to reach agreement to the PPA, the Company, taking into consideration the timing of such removal and the current status of the Company’s needs under the RFP, in consultation with and concurrence from the Independent Observer, will review the Priority List to determine (1) if another Proposal should be added to the Final Award Group; (2) if either of the Contingency Plan or Parallel Plan should be pursued; or (3) if the remaining Proposals in the Final Award Group should remain unchanged.

Order No. 36536 “directs the Companies to work with the [Independent Observers] to increase bid transparency within the RFP process, while maintaining an appropriate level of confidentiality regarding bids and bidders.” The Companies agree that it is desirable for the RFP process to be as transparent as possible while maintaining the confidentiality of Proposer and Proposal information. The type and quantity of information that can be disclosed will not be known until the Companies and the Independent Observer have a better understanding of the number and types of Proposals received and whether such information can be easily anonymized. The Companies will work with the Independent Observers to determine an appropriate level of disclosure after Proposals are received with a goal of disclosing more information than was disclosed in the Companies’ Stage 1 RFPs for O‘ahu, Maui, and Hawai‘i island.

Chapter 5: Post Evaluation Process

5.1 Interconnection Requirements Study Process

A complete package of IRS Data Request worksheets and project single line diagram(s) shall be submitted with each Proposal. For Projects with a proposed GCOD in 2022, the models for equipment and controls, list(s) to clearly identify the components and respective files (for inverters and power plant controller), and complete documentation with instructions, shall be submitted within 60 days thereafter. See Section 2.1.1 of Appendix B. For all other Projects, the same complete submittal shall be due within 60 days after selection to the Final Award Group. PSSE Generic models, PSSE User models,
and ASPEN models shall be configured to represent all of the functional equipment with settings in place to comply with the Company’s PPA performance requirements. These must be checked for functionality by the Proposer or its vendors and consultants prior to submission to the Company. Similar and fully accurate PSCAD models shall be submitted in a condition that complies with the PSCAD modeling guidelines provided by the Company. PSSE generic models shall be provided promptly after the PSSE user models have been approved by the Company.

After proposals and models are submitted, the Company will inspect the data packages for general completeness. For any incomplete submissions, a list of missing or non-functional items will be provided. Proposers will be given 15 Days to resolve data and modeling deficiencies. The Company, in consultation with the Independent Observer, may remove Proposals from the Priority List or Final Award Group, or may terminate PPA negotiations or executed PPAs, if their submission requirements are deemed incomplete for the lack of requested models. Proposals that are complete will be considered for further evaluation. A formal, technical model checkout will be deferred until a later date when IRS Agreements and deposits are in place, so that the expert subject matter work can be provided by the Company’s IRS consultant(s).

Upon notification of selection to the Final Award Group, the Company will provide a draft IRS Agreement for each selected project, with a statement of required deposit for individual and prorated work as part of an IRS Scope for a System Impact Study that will involve (a) technical model checkout for each project, (b) any considerations that are specific to a particular project and location, and (c) system impact analyses of the projects as a group. Interconnection cost and schedule, including cost of any required system upgrades, will be determined in a subsequent Facilities Study.

The technical model checkouts will be conducted first. Upon identification of any functional problems or deficiencies, corrective action shall be taken immediately and on an interactive basis so that the problems or deficiencies can be resolved within 15 Days, including re-submission of data and updated models, or the Project shall be deemed withdrawn. At the discretion of the Company and provided that there is a demonstration of good faith action to minimize delay that would affect the schedule for IRS analyses, a second round of model checkout and problem solving may proceed. Thereafter, any notice that a Project is deemed withdrawn for lack of completeness shall be final. Subject to consultation with the Independent Observer, failure to provide all requested material within the time(s) specified, or changes to the data provided after the due date(s), shall result in elimination from the Final Award Group.

Proposers shall be responsible for the cost of the IRS, under separate agreements for the System Impact Study and the Facilities Study. The overall IRS will provide information including, but not limited to, an estimated cost and schedule for the required Interconnection Facilities for a particular Project and any required mitigation measures. Proposers will be responsible for the actual final costs of all Seller-Owned Interconnection Facilities and Company-Owned Interconnection Facilities. Upon reviewing the results of the IRS, Proposers will have the opportunity to declare the PPA null and void in the event that the estimated interconnection costs and schedule for the
Project are higher than what was estimated in the Project Proposal. See Section 12.4 of the RDG PPA.

5.2 **Contract Negotiation Process**

Within five (5) business Days of being notified by the Company of its intent to enter into contract negotiations, Proposers selected for the Final Award Group will be required to indicate, in writing to the Company’s primary contact for this RFP, whether they intend to proceed with their Proposals. Proposers who elect to remain in the Final Award Group will be required to keep their Proposal valid through the award period. Contract negotiations will take place in parallel with the IRS process. The Company’s goal is to complete contract negotiations and submit executed PPAs for approval within six (6) months of notification of intent to enter contract negotiations. The IRS may not be completed at such time. The Company intends to execute and file the PPA with the PUC for approval and later amend the PPA to include the results of the IRS.

5.3 **Community Outreach and Engagement/Cultural Resource Impacts**

The public meeting and comment solicitation process described in this Section and Section 29.21 of the model RDG PPA (Community Outreach Plan) do not represent the only community outreach and engagement activities that can or should be performed by a Proposer. Within 30 Days of the start of PPA negotiations, Proposers shall have provided the Company with an updated comprehensive Community Outreach Plan to work with and inform neighboring communities and stakeholders and to provide them timely information during all phases of the Project. The Community Outreach Plan shall include but not be limited to the following information: Project description, Project stakeholders, community concerns and Proposer’s efforts to address such concerns, Project benefits, government approvals, Project schedule, and a comprehensive communications plan.

Upon selection to the Final Award Group, a Proposer's Community Outreach Plan shall be a public document available to the public on the Proposer’s website and upon request. The Proposer shall also provide the Company with links to their Project website and Community Outreach Plan, which the Company will post on the Company’s website. Prior to the execution date of the PPA, Proposers shall also host a public meeting in the community where the proposed Project is to be located 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) calendar days from the date of said public meeting to submit written comments to Company and/or Proposer for inclusion in the Company’s submission to the PUC of its application for a satisfactory PUC Approval Order. The Proposer shall collect all public comments, and then provide the 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. If a PPA is executed by the Proposer and the Company, the Company may submit any and all public comments (presented in its original, unedited form) as part of
its PUC application for this Project. Proposers shall notify the public at least three weeks in advance of the meeting. The Company shall be informed of the meeting. The Company will provide Proposers with detailed instructions regarding the community meeting requirement after the selection of the Final Award Group. (For example, notice will be published in county or regional newspapers/media, as well as media with statewide distribution. The Proposer will be directed to notify certain individuals and organizations. The Proposer will be provided templates to use for the public meeting notices, agenda, and presentation.) Proposers must also comply with any other requirement set forth in the PPA relating to Community Outreach.

Following the submission of the PUC application for the Project, and prior to the date when the Parties’ statements of position are to be filed in the docketed PUC proceeding for the Project, the Proposer shall provide another opportunity for the public to comment on the proposed Project. The Proposer’s statement of position filed in the docket associated with the Project will contain an attachment including those comments.

The Proposer shall be responsible for community outreach and engagement for the Project, and that the public meeting and comment solicitation process described in this section do not represent the only community outreach and engagement activities that can or should be performed.

Within 30 Days of the start of PPA negotiations, the Proposer shall contract with a consultant to begin a cultural impact assessment for the Project. The consultant shall identify (1) 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; (2) the extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken to reasonably protect native Hawaiian rights if they are found to exist.

5.4 Greenhouse Gas Emissions Analysis

Proposers whose Proposal(s) are selected for the Final Award Group shall cooperate with and promptly provide to the Company and/or Company’s consultant(s) upon request all information necessary, in the Company’s sole and exclusive discretion, for such consultant to prepare a greenhouse gas (“GHG”) emissions analysis and report in support of a PUC application for approval of the PPA for the project (the “GHG Review”). Proposers shall be responsible for the full cost of the GHG Review associated with their project under a separate agreement between the Proposer and the Company. The GHG Review is anticipated to address whether the GHG emissions that would result from approval of the PPA and subsequent to addition of the Project to the Company’s system are greater than the GHG emissions that would result from the operations of the Company’s System without the addition of the Project, whether the cost for renewable, dispatchable generation, and/or energy storage services as applicable under the PPA is reasonable in light of the potential for GHG emissions, and whether the terms of the PPA...
are prudent and in the public interest in light of its potential hidden and long-term consequences.

5.5 **PUC Approval of PPA**

Any signed PPA resulting from this RFP is subject to PUC approval as described in the RDG PPA, including Article 12 and Section 29.20 thereof.

5.6 **Facility In-Service**

The Company requires the following be included with the 60% design drawings: relay settings and protection coordination study, including fuse selection and ac/dc schematic trip scheme.

For the Company to test the Facility, coordination between the Company and Project is required. Drawings must be approved by the Company prior to testing. The entire Facility must be ready for testing to commence. Piecemeal testing will not be allowed. Communication infrastructure and equipment must be tested by the IPP and ready for operation prior to Company testing.

If approved drawings are not available, or if the Facility is otherwise not test ready as scheduled, the Project will be moved to the end of the Company’s testing queue. If tests are not completed within the allotted scheduled testing time, the Project will be moved to the end of the Company’s testing queue. The IPP will be allowed to cure if successful testing is completed within the allotted scheduled time. No adjustments will be made to PPA milestones if tests are not completed within the original allotted time. Liquidated damages for missed milestones will be assessed pursuant to the PPA.
Exhibit 4

Redline of Final RFP for the Island of Lānaʻi against August 6, 2019 Proposed Final Draft RFP
DRAFT REQUEST FOR PROPOSALS

FOR

VARIABLE RENEWABLE DISPATCHABLE GENERATION

PAIRED WITH ENERGY STORAGE

ISLAND OF LĀNAʻI

AUGUST 6 - NOVEMBER 27, 2019

Docket No. 2017-03522019-0178
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<td>Lānaʻi Community Comments</td>
</tr>
<tr>
<td>K</td>
<td>Model PV RDG PPA</td>
</tr>
</tbody>
</table>
Maui Electric Company, Ltd. (“Maui Electric” or the “Company”) seeks proposals for the supply of qualified variable renewable dispatchable generation **paired with energy storage** for the Maui Electric System on the island of Lāna‘i in accordance with this Request for Proposals (“RFP”). The total amount of variable renewable dispatchable generation being solicited in this RFP is the capability to provide up to 20,800 megawatt hours (“MWh”) annually. However, this targeted amount will depend on the availability of the Lāna‘i Sustainability Research (“LSR”) and Mānele Bay Combined Heat and Power (“CHP”) facilities as further described in this RFP.

Affiliates of the Company may submit a proposal in response to this RFP subject to the requirements of this RFP. The Company may submit a sealed Proposal in response to this RFP (“Sealed SBO Proposal”) subject to the requirements of this RFP.

The Company is seeking Proposals for a photovoltaic (“PV”) project that is paired with an energy storage system in this RFP. The Company intends to contract for a single project through this RFP using its Model Renewable Dispatchable Generation Power Purchase Agreement (“RDG PPA”), which treats variable generation facilities as fully dispatchable. The Company has created a photovoltaic (“PV”) version (**the “PV RDG PPA”**) of its RDG PPA attached as Appendix K to this RFP.¹

The successful Proposer will provide variable renewable dispatchable generation paired with energy storage to the Company pursuant to the terms of the RDG PPA, which will be subject to **PUC** review and approval by the State of Hawai‘i Public Utilities Commission (“PUC”).

The Company will evaluate Proposals using the evaluation and selection process described in **Chapter 4**. The Company will evaluate and select a Proposal based on both price and non-price factors that impact the Company, its customers, and communities affected by the proposed Project.

All requirements necessary to submit a Proposal(s) are stated in this RFP. A description of the technical requirements for Proposers is included in the body of this RFP, **Appendix B**, and in the RDG PPA attached as **Appendix K**.

All capitalized terms used in this RFP shall have the meaning set forth in the glossary of defined terms attached as **Appendix A**. Capitalized terms that are not included in **Appendix A** shall have the meaning ascribed in this RFP.

### 1.1 Authority and Purpose of the Request for Proposals

1.1.1 This RFP is issued in response to Order No. 3635636776 issued on June 10November 15, 2019 in Docket No. 2017-03522019-0178 as part of a procurement process established by the PUC.

1.1.2 This RFP is subject to Decision and Order (“D&O”) No. 23121 in Docket No. 03-0372 (To Investigate Competitive Bidding for New Generating Capacity in Hawai‘i), which

¹ The **PV RDG PPA** for PV is available on the Company’s RFP website and through the PowerAdvocate platform for the RFP.
sets forth the PUC’s Framework for Competitive Bidding (“Framework” or “Competitive Bidding Framework”).

1.1.3 Proposers should review the Hawaiian Electric Companies’ Power Supply Improvement Plans, filed in Docket No. 2014-0183 on December 23, 2016 (“PSIP Update Report: December 2016” or “PSIP”). Consistent with the PSIP, the primary purpose of this RFP is to obtain variable renewable energy and energy storage so that the Company can continue to transform Lānaʻi’s power supply portfolio from fossil fuel-based generation to renewable-based generation to meet Hawaiʻi’s 100% RPS requirement.

1.2 Scope of the RFP

1.2.1 The targeted amount of variable renewable dispatchable generation will be dependent on the availability of the LSR and CHP facilities. The following table identifies the different targeted amounts of variable renewable dispatchable generation that the Company will be seeking should it be determined that one or both of the LSR and CHP facilities be removed from service. The Company will work with Pūlama Lānaʻi, the owner of the LSR facility and contracting party for CHP, to determine the appropriate use of the LSR and CHP facilities based on the results of the RFP to ensure the optimal use of these assets and to determine if there is a potential to further reduce costs for the Company’s customers. This could include the removal of service of LSR and/or CHP or reducing the use of the facilities. The Company will consult with the Independent Observer as to the appropriate target amount based on the latest developments for the two projects at the time of the selection of the Final Award Group. In order to address this uncertainty in the targeted amount, Proposers are required to propose sizing variations for their Project that address each of the following four (4) possible variable renewable generation targets.

<table>
<thead>
<tr>
<th></th>
<th>CHP facility available</th>
<th>CHP facility not available</th>
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</thead>
<tbody>
<tr>
<td>LSR facility available</td>
<td>Sizing Variation 1</td>
<td>Sizing Variation 3</td>
</tr>
<tr>
<td></td>
<td>13,300 MWh annually</td>
<td>18,300 MWh annually</td>
</tr>
<tr>
<td>LSR facility not available</td>
<td>Sizing Variation 2</td>
<td>Sizing Variation 4</td>
</tr>
<tr>
<td></td>
<td>15,800 MWh annually</td>
<td>20,800 MWh annually</td>
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</tbody>
</table>

1.2.2 Projects submitted in response to this RFP must be PV combined with storage projects that are located on the Site specified in Section 3.11. No other generation technologies or project locations may be proposed.

1.2.3 Each Proposal submitted in response to this RFP must represent a Project that is capable of meeting the requirements of this RFP without having to rely on the completion or implementation of any other Project.
1.2.4 Projects must interconnect to the Company’s System at the Miki Basin switchyard (See, Section 3.11 of Attachment 2, Appendix F).

1.2.5 No single point of failure from the Facility shall result in a decrease in net electrical output greater than a nominal 3.3 MW AC. Additionally, in meeting this requirement, the Facility must be segmented in equally sized capacities (MW). Each segment must have its own point of interconnection into the Miki Basin switchyard that can be independently dispatched via the Company’s energy management system. Revisions would need to be made to the RDG PPA to account for multiple points of interconnection.

1.2.6 The contract for the project selected through this RFP shall use the RDG PPA, as described in Section 3.8. Under the RDG PPA, the Company will maintain exclusive rights to fully direct dispatch of the Facility, subject to availability of the resource and Section 1.2.8 below. The term of the PPA will be 20 years.

1.2.7 Proposals must be submitted with an energy storage component. The energy storage component can be charged during periods when full potential export of the generation Facility is not being dispatched by the Company and can be used to provide energy to the Company during other times that are beneficial to the system. The energy storage component must be sized to support the Facility’s Allowed Capacity (in MW) for four (4) continuous hours throughout the term of the PPA. For example, for a 409.5 MW facility, the energy storage component must be able to store and discharge 4038 MWh of energy in a cycle throughout the term of the PPA.

1.2.8 After the 5-year Investment Tax Credit ("ITC") recapture period has lapsed, the energy storage component must be capable of being 100% charged from the grid at the direction of the Company. Energy storage components that are incapable of claiming the ITC must be capable of being 100% charged from the grid from the GCOD.

1.2.9 The amount of energy discharged from the energy storage component in a year will be limited to the energy storage contract capacity (in MWh) multiplied by the number of Days in that year.

1.2.10 Proposals must specify a Guaranteed Commercial Operations Date ("GCOD") no later than December 31, 2023. Preference will be given to Proposals that specify an earlier GCOD during the non-price evaluation.

1.2.11 A Proposer’s GCOD set forth in its Proposal will be the GCOD in any resulting PPA if such Proposal is selected to the Final Award Group. Proposers will not be able to request a change in the GCOD set forth in their Proposals.

1.2.12 The selected Proposer will be responsible for all Project costs throughout the term of the PPA, including but not limited to Project development, completion of an Interconnection Requirements Study ("IRS"), the cost of conducting a greenhouse gas analysis, land acquisition/leasing, permitting, financing, construction of the Facility and all Interconnection Facilities, and operations and maintenance ("O&M").
1.2.13 The selected Proposer will be solely responsible for the decommissioning of the Project and the restoration of the Site upon the expiration of the PPA, as described in Attachment G, Section 7 of the RDG PPA.

1.2.14 The selected Proposer shall pursue all available applicable federal and state tax credits. Proposal pricing must be set to incorporate the benefit of such available federal tax credits. However, to mitigate the risk on Proposers due solely to potential changes to the state’s tax credit law before a selected project reaches commercial operations, Proposal pricing shall be set without including any state tax credits. If a Proposal is selected, the PPA for the project will require the Proposer to pursue the maximum available state tax credit and remit tax credit proceeds to the Company for customers’ benefit as described in Attachment J of the RDG PPA. The PPA will also provide that the Proposer will be responsible for payment of liquidated damages for failure to pursue the state tax credit.

1.2.15 Each Proposal submitted in response to this RFP must represent a Project that is capable of meeting the requirements of this RFP without having to rely on a proposed change in law, rule, or regulation.

1.3 Competitive Bidding Framework

Consistent with the Framework, this RFP outlines the Company’s requirements in relation to the resources being solicited and the procedures for conducting the RFP process. It also includes information and instructions to prospective Proposers participating in and responding to this RFP.

1.4 Role of the Independent Observer

1.4.1 Part III.C.1 of the Framework sets forth the circumstances under which an Independent Observer is required in a competitive bidding process. The PUC has retained an Independent Observer both to advise and monitor the process for this RFP. All phases of the RFP process will be subject to the Independent Observer’s oversight, and the Independent Observer will coordinate with PUC staff throughout the RFP process to ensure that the RFP is undertaken in a fair and unbiased manner. In particular, the Company will review and discuss with the Independent Observer decisions regarding the evaluation, disqualification, non-selection, and selection of Proposals.

1.4.2 The role of the Independent Observer, as described in the Framework, will include but is not limited to:

- Monitor all steps in the competitive bidding process
- Monitor communications (and communications protocols) with Proposers
- Monitor adherence to the Company’s Code of Conduct
- Submit comments and recommendations, if any, to the PUC concerning the RFP
- Review the Company’s Proposal evaluation methodology, models, criteria, and assumptions
- Review the Company’s evaluation of Proposals
- Advise the Company on its decision-making
- Participate in dispute resolution as set forth in Section 1.10
• Monitor contract negotiations with Proposers
• Report to the PUC on monitoring results during each stage of the competitive bidding process
• Provide an overall assessment of whether the goals of the RFP were achieved
• Monitor the ongoing discussions between Maui Electric and Pūlama Lānaʻi

1.4.3 The Independent Observer for this RFP is **Navigant Consulting, Inc.**

Navigant Consulting, Inc.
685 Third Avenue, 14th Floor
New York, NY 10017
Attn: Dia Dean Koujak

1.5 Communications Between the Company and Proposers – Code of Conduct Procedures Manual

1.5.1 Communications and other procedures under this RFP are governed by the “Code of Conduct Procedures Manual,” (also referred to as the “Procedures Manual”) developed by the Company as required by the Framework, and attached as Appendix C.

1.5.2 All pre-Proposal communication with prospective Proposers will be conducted via the Company’s RFP website, Electronic Procurement Platform, and/or electronic mail (“Email”) through the address specified in Section 1.6 (the “RFP Email Address”). Frequently asked questions submitted by prospective Proposers and the answers to those questions may be posted on the Company’s RFP website, or sent through either Email or the Electronic Procurement Platform to registered individuals. The Company reserves the right to respond only to comments and questions it deems are appropriate and relevant to the RFP. Proposers are advised to submit questions no later than fifteen Days before the Proposal Due Date (RFP Schedule in Section 3.1, Items 79 and 810). The Company will endeavor to respond to all questions no later than five Days before the Proposal Due Date.

1.5.3 After Proposals have been submitted, the Company may contact individual Proposers for purposes of clarifying their Proposal(s).

1.5.4 Any confidential information deemed by the Company, in its sole discretion, to be appropriate to share, will only be transmitted to the requesting party after receipt of a fully executed Mutual Confidentiality and Non-Disclosure Agreement (“NDA”). See Appendix E.

1.5.5 Except as expressly permitted and in the manner prescribed in the Procedures Manual, any unsolicited contact by a Proposer or prospective Proposer with personnel of the Company pertaining to this RFP is prohibited.
1.6 Company Contact for Proposals

The primary contact for this RFP is:

Reese Yorimoto
Dean Ono
Energy Contract Manager
Hawaiian Maui Electric Company, Inc.—Limited
Central Pacific Plaza Building, Suite 2100
220 South King Street
Honolulu 210 West Kamehameha Avenue
Kahului, Hawaii 96813 96732

RFP Email Address: lanaicompptetivebidding@mauielectric.com

1.7 Proposal Submission Requirements

1.7.1 All Proposals must be prepared and submitted in accordance with the procedures and format specified in the RFP. Proposers are required to respond to all questions and provide all information requested in the RFP, as applicable, and only via the communication methods specified in the RFP.

1.7.2 Detailed requirements regarding the form, submission, organization and information for the Proposal are set forth in Chapter 3 and Appendix B.

1.7.3 In submitting a Proposal in response to this RFP, each Proposer certifies that the Proposal has been submitted in good faith and without fraud or collusion with any other unaffiliated person or entity. The Proposer shall acknowledge this in the Response Package submitted with its Proposal. Furthermore, in executing the NDA provided as Appendix E, the Proposer agrees on behalf of its Representatives (as defined in the NDA) that the Company’s negotiating positions will not be shared with other Proposers or their respective Representatives.

Without limiting the foregoing, unaffiliated Proposers are prohibited from using shared legal counsel to prepare their Proposals where counsel is an individual person. If counsel is a law firm with multiple attorneys, unaffiliated Proposers may use the same firm only if (1) such firm assigns separate attorney(s) to each Proposer, (2) the attorney(s) are prohibited from (i) sharing a Proposer’s confidential information or the Company’s confidential information associated with such Proposer with others, or (ii) accessing another Proposer’s confidential information or Company’s confidential information associated with such Proposer from another attorney in the firm, (3) the law firm has appropriate procedures, safeguards and policies in place to ensure that separations exist so that attorney(s) assigned to a Proposer do not share or have access to confidential information of another Proposer or of the Company which was obtained through another attorney’s representation of a Proposer, and (4) an authorized signatory of the law firm shall provide Company with a written certification in the form attached as Appendix B Attachment 1.
In addition, in submitting a Proposal, a Proposer will be required to provide Company with its legal counsel’s written certification in the form attached as Appendix B Attachment 1 certifying in relevant part that irrespective of any Proposer’s direction, waiver, or request to the contrary, that the attorney will not share a Proposer’s confidential information associated with such Proposer, including, but not limited to, such information such as a proposer’s or Company’s negotiating positions, with third parties unaffiliated with Proposer (by contract or organizational structure), including other proposers responding to the RFP. If legal counsel represents multiple unaffiliated Proposers whose Proposals are selected for the Final Award Group, such counsel will also be required to submit a similar certification at the conclusion of power purchase agreement negotiations that he or she has not shared a Proposer’s confidential information or the Company’s confidential information associated with such Proposer, including but not limited to, a Proposer’s or Company’s negotiating positions, with third parties unaffiliated with such proposer (by contract or organizational structure), including other Proposers responding to the RFP.

1.7.4 Proposals must be submitted by 2:00 pm Hawai‘i Standard Time (HST) on the Proposal Due Date shown in the RFP Schedule in Section 3.1. IPP and Affiliate proposals must be submitted via the Electronic Procurement Platform. No hard copies of these Proposals will be accepted by the Company. The Sealed SBO Proposal must be submitted in accordance with the instructions in Section 1.9.

It is the Proposer’s sole responsibility to ensure that complete and accurate information has been submitted on time and consistent with the instructions of this RFP. With this assurance, Company shall be entitled to rely upon the completeness and accuracy of every Proposal. Any errors identified by the Proposer or Company after the Proposal Due Date has passed may jeopardize further consideration and success of the Proposal. If an error or errors are later identified, Company, in consultation with the Independent Observer, may permit the error(s) to be corrected without further revision to the Proposal, or may require Proposer to adhere to terms of the Proposal as submitted without correction. Additionally, and in Company’s sole discretion, if such error(s) would materially affect the Final Award Group, Company reserves the right, in consultation with the Independent Observer, to remove or disqualify a Proposal upon discovery of the material error(s). The Proposer of such Proposal shall bear the full responsibility for such error(s) and shall have no recourse against Company’s decision to address Proposal error(s), including removal or disqualification. The Energy Contract Manager, in consultation with the Independent Observer, will confirm that the sealed SBO Proposal is either delivered or postmarked by, and that any Affiliate Proposals are timestamped by, milestone (409) Sealed SBO Proposal and Affiliate Proposal Due Date in Section 3.1 Table 1. The PowerAdvocate Platform automatically closes to further submissions after milestone (4110) IPP Proposal Due Date in Table 1.

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2 Affiliate Proposals have additional submission requirements to the PUC specified in Section 1.9 below.
1.8 Proposal Fee

1.8.1 IPP and Affiliate proposers are required to tender a non-refundable Proposal Fee of $105,000 for each Proposal submitted.

1.8.2 Proposers must submit four (4) sizing variations for their Project to address the different energy targets identified in Section 1.2.1. A separate Proposal Fee will not be assessed for these sizing variations. All unique information for each sizing variation of a Proposal, no matter how minor such variation is, must be clearly identified and separated by following the instructions in Appendix B Section 3.

1.8.3 The Proposal Fee must be in the form of a cashier’s check or equivalent from a U.S.-chartered bank made payable to “Maui Electric Company, Ltd.” and must be delivered and received by the Company by 2:00 pm (HST) on the Proposal Due Date shown in the RFP Schedule in Section 3.1. The check should include a reference to the Proposal(s) for which the Proposal Fee is being provided. Proposers are strongly encouraged to utilize a delivery service method that provides proof of delivery to validate delivery date and time.

If the Proposal Fee is delivered by U.S. Postal Service (with registered, certified, receipt verification), the Proposer shall address it to:

Reese Yorimoto
Dean Ono
Energy Contract Manager
Hawaiian Maui Electric Company, Inc.
Mail Code CP21-IUKBY-IC
PO Box 2750398
Honolulu, Hawai’i 96840-96733

If the Proposal Fee is delivered in person, or via an alternative registered, certified delivery service, the Proposer shall use the address specified in Section 1.6.

1.9 Procedures for the Self-Build or Affiliate Proposals

1.9.1 The Competitive Bidding Framework allows the Company the option to offer a Proposal in response to this RFP (“Self-Build Option” or “SBO”). Accordingly, the Company must follow certain requirements and procedures designed to safeguard against and address concerns associated with: (1) preferential treatment of the SBO or members, agents, or consultants of the Company formulating the SBO (the “Self-Build Team”); and (2) preferential access to proprietary information to the Self-Build Team. These requirements are specified in the Code of Conduct required under the Framework and implemented by certain rules and procedures found in the Procedures Manual submitted to the PUC in Docket No. 2017-0352 on July 10, 2019. A copy of the Procedures Manual is attached as Appendix C.

The Competitive Bidding Framework also allows Affiliates of the Company to submit Proposals to RFPs issued by the Company. All Sealed SBO Proposals and Affiliate Proposals are subject to the Company’s Code of Conduct and the Procedures Manual.
Affiliate Proposals are also subject to any applicable Affiliate Transaction Requirements issued by the PUC in Decision and Order No. 35962 on December 19, 2018, and subsequently modified by Order No. 36112, issued on January 24, 2019, in Docket No. 2018-0065. Affiliate Proposals will be treated identically to an IPP proposal, except that they are due at the same time as the Sealed SBO Proposal.

The Independent Observer will monitor adherence to the Company’s Code of Conduct and the Procedures Manual.

1.9.2 Pursuant to the Framework and as set forth in the RFP Schedule, the Company will require that Affiliate Proposals be submitted electronically through the Electronic Procurement Platform and filed with the PUC in hard copy a minimum of one (1) Day before IPP Proposals are due. Affiliate Proposals will be uploaded into the Electronic Procurement Platform in the same manner IPP Proposals from other Proposers are uploaded. The Energy Contract Manager, in consultation with the Independent Observer, will confirm that the Affiliate Proposals are timestamped by Milestone (10) Sealed SBO Proposal and Affiliate Proposal Due Date in RFP Table 1.

1.9.3 This RFP will permit only one (1) Proposal from the Self-Build Team, which will be submitted under seal and evaluated only upon certain conditions identified in Chapter 4. The Sealed SBO Proposal will not be submitted through the Electronic Procurement Platform, but rather must be submitted to the Company in hard copy to the contact and address identified in Section 1.8.4. A hard copy of the Sealed SBO Proposal must also be filed confidentially with the PUC in hard copy and submitted to the Independent Observer to the contact and address identified in Section 1.4.3. Pursuant to the Framework and as set forth in the RFP Schedule, these hard copies must be delivered or postmarked by the date and time identified in Milestone (10) Sealed SBO Proposal and Affiliate Proposal Due Date in RFP Table 1.

Detailed requirements for a Sealed SBO Proposal can be found in Appendix G. These requirements are intended to provide a level playing field between the Sealed SBO Proposal and third-party Proposals. Except where specifically noted, the Sealed SBO Proposal must adhere to the same price and non-price Proposal requirements as required of all Proposers, as well as certain PPA requirements, such as milestones and liquidated damages, as described in Appendix G. In addition to its Sealed SBO Proposal, the Self-Build Team will be required to submit Appendix G Attachment 1, Self-Build Option Team Certification Form, acknowledging it has followed the rules and requirements of the RFP to the best of its ability and has not engaged in any collusive actions or received any preferential treatment or information providing an impermissible competitive advantage to the Self-Build Team over other proposers responding to this RFP, as well as adherence to PPA terms and milestones required of all proposers and the SBO’s proposed cost protection measures.

The cost recovery methods between a regulated utility Sealed SBO Proposal and IPP Proposals are fundamentally different due to the business environments they operate in. As a result, the Company has instituted a process to compare the two types of proposals.
for the evaluation of the price related criteria on a ‘like’ basis through comparative analysis.

At the core of a Sealed SBO Proposal are its total project capital cost and any associated annual operations and maintenance (“O&M”) costs. If the Sealed SBO Proposal is evaluated, its capital costs\(^3\) and O&M costs will be used in a revenue requirement calculation to determine the estimated revenues needed from ratepayers which would allow the Company to recover the total cost of the project. The SBO revenue requirements are then used in a levelized price calculation to determine a Levelized Energy Price (“LEP”) ($/MWh).

The Company, in conjunction with the Independent Observer, may also conduct a risk assessment of the Sealed SBO Proposal to ensure an appropriate level of customer cost protection measures are included in such Proposal.

The SBO will be permitted to submit a shared savings mechanism with its Proposal to share in any cost savings between the amount of cost bid in the Sealed SBO Proposal and the actual cost to construct the Project. If the Sealed SBO Proposal is selected to the Final Award Group, the proposed shared savings mechanism will need to be approved by the PUC. Submission of a shared savings mechanism is not required and will not be considered in the evaluation of the Sealed SBO Proposal.

1.10 Dispute Resolution Process
1.10.1 If disputes arise under the RFP, the provisions of Section 1.10 and the dispute resolution process established in the Framework will control. See Part V of the Framework.

1.10.2 Proposers who challenge or contest any aspect of the RFP process must first attempt to resolve their concerns with the Company and the Independent Observer (“Initial Meeting”). The Independent Observer will seek to work cooperatively with the parties to resolve any disputes or pending issues and may offer to mediate the Initial Meeting to resolve disputes prior to such issues being presented to the PUC.

1.10.3 Any and all disputes arising out of or relating to the RFP which remain unresolved for a period of twenty (20) Days after the Initial Meeting takes place may, upon the agreement of the Proposer and the Company, be submitted to confidential Mediation in Honolulu, Hawai‘i, pursuant to and in accordance with the Mediation Rules, Procedures, and Protocols of Dispute Prevention Resolution, Inc. (“DPR”) (or its successor) or, in its absence, the American Arbitration Association then in effect (“Mediation”). The Mediation will be administered by DPR. If the parties agree to submit the dispute to Mediation, the Proposer and the Company 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 Mediation costs and attorney’s fees.

\(^3\) Sealed SBO Proposals will be required to provide a table identifying project costs by year. These capital costs should be all inclusive, including but not limited to costs associated with equipment, Engineering, Procurement, and Construction (EPC), interconnection, overhead, and Allowance for Funds Used During Construction (AFUDC).
1.10.4 If settlement of the dispute is not reached within sixty (60) Days after commencement of the Mediation, or if after the Initial Meeting, the parties do not agree to submit any unresolved disputes to Mediation, then as provided in the Framework, the Proposer may submit the dispute to the PUC in accordance with the Framework.

1.10.5 In accordance with the Framework, the PUC will serve as the arbiter of last resort for any disputes relating to this RFP involving Proposers. The PUC will use an informal expedited dispute resolution process to resolve the dispute within thirty (30) Days, as described in Parts III.B.8 and V of the Framework. There will be no right to hearing or appeal from this informal expedited dispute resolution process.

1.10.6 If any Proposer initiates a dispute resolution process for any dispute or claim arising under or relating to this RFP, other than that permitted by the Framework and Section 1.10 (e.g., a court proceeding), then such Proposer shall be responsible for any and all attorneys’ fees and costs that may be incurred by the Company or the PUC in order to resolve such claim.

1.11 **No Protest or Appeal**

Subject to Section 1.10, no Proposer or other person will have the right to protest or appeal any award of a Project made by the Company.

By submitting a Proposal in response to the RFP, the Proposer expressly agrees to the terms and conditions set forth in this RFP.

1.12 **Modification or Cancellation of the Solicitation Process**

1.12.1 Unless otherwise expressly prohibited, the Company may, at any time up to the final execution of an RDG PPA, as may be applicable, in consultation with the Independent Observer, postpone, withdraw, and/or cancel any requirement, term, or condition of this RFP, including deferral of the award or negotiation of any contract, and/or cancellation of the award all together, all of which will be without any liability to the Company.

1.12.2 The Company may modify this RFP subject to requirements of the Framework, whereby the modified RFP will be reviewed by the Independent Observer and submitted to the PUC thirty (30) Days prior to its issuance, unless the PUC directs otherwise. See Framework Part IV.B.10. The Company will follow the same procedure with regard to any potential postponement, withdrawal, or cancellation of the RFP or any portion thereof.

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4 The informal expedited dispute resolution process does not apply to PUC review of contracts that result from the RFP. See Decision and Order No. 23121 at 34-35. Further, the informal expedited dispute resolution process does not apply to the Framework’s process relating to issuance of a draft and final RFP, and/or to the PUC approval of the RFP because: (1) the Framework (and the RFP) set forth specific processes whereby interested parties may provide input through the submission of comments; and (2) the Framework’s dispute resolution process applies to “Bidders” and there are no “Bidders” at this stage in the RFP process.
1.13 Community Outreach

The Company held a community meeting on Lānaʻi to explain the RFP process and the Company’s intent to procure a PV with storage project on the island of Lānaʻi. At the community meeting, the Company solicited feedback from the community of Lānaʻi regarding the RFP process and planned procurement. The Company has provided the comments received at the meeting in Appendix J. Proposers are encouraged to review such comments and take such comments into account when developing Proposals in response to this RFP.

Chapter 2: Resource Needs and Requirements

2.1 Performance Standards

Proposals must meet the attributes set forth in this RFP and the requirements of the RDG PPA. This RFP and the RDG PPA set forth the minimum requirements that all Proposals must satisfy to be eligible for consideration in this RFP. Additional Performance Standards may be required based on the results of the IRS.

Facilities must be able to operate in grid-forming mode when directed by the Company as defined in the RDG PPA.

Black start capability is preferred. Proposals will need to identify any incremental costs to enable their facility to be black start capable, if not already enabled.

The functionality and characteristics of the storage must be maintained throughout the term of the PPA. To be clear, Proposers may not propose any degradation for either capacity or efficiency in their Proposals.

2.2 Distribution System Information

The Company has performed a preliminary evaluation of the Distribution System which indicates that a PV project of the requested size is able to be supported at the Miki Basin switchyard. A detailed IRS will be required to assess whether additional system mitigation measures will be required to integrate any specific project selected through this RFP. Per Section 3.11 and Appendix F, projects must interconnect to the Miki Basin switchyard. The estimated configuration of the interconnection is provided in Appendix H. Any questions regarding the interconnection may be directed to the RFP Email Address in Section 1.6.

2.3 Interconnection to the Company System

2.3.1 The Interconnection Facilities include both: (1) Seller-Owned Interconnection Facilities; and (2) Company-Owned Interconnection Facilities.

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5 If black start is not already enabled for the Proposal, any additional costs necessary to enable black start will be identified in the submission instructions defined in Appendix B.
2.3.2 All Proposals must include a description of the Proposer’s plan to transmit power from the Facility to the Company System. The proposed Interconnection Facilities must be compatible with the Company System. In the design, Projects must adequately consider Company requirements to address impacts on the performance and reliability of the Company System.

2.3.2.1 In addition to the Performance Standards and findings of the IRS, the design of the Interconnection Facilities, including power rating, Point(s) of Interconnection with the Company System, and scheme of interconnection, must meet Company standards. The Company will provide its construction standards and procedures to the Proposer (Engineer, Procure, Construct Specifications for Hawaiian Electric Power Lines and Substations) if requested via the RFP Email Address in Section 1.6 and upon the execution of an NDA as specified in Section 3.12.1. These specifications are intended to illustrate the scope of work typically required to administer and perform the design and construction of a Maui Electric substation and power line.

2.3.2.2 Interconnection Facilities must be designed such that, with the addition of the Facility, the Company System can meet all relevant Distribution Planning Criteria and any amendments thereto.

2.3.3 Tariff Rule No. 19, a copy of which is attached as Appendix I, establishes provisions for Interconnection and Transmission Upgrades. While the Lānaʻi System does not have a traditional Transmission System, the tariff provisions are intended to simplify the rules regarding who pays for, installs, owns, and operates interconnection facilities in the context of competitive bidding. Proposers will be required to build the Company-Owned Interconnection Facilities, including any potential line extensions, except for any work in the Company’s existing energized facilities and the final tap. Construction of Company-Owned Interconnection Facilities by the Proposer must comply with industry standards, laws, rules, and licensing requirements, as well as the Company’s specific construction standards and procedures that the Company will provide upon request. (See Section 2.3.1.) Attachment A of Appendix I is provided to illustrate certain defined terms in Appendix I and does not represent the Company’s design requirements. The design of all Interconnection Facilities will be subject to the requirements outlined in Section 2.3.2.1.

2.3.4 The Proposer shall be responsible for all costs required to interconnect a Project to the Company System, including all Seller-Owned Interconnection Facilities and Company-Owned Interconnection Facilities.

2.3.5 Proposers are required to include in their pricing proposal all costs for interconnection and distribution equipment expected to be required between their Facility and their proposed Point of Interconnection. Appendix H includes information related to Company-Owned Interconnection Facilities and costs that may be helpful to Proposers.

The selected Proposer shall be responsible for the actual final costs of all Seller-Owned Interconnection Facilities and Company-Owned Interconnection Facilities, whether or

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6 MECO – Criteria for Distribution Substation and Feeder Planning.
not such costs exceed the costs set forth in a Proposer’s Proposal. No adjustments will be allowed to the proposed price in a Proposal if actual costs for Interconnection Facilities exceed the amounts proposed.

2.3.6 Proposers are required to include in their pricing proposal all costs for distribution-level service interconnection for station power.

2.3.7 All Projects will be screened for general readiness to comply with the requirements for interconnection. The selected Proposal will be subject to further study in the form of an IRS. The IRS process is further described in Section 5.1. The results of the completed IRS, as well as any mitigation measures identified, will be incorporated into the terms and conditions of a final executed PPA.

Chapter 3: Instructions to Proposers

3.1 Schedule for the Proposal Process

Table 1 sets forth the proposed schedule for the proposal process (the “RFP Schedule”). The RFP Schedule is subject to PUC approval. The Company reserves the right to revise the RFP Schedule as necessary. Changes to the RFP Schedule prior to the RFP Proposal Due Date will be posted to the RFP website. Changes to the RFP Schedule after the Proposal Due Date will be communicated via email or via the Electronic Procurement Platform to the Proposers.
### Table 1
**Proposed RFP Schedule**

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Schedule Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Draft RFP is filed</td>
<td>August 6, 2019</td>
</tr>
<tr>
<td>(2) PUC Opened Docket No. 2019-0178</td>
<td>August 29, 2019</td>
</tr>
<tr>
<td>(2)(3) PUC Status Conference</td>
<td></td>
</tr>
<tr>
<td>(3)(4) Stakeholder Comments submitted to PUCConsumer Advocate and Company Comments Filed</td>
<td>August 26, September 5, 2019</td>
</tr>
<tr>
<td>(4) Companies’ Response to Stakeholder Comments</td>
<td>September 6, 2019</td>
</tr>
<tr>
<td>(5) Commission’s comments on Order Approving Draft RFP, with Modifications</td>
<td>September 20, November 15, 2019</td>
</tr>
<tr>
<td>(6) Company’s submission of Proposed Final RFP</td>
<td>October 11, November 27, 2019</td>
</tr>
<tr>
<td>(7) Completion of Commission review period of Proposed Final RFPs</td>
<td>November 12, 2019</td>
</tr>
<tr>
<td>(8)(7) Final RFP is Issued and Opened in Power Advocate</td>
<td>November 18, December 2, 2019</td>
</tr>
<tr>
<td>(9)(8) Proposer’s Conference Webinar (posted to Company’s website)</td>
<td>November 22, December 9, 2019</td>
</tr>
<tr>
<td>(10)(9) Sealed SBO Proposal and Affiliate Proposal Due Date</td>
<td>January 4, 2020 at 2:00 pm HST</td>
</tr>
<tr>
<td>(11) IPP Proposal Due Date</td>
<td>January 4, 2020 at 2:00 pm HST</td>
</tr>
<tr>
<td>(12)(11) Selection of Final Award Group</td>
<td>March 4, 2020</td>
</tr>
<tr>
<td>(13)(12) Contract Negotiations Start</td>
<td>March 24, April 7, 2020</td>
</tr>
</tbody>
</table>

### 3.2 Company RFP Website/Electronic Procurement Platform

3.2.1 The Company has established a website for general information to share with potential Proposers. The RFP website is located at the following link:

www.mauielectric.com/lanaicompetitivebidding

The Company will provide general notices, updates, schedules and other information on the RFP website throughout the process. Proposers should check the website frequently.

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2. Per Section IV.B.6.e.ii of the Competitive Bidding Framework “[t]he utility shall have the right to issue the RFP if the Commission does not direct the utility to do otherwise within thirty (30) days after the Commission receives the proposed RFP and the Independent Observer’s comments and recommendations.” November 12, 2019 is based on this thirty (30) day timeline. However, this date and all dates in the proposed schedule are dependent on any further guidance provided by the PUC.

8 An SBO or Affiliate Proposal must also be filed in hard copy form with the PUC a minimum of one (1) Day before other Proposals are due.
to stay abreast of any new developments. This website will also contain the link to the Electronic Procurement Platform employed by the Company for the receipt of Proposals.

“Sourcing Intelligence” developed by Power Advocate is the Electronic Procurement Platform that the Company has licensed and will utilize for this RFP. Proposers who do not already have an existing account with Power Advocate and who intend to submit a Proposal for this RFP will need to register as a “Supplier” with Power Advocate.

3.2.2 There are no license fees, costs, or usage fees to Proposers for the use of the Electronic Procurement Platform.

See Appendix D for user information on and screenshots of Power Advocate’s Sourcing Intelligence procurement platform.

3.3 Status Conference and Proposers’ Conference

If provided for by the PUC, the Company will participate in a Status Conference with the PUC for prospective Proposers, the PUC, and other stakeholders to learn about the provisions and requirements of this RFP. Following the Status Conference, if provided for by the PUC, prospective Proposers and stakeholders may submit comments to the PUC regarding this draft RFP. The Commission held a status conference on September 5, 2019 to allow the Companies to propose plans for the draft Lānaʻi and Molokaʻi RFPs and to respond to questions from the Commission, the Consumer Advocate and stakeholders. The Companies’ presentation was made available on the Companies’ RFP Website. The Commission also solicited comments from stakeholders on the Companies’ Draft Lānaʻi and Molokaʻi RFPs on September 6, 2019 before releasing its Order No. 36776 approving the draft RFPs with modifications on November 15, 2019.

Following issuance of the RFP, the Company will also post a prerecorded webinar (“Proposer’s Conference Webinar”) for prospective Proposers to learn about the provisions and requirements of the Company’s final RFP. Prospective Proposers may submit clarifying questions to a link to better understand the Company’s proposed competitive bidding process and draft documents. General responses will be posted to the RFP Companies’ website.

Prospective Proposers may submit written questions regarding the RFP to the RFP Email Address set forth in Section 1.6. The Company will endeavor to address all questions that will be helpful to prospective Proposers via a Q&A section on the RFP website.

Prospective Proposers should review the RFP Website’s Q&A section prior to submission of their Proposal. Duplicate questions will not be answered.

3.4 Preparation of Proposals

3.4.1 Each Proposer shall be solely responsible for reviewing the RFP (including all attachments and links) and for thoroughly investigating and informing itself with respect to all matters pertinent to this RFP, the Proposer’s Proposal, and the Proposer’s anticipated performance under the RDG PPA. It is the Proposer’s responsibility to ensure
it understands all requirements of the RFP, to seek clarification if the RFP’s requirements or Company’s request is not clear, and to ask for any confirmation of receipt of submission of information. Under Section 1.7.4, the Proposer is solely responsible for all errors in its Proposal(s). The Company will not accept any explanation by a Proposer that it was incumbent on the Company to catch any error.

3.4.2 Proposers shall rely only on official information provided by the Company in this RFP when preparing their Proposal. The Company will rely only on the information included in the Proposals and additional information solicited by the Company to Proposers in the format requested, to evaluate the Proposals received. Evaluation will be based on the stated information in this RFP and on information submitted by Proposers in response to this RFP. Proposal submissions should not reference previous RFP submissions for support. Proposers also should not assume that any previous RFP decisions/preferences will also pertain to this RFP.

3.4.3 Each Proposer shall be solely responsible for, and shall bear all of its costs incurred in the preparation of its Proposal and/or its participation in this RFP, including, but not limited to, all costs incurred with respect to the following: (1) review of the RFP documents; (2) meetings with the Company; (3) Site visits; (4) third-party consultant consultation; and (5) investigation and research relating to its Proposal and this RFP. The Company will not reimburse any Proposer for any such costs, including the selected Proposer.

3.4.4 Each Proposal must contain the full name and business address of the Proposer and must be signed by an authorized officer or agent\(^9\) of the Proposer.

3.5 Organization of the Proposal

The Proposal must be organized as specified in Appendix B. It is the Proposer’s responsibility to ensure the information requested in this RFP is submitted and contained within the defined Proposal sections as specified in Appendix B.

3.6 Proposal Limitations

Proposers expressly acknowledge that Proposals are submitted subject to the following limitations:

The RFP does not commit or require the Company to award a contract, pay any costs incurred by a Proposer in the preparation of a Proposal, or procure or contract for products or services of any kind whatsoever. The Company reserves the right, in consultation with the Independent Observer, to accept or reject, in whole or in part, any or all Proposals submitted in response to this RFP, to negotiate with any or all Proposers eligible to be selected for award, or to withdraw or modify this RFP in whole or in part at any time.

\(^9\) Proposer’s officer or agent must be authorized to sign the Proposal. Such authorization must be in writing and may be granted via Proposer’s organizational documents (i.e., Articles of Incorporation, Articles of Organization, By-laws, etc.), resolution, or similar documentation.
The Company reserves the right, in consultation with the Independent Observer, to request additional information from any or all Proposers relating to their Proposals or to request that Proposers clarify the contents of their Proposals. Proposers who are not responsive to such information requests may be eliminated from further consideration upon consultation with the Independent Observer.

The Company reserves the right, in consultation with the Independent Observer, to solicit additional Proposals from Proposers after reviewing the initial Proposals. Other than as provided in this RFP, no Proposer will be allowed to alter its Proposal or add new information to a Proposal after the Proposal Due Date.

All material submitted in response to this RFP will become the sole property of the Company, subject to the terms of the NDA.

3.7 Proposal Compliance and Bases for Disqualification

Proposers may be deemed non-responsive and/or Proposals may not be considered for reasons including, but not limited to, the following:

- Any unsolicited contact by a Proposer or prospective Proposer with personnel of the Company pertaining to this RFP as described in Section 1.5.5.
- Any illegal or undue attempts by or on behalf of the Proposer or others to influence the Proposal Review process.
- The Proposal does not meet one or more of the Eligibility Requirements specified in Section 4.2.
- The Proposal does not meet one or more of the Threshold Requirements specified in Section 4.3.
- The Proposal is deemed to be unacceptable through a fatal flaws analysis as described in Section 4.4.2.
- The Proposer does not respond to a Company request for additional information to clarify the contents of its Proposal within the timelines specified by the Company.
- The Proposal contains misrepresentations or errors.

3.8 Power Purchase Agreement

3.8.1 The Power Purchase Agreement for proposals selected under this RFP will be in the form of the RDG PPA, attached as Appendix K.

3.8.2 If selected, any Affiliate Proposer will be required to enter into the RDG PPA with the Company.
3.8.3 If selected, a Self-Build Proposer will not be required to enter into a PPA with the Company. However, the Sealed SBO Proposal will be held to the same performance metrics and milestones set forth in the RDG PPA to the same extent as all Proposers, as attested to in the SBO’s Appendix G, Attachment I, Self-Build Option Certification submittal. If liquidated damages are assessed, they will be paid from shareholder funds and returned to customers through the Purchased Power Adjustment Clause (“PPAC”) or other appropriate rate adjustment mechanisms.

To retain the benefits of operational flexibility in a Company-owned facility, the Sealed SBO Proposal will be permitted to adjust operational requirements and performance metrics with the approval of the PUC. The process for adjustment would be similar to a negotiated amendment to a PPA with PUC approval.

3.8.4 In general, under the RDG PPA, payment to the Seller contains two parts: a Lump Sum Payment component to cover the fixed costs of the Project and a Price for Purchase of Electric Energy component ($/MWh component) to cover variable operations and maintenance costs (if applicable, depending on the resource). In return, the Seller shall guarantee minimum performance and availability metrics to ensure that the Facility is maintained and available for energy storage and dispatch, as well as provide an indication of the available energy in near real-time for the Company’s dispatch. Company shall not be obligated to accept, nor shall it be required to pay for test energy generated by the Facility during acceptance testing or other test conditions.

3.8.5 As described in Section 2.1, the Performance Standards identified in the RDG PPA establish the minimum requirements a Proposal must satisfy to be eligible for consideration in this RFP. A proposed Facility’s ability to meet these Performance Standards is both a Threshold Requirement and a Non-Price Related Criteria under Sections 4.3 and 4.4.2, respectively. As such, the Performance Standards included in the RDG PPA are non-negotiable. Proposers may propose modifications to other sections of the RDG PPA but are encouraged to accept such terms as written in order to expedite the overall RFP process and potential contract negotiations. As a component of their Proposals, Proposers who elect to propose modifications shall provide a Microsoft Word red-line version of the relevant document identifying specific proposed modifications to the model language that the Proposer is agreeable to, as well as a detailed explanation and supporting rationale for each modification.

3.8.5.1 General comments, drafting notes and footnotes such as “parties to discuss” are unacceptable and will be considered non-responsive. Proposed modifications to the RDG PPA will be evaluated as a non-price evaluation criterion as further described in Section 4.4.2. In order to facilitate this process, the Company will make available an electronic version of the model agreement on the RFP website and through the PowerAdvocate platform for the RFP. Any proposed modifications to the RDG PPA will be subject to negotiation between the Company and the Final Award Group. As stated above, since general comments, drafting notes, and footnotes without accompanying specific proposed language modifications are unacceptable and non-responsive, the Company will not negotiate provisions simply marked by such general comments, drafting notes, and footnotes.
3.8.6 Proposals that do not include specific proposed modifications to the attached RDG PPA will be deemed to have accepted the RDG PPA in its entirety.

3.9 Pricing Requirements

3.9.1 Proposers must submit pricing for each of their sizing variations associated with each Proposal. Proposers are responsible for understanding the terms of the RDG PPA. Pricing cannot be specified as contingent upon other factors (e.g., changes to federal tax policy or receiving all Investment Tax Credits assumed).

3.9.2 Escalation in pricing over the term of the RDG PPA is prohibited.

3.9.3 Pricing information must only be identified within specified sections of the Proposal instructed by this RFP’s Appendix B Proposer’s Response Package (i.e., Proposal pricing information must be contained within defined Proposal sections of the Proposal submission). Pricing information contained anywhere else in a Proposal will not be considered during the evaluation process.

3.9.4 The Proposer’s Response Package must include the following prices for each Proposal (and sizing variation):

For IPP or Affiliate proposals:

- **Lump Sum Payment ($/year):** Payment amount for full dispatchability of the Facility. Payment will be made in monthly increments.

- **Price for Purchase of Electric Energy ($/MWh):** Payment for delivery of net energy sourced from the variable generation resource, if applicable. No Energy Payment will be provided for any energy delivery that is sourced originally from the grid (Company’s System).

- **Black Start ($):** If the Facility is not already black start enabled, the incremental cost required to enable black start.

For the Sealed SBO Proposal:

- **Total Project Capital Costs ($/year):** Total capital costs for the project (identified by year).

- **Annual O&M Costs ($/year):** Initial year operations and maintenance costs, annual escalation rate.

- **Annual Revenue Requirement ($/year):** Annual revenue requirements (ARR) calculated for each year.

- **Black Start ($):** If the Facility is not already black start enabled, the incremental cost required to enable black start.
Additional description and detail on the Total Project Capital Costs, Annual O&M Costs, and Annual Revenue Requirement for the Sealed SBO Proposal is located in Appendix G.

3.9.5 As identified in the Schedule of Defined Terms in the PPA under “BESS Allocated Portion of the Lump Sum Payment”, the allocated portion of the Lump Sum Payment specified for energy storage for the Facility is 50% and shall be a non-negotiable percentage in the PPA.

3.10 Project Description

3.10.1 Proposals are required to provide a NEP RFP Projection for the Project. The NEP RFP Projection associated with the proposed Project represents the estimated annual net energy (in MWh) that could be produced by the Facility and delivered to the Point of Interconnection over a ten-year period with a probability of exceedance of 95%. The proposed Project’s energy storage component should not be factored into the NEP RFP Projection. Any losses that may be incurred from energy being stored and then discharged from the energy storage component or any energy that may be diverted to the energy storage component due to generation in excess of the Facility’s Allowed Capacity should not be factored into the NEP RFP Projection. The NEP RFP Projection should assume that all energy is being directly exported to the Maui Electric Lāna‘i System. The NEP RFP Projection will be used in the RFP evaluation process and therefore Proposers will be held to their provided value.10

3.10.2 Proposers must provide all information pertaining to the design, development, and construction of the Interconnection Facilities as specified in Appendix B.

3.10.3 Each Proposer must also agree to provide Project financial information, including proposed Project finance structure information specified in Appendix B. Such information will be used to evaluate Threshold Requirements and non-price criteria (e.g., Financial Viability of Proposer, Financial Strength and Financing Plan, State of Project Development and Schedule) set forth in Sections 4.3 and 4.4.2. Upon selection, the Final Award Group may be requested to provide further detailed cost information if requested by the PUC or the Consumer Advocate as part of the PPA approval process. If requested, such information would be provided to the PUC, Consumer Advocate, and Company pursuant to a protective order in the docket.

3.10.4 The Proposer agrees that no material changes or additions to the Facility from what is submitted in its Proposal will be made without the Proposer first having obtained prior

10 If a PPA is executed between the Company and the selected Proposer, the NEP RFP Projection will be further evaluated at several steps throughout the process as set forth in the RDG PPA, and adjustments to the Lump Sum Payment will be made accordingly. Additionally, because the Company will rely on an accurate representation of the NEP RFP Projection in the RFP evaluation, a one-time liquidated damage as described in the RDG PPA will be assessed if the First NEP benchmark is less than the Proposer’s NEP RFP Projection. After the Facility has achieved commercial operations, the performance of the Facility will be assessed on a continuing basis against key metrics identified in the RDG PPA. See Article 2 and Attachment U of the RDG PPA.
written consent from the Company. Evaluation of all Proposals in this RFP is based on the information submitted in each Proposal at the Proposal Due Date. If any Proposer requests any Proposal information to be changed after that date, the Company, in consultation with the Independent Observer, and in consideration of whether the evaluation is affected, will determine whether the change is permitted.

3.11 Project Site

All proposals must be sited on a pre-determined Project Site owned by Pūlama Lānaʻi, referred to as the Pūlama Site. The available area is approximately fifty (50) acres and is located adjacent to Miki Road approximately a mile from the airport. The Pūlama Site is further described in Appendix F.

The selected Proposer will be required to execute a lease for the Pūlama Site coterminous with the term of the PPA with the landowner. A draft copy of the proposed form of lease is included as Attachment 2 to Appendix F. The terms of the lease will be negotiable with the landowner.

The Company has contracted with Fewell Geotechnical Engineering, Ltd and Cultural Services Hawai‘i to perform preliminary investigations at the Pūlama Site and is willing to share the geotechnical and the archaeological field investigation reports (“Information”) with interested Proposers. The Information will be available no later than December 6, 2019. Requests for copies of these reports must be sent to the RFP email address, and the reports will be made available to Proposers only after a Proposer’s submission of an executed NDA. More information regarding these reports and the Pūlama Site can be found in Appendix F of this RFP.

The Company, in conjunction with Pūlama Lānaʻi plans to offer potential Proposers the opportunity to visit the Pūlama Site. The date, time, and the Company’s existing Miki Basin facility on December 18, 2019. Additional details and requirements for this site visit will be posted to the Company’s RFP website.

3.12 Confidentiality

3.12.1 Each prospective Proposer must submit an executed NDA (specific to the Lānaʻi Variable Renewable Dispatchable Generation Pairs with Energy Storage RFP) in the form attached as Appendix E by the Proposal Due Date specified in the RFP Schedule in Section 3.1. The form of the NDA is not negotiable. Information designated as confidential by the Company will be provided on a limited basis, and only those prospective Proposers who have submitted an executed NDA will be considered. Proposers must clearly identify all confidential information in their Proposals. However, Proposers should designate as confidential only those portions of their Proposals that genuinely warrant confidential treatment. The Company discourages the practice of marking each and every page of a Proposal as confidential. The Company will make reasonable efforts to protect any such information that is clearly marked as confidential. Consistent with the terms of the NDA, the Company reserves the right to share any
information, even if marked confidential, to its agents, contractors, or the Independent Observer for the purpose of evaluating the Proposal and facilitating potential contract negotiations.

3.12.2 Proposers, in submitting any Proposal(s) to Company in response to this RFP, certify that such Proposer has not shared its Proposal(s), or any part thereof, with any other Proposer of a Proposal(s) responsive to this RFP.

3.12.3 The Company will request that the PUC issue a Protective Order to protect confidential information provided by Proposers to the Company and to be filed in a proceeding before the PUC. A copy of the Protective Order, once issued by the PUC, will be provided to Proposers. Proposers should be aware that the Company may be required to share certain confidential information contained in Proposals with the PUC, State of Hawai‘i Department of Commerce and Consumer Affairs, Division of Consumer Advocacy, and the parties to any docket instituted by the PUC, provided that recipients of confidential information have first agreed in writing to abide by the terms of the Protective Order. Notwithstanding the foregoing, no Proposer will be provided with Proposals from any other Proposer, nor will Proposers be provided with any other information contained in such Proposals or provided by or with respect to any other Proposer.

3.13 Credit Requirements Under the PPA

3.13.1 The Proposer with whom the Company concludes PPA contract negotiations with must post Development Period Security and Operating Period Security in the form of an irrevocable standby letter of credit from a bank chartered in the United States as required and set forth in Article 14 of the RDG PPA.

3.13.2 The Development Period Security and Operating Period Security identified in the RDG PPA are minimum requirements. Proposers shall not propose an amount lower than that set forth in the RDG PPA.

3.13.3 Each Proposer shall be required to provide a satisfactory irrevocable standby letter of credit in favor of the Company from a bank chartered in the United States to guarantee Proposer’s payment of interconnection costs for all Company-Owned Interconnection Facilities in excess of the Total Estimated Interconnection Costs and/or all relocation costs in excess of Total Estimated Relocation Costs that are payable to Company as required and set forth in Attachment G to the RDG PPA.

3.13.4 Proposers may be required to provide an irrevocable standby letter of credit in favor of the Company from a bank chartered in the United States in lieu of the required Source Code Escrow in an amount and as required and set forth in Attachment B to the RDG PPA.
Chapter 4: Evaluation Process and Evaluation Criteria

4.1 Proposal Evaluation and Selection Process

As set forth in Section 1.9.3 above, the Company’s Sealed SBO Proposal will only be unsealed and evaluated if certain conditions arise. In the absence of any one of these conditions, the Company will evaluate the other IPP and Affiliate Proposals received in response to this RFP in accordance with this Chapter 4 in determining the Final Award Group and will not open or evaluate the Sealed SBO Proposal. Should one of the following conditions arise, the Company’s Sealed SBO Proposal will be opened and evaluated in the same manner as described in this Chapter 4. These conditions are that: (1) there are no IPP or Affiliate Proposals received in response to this RFP, (2) there are no Eligible Proposals that remain after reviewing the Eligibility and Threshold Requirements, (3) all Eligible Proposals fail to pass the fatal flaws analysis during the Non-Price criteria evaluation, or (4) all Eligible Proposals that pass the fatal flaws analysis do not provide a customer benefit in the form of a tangible rate reduction as determined through consultation with the Independent Observer. The Company’s Sealed SBO Proposal will need to meet the RFP’s Eligibility and Threshold Requirements, pass the fatal flaws analysis, and provide a customer benefit in the form of a tangible rate reduction, as determined through consultation with the Independent Observer, in order to be selected to the Final Award Group.

The Company will employ a multi-step evaluation process. Once the Proposals are received, the Proposals will be subject to a consistent and defined review, evaluation, and selection process. This Chapter provides a description of each step of the process, along with the requirements of Proposers at each step. Figure 1 sets forth the flowchart for the proposal evaluation and selection process.

Upon receipt of the Proposals, the Company will ensure that the Proposals meet the Eligibility Requirements, and if so, will review the Proposals to ensure that the Threshold Requirements have been met. The Company, in coordination with the Independent Observer will determine if a Proposer is allowed to cure any aspect of its Proposal or whether theProposal would be eliminated based on failure to meet either Eligibility or Threshold Requirements. If a Proposer is provided the opportunity to cure any aspect of its Proposal, the Proposer shall be given three (3) business Days to cure from the date of notification to cure. Proposals that have successfully met the Eligibility and Threshold Requirements will then enter a price and non-price evaluation process ultimately ending in a Proposal being selected to the Final Award Group.

11 As a general rule, if a Proposer does not include a requested document, inadvertently excludes minor information or provides inconsistencies in its information, it may be given a chance to cure such deficiency. If a Proposer fails to provide material required information in its Proposal and providing the Proposer an opportunity to cure is deemed by the Company, in consultation with the Independent Observer, as an unfair advantage to such Proposer, the Proposal could be classified as non-conforming and eliminated for failure to meet Eligibility Requirements.
4.2 Eligibility Requirements Assessment

Upon receipt of the Proposals, each Proposal will be reviewed to ensure that it meets the following Eligibility Requirements.

- The Proposal, including required uploaded files, must be received on time via the PowerAdvocate Platform.
- The Proposal Fee must be received on time on or before the Proposal Due Date.\(^\text{12}\)

\(^{12}\) Proposal Fees will not be required for the Sealed SBO Proposal
• The Proposal must not contain material omissions.
• The Proposal must be signed and certified by an officer or other authorized person of the Proposer.
• The Proposers must fully execute the agreements or other documents required pursuant to this RFP.
• The Proposer must provide a certificate of good standing from the State of Hawai‘i Department of Commerce and Consumer Affairs.
• The Proposer must provide federal and state tax clearance certificates for the Proposer.
• The Proposal must not be contingent upon changes to existing county, state, or federal laws or regulations.
• The Proposal must be sited on the Pūlama Site.
• The Proposal must be for a PV project and must include an energy storage component.
• No single point of failure from the Facility shall result in a decrease in net electrical output greater than a nominal 3.3 MW AC. Additionally, in meeting this requirement, the Facility must be segmented in equally sized capacities (MW).
• The energy storage component must be able to be charged from the grid at the direction of the Company as described in Section 1.2.7.
• Proposals must specify a GCOD no later than December 31, 2023.

4.3 Threshold Requirement Assessment

Proposals that meet all the Eligibility Requirements will then be evaluated to determine compliance with the Threshold Requirements, which have been designed to screen out Proposals that are insufficiently developed, lack demonstrated technology, or will impose unacceptable execution risk for the Company. Proposers are responsible to provide explanations and supporting information demonstrating how and why they believe the Project they are proposing meets each of the Threshold Requirements. Proposals that fail to provide this information or meet a Threshold Requirement will be eliminated from further consideration upon concurrence with the Independent Observer. The Threshold Requirements for this RFP are the following:

• **Performance Standards:** The proposed Facility must be able to meet the performance attributes identified in this RFP and the Performance Standards identified in the RDG PPA. Proposals should include sufficient documentation to support the stated claim that the Facility will be able to meet the Performance Standards. The Proposal should include information required to make such a determination in an organized manner to ensure this evaluation can be completed within the evaluation review period.

• **Proven Technology:** This criterion is intended as a check to ensure that the technologies proposed are viable and can reasonably be relied upon to meet the objectives of this RFP. The Company will only consider Proposals utilizing technologies that have successfully reached commercial operations in commercial applications (i.e., a PPA) at the scale being proposed. Proposals should include any
supporting information for the Company to assess the commercial and financial maturity of the technologies being proposed.

- **Experience of the Proposer:** The Proposer, its affiliated companies, partners, and/or contractors and consultants on the Proposer’s Project team must have experience in financing, designing, constructing, interconnecting, owning, operating, and maintaining at least one (1) electricity generation project, including all components of the project (i.e., storage or other attributes), similar in size, scope, technology, and structure to the Project being proposed by Proposer. The Company will consider a Proposer to have reasonably met this Threshold Requirement if the Proposer can provide sufficient information in its Proposal’s RFP Appendix B Section 2.13 tables demonstrating that at least one member of the Proposer’s team (identified in the Proposal) has specific experience in each of the following categories: financing, designing, constructing, interconnecting, owning, operating, and maintaining projects similar to the Project being proposed.

- **Credit/Collateral Requirements:** Proposers shall agree to post Development Period Security and Operating Period Security as described in Section 3.13.

- **Viability of Proposer’s Financial Plan:** Proposers must provide a basic financial plan for the Project with details on the sources of debt and equity, capital structure, etc. Evidence must be provided of general support for Project financing.

- **Financial Compliance:** The proposed Project must not cause the Company to be subject to consolidation as set forth, in Financial Accounting Standards Board (“FASB”) Accounting Standards Codification Topic 810, Consolidation (“ASC 810”) as issued and amended from time to time by FASB. Proposers are required to state to the best of their knowledge, with supporting information to allow the Company to verify such conclusion, that the Proposal will not result in the Seller under the PPA being a Variable Interest Entity (“VIE”) and result in the Company being the primary beneficiary of the Seller that would trigger consolidation of the Seller’s finances on to the Company’s financial statements under FASB ASC 810. The Company will perform a preliminary consolidation assessment based on the Proposals received. The Company reserves the right to allow a Proposal to proceed through the evaluation process through selection of the Priority List and work with the Proposer on this issue during or prior to PPA negotiations.

- **Community Outreach:** Gaining community support is an important part of a Project’s viability and success. A comprehensive community outreach and communications plan (“Community Outreach Plan”) is an essential roadmap that guides a developer as they work with various communities and stakeholders to gain their support for a Project. Proposers must include a Community Outreach Plan that describes the Proposer’s commitment to work with the neighboring community and stakeholders and to provide them timely Project information during all phases of the Project. The Community Outreach Plan shall include, but not be limited to, the following information: Project description, community scoping (including stakeholders and community concerns), Project benefits, government approvals,
development process (including Project schedule), and a comprehensive communications plan.

4.4 Evaluation – Price and Non-Price Analysis

Proposals that meet both the Eligibility and Threshold Requirements are Eligible Proposals which will then be subject to a price and non-price assessment. Two teams have been established to undertake the Proposal evaluation process: a Price Evaluation Team and Non-Price Evaluation Team. The results of the price and non-price analysis will be a relative ranking and scoring of all Eligible Proposals. Price-related criteria will account for sixty percent (60%) of the total score and non-price-related criteria will account for forty percent (40%) of the total score. The non-price criteria and methodology for applying the criteria are explained in Section 4.4.2.

The Company will employ a closed-bidding process for this solicitation in accordance with Part IV.H.3 of the Framework where the price and non-price evaluation models to be used will not be provided to Proposers. However, the Company will provide the Independent Observer with all necessary information to allow the Independent Observer to understand the evaluation models and to enable the Independent Observer to observe the entire analysis to ensure a fair process. The evaluation models will be finalized prior to the receipt of Proposals.

4.4.1 Evaluation of the Price Related Criteria

For the evaluation price analysis, an equivalent LEP (Levelized $/MWh) will be calculated for each Eligible Proposal based on information provided in the Proposal including the Lump Sum Payment ($/year), Price for Purchase of Electric Energy ($/MWh), and the Net Energy Potential (“NEP”) RFP Projection (MWh) information defined in RFP Sections 3.9 and 3.10.

The Eligible Proposal with the lowest LEP will receive 600 points. All other Eligible Proposals will receive points based on a proportionate reduction using the percentage by which the Eligible Proposal’s LEP exceeds the lowest LEP. For example, if a Proposal’s LEP is ten percent (10%) higher than the lowest LEP, the Proposal will be awarded 540 points (that is, 600 points less 10%). The result of this assessment will be a ranking and scoring of each Proposal.

4.4.2 Evaluation of the Non-Price Related Criteria

For the non-price analysis, each Proposal will be evaluated on each of the eight (8) non-price criteria categories set forth below to assess their merit in the general areas of Project development feasibility and operational viability.

- Community Outreach and Cultural Resource Impacts
- Project Schedule and Costs
- Performance Standards
- Environmental Compliance and Permitting Plan
- Experience and Qualifications
• Financial Strength and Financing Plan
• RDG PPA Contract Exceptions
• Guaranteed Commercial Operations Date

Each of the first three criteria – Community Outreach and Cultural Resource Impacts, Project Schedule and Costs, Performance Standards – will be weighted twice as heavily as the others to reflect the impact these categories have to achieve a successful and timely procurement. The non-price criteria are generally scored on a scale of 1 (poor) to 5 (highly preferable).

The total non-price score will be the sum of the scores for each of the individual non-price criteria. The Company will then award non-price evaluation points in accordance with the relative ranking of scores. The Proposal with the highest total non-price score will receive 400 points, and all other Proposals will receive points equal to the Proposal’s score divided by the top score, multiplied by 400.

During the non-price criteria evaluation, a fatal flaws analysis will also be conducted such that any Proposal that is deemed not to meet the minimum standards level\(^{13}\) for three (3) or more non-price criteria will be disqualified given that the Proposal has failed to meet a majority of non-price factors that are indicative as to the general feasibility and operational viability of a proposed Project.

The Company’s evaluation of the non-price criteria will be based on the materials provided by a Proposer in its Proposal. Acceptance of any Proposal into the Final Award Group shall not be assumed or construed to be an endorsement or approval that the materials provided by Proposer are complete, accurate or in compliance with applicable law. The Company assumes no obligation to correct, confirm or further research any of the materials submitted by Proposers. Proposers retain sole responsibility to ensure their Proposals are accurate and in compliance with all laws.

The non-price criteria are:

• **Community Outreach and Cultural Resource Impacts** – Gaining community support is an important part of a Project’s viability and success. An effective Community Outreach Plan will call for early meaningful communications with stakeholders and will reflect a deep understanding and respect for the community’s desire for information to enable them to make informed decisions about future projects in their communities. Therefore, Proposals will be evaluated on the quality of the Community Outreach Plan to inform the Project’s impacted communities. Proposers need to also be mindful of the Project’s potential impacts to historical and cultural resources. Proposers will be evaluated on their proposed plan to select and engage with a consultant to assess if there are any historical and/or cultural resources at the Site, including the extent to which traditional and customary native Hawaiian rights are exercised in the area, and how any potential historical or cultural resource issues that arise during the term will be addressed.

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\(^{13}\) A score of 3 is the “meets minimum standards” level that a Proposal must achieve in at least four (4) criteria.
At a minimum, Proposals should include a Community Outreach Plan that describes the Proposer’s commitment to work with the neighboring community and stakeholders and to provide timely Project information during project development, construction and operation. The Community Outreach Plan shall include, but not be limited to, the following:

1) **Project description.** A thorough description including a map of the location of the Project. This information will help the community understand the impact that the Project may have on the community.

2) **Community scoping.** Identify stakeholders (individuals, community leaders, organizations), community issues and concerns, and community sentiment.

3) **Project benefits.** An explanation of the need for the Project. This will help the community to understand how the Project might benefit their community.

4) **Government approvals.** Required government permits and approvals, public hearings and other opportunities for public comment. This information will help the community to understand the level of public scrutiny and participation that might occur for the Project and the opportunities to provide public comments.

5) **Development process.** A Project schedule that identifies key milestones will facilitate the community’s understanding of the development process.

6) **Communications Plan.** A communications plan including a detailed community outreach schedule that will keep the affected communities and stakeholders informed about the Project’s outreach efforts during early Project development period through construction and operations.

Preference will be given to Proposers who have already identified established contacts to work with the local community, have proposed a community benefits package (including details of the community recipients and benefits package), or have community consultants as part of the Project team doing business in Hawai‘i that have successfully worked with communities in Hawai‘i on the development of two or more energy projects or projects with similar community issues. These criteria are aligned with the Companies’ community engagement expectation whereby all developers will be required to engage in community outreach prior to signing a PPA with the Companies. This process is also outlined in RFP Section 5.3.

Also, at a minimum, Proposers should provide a plan to select and engage with a consultant to assess if there are any historical and/or cultural resources at the Site and how any potential historical or cultural resource issues that arise during the term will be addressed. Preference will be given to Proposals that are able to provide a mitigation/action plan or are able to provide a date for when a mitigation/action plan will be available that addresses any identified cultural resource issues.

- **Project Schedule and Costs** – Projects should demonstrate how they plan to capture any ITC safe harbor and reach their GCOD specified, including
identification of risks and schedule assumptions. (Schedules must identify the IRS completion date and PUC approval dates assumed.) Proposals should also demonstrate, via a detailed critical path schedule, that there is a high likelihood that the Project will be able to reach commercial operations as specified. Proposals shall include a Gantt chart that clearly illustrates the overall schedule and demonstrates achievement of any ITC safe harbor, if applicable, and commercial operations by their specified GCOD. The Gantt chart shall include task durations and dependencies, identify tasks that will be fast tracked, and identifies slack time and contingencies.

This criterion will also look at the high-level Project costs set forth in the Proposal including: costs for equipment, construction, engineering, Seller-Owned Interconnection Facilities, Company-Owned Interconnection Facilities, land, annual O&M, the reasonableness of such costs and the assumptions used for such costs. Project costs that do not appear reasonable for a project of the size proposed may result in a lower ranking for this criterion if the Company reasonably determines that the cost information is unrealistic based on prior experience in the market which may result in a risk that the Project can be built on time and for the price proposed by the Proposer. The Company reserves the right to discuss any cost and financial information with a Proposer to ensure the information provided is accurate and correct.

- **Performance Standards** – The proposed Facility must be able to meet the performance attributes identified in this RFP and the Performance Standards identified in the RDG PPA. The Company will review the Proposal information received, including design documents and operating procedures materials provided in the Proposal, and evaluate whether the Project as designed is able to meet the Performance Standards identified in the RDG PPA and in this RFP. At a minimum, in addition to meeting the Performance Standards, the Proposals should include sufficient documentation, provided in an organized manner, to support the stated claim that the Facility will be able to meet the Performance Standards. The Proposal should include information required to make such a determination in an organized manner to ensure this evaluation can be completed on a timely basis. Preference will be given to Proposals that provide detailed technical and design information showing how each standard can be met by the proposed Facility. Preference will also be provided to proposed Projects that offer additional capabilities (e.g., Black-Start).

- **Environmental Compliance and Permitting Plan** – This criterion relates to the potential (short- and long-term) environmental impacts associated with each project, the quality of the plan offered by the Proposer to mitigate and manage any environmental impacts (including any pre-existing environmental conditions), and the plan of Proposers to remain in environmental compliance over the term of the contract. These impacts are reflected on a technology-specific basis. Completing any necessary environmental review and obtaining the required permitting in a timely manner is also important and Proposals will be evaluated on their plan to identify, apply for, and secure the required permits for the Project,
any permitting activity that has been completed to date, including having initial discussions with U.S. Fish and Wildlife and the State of Hawai‘i Department of Land and Natural Resources’ Division of Forestry and Wildlife, to the extent applicable, prior to submitting a Proposal, and the degree of certainty offered by the Proposer in securing the necessary permits.

—At a minimum, proposed Projects should be expected to have minimal environmental impact for most areas and Proposals should provide a comprehensive plan to mitigate the identified potential or actual significant environmental impacts to remain in environmental compliance. The proposed mitigation plans should be included in the Project timeline. Preference will be given to Proposals that provide a more detailed plan as well as those that have proactively taken steps to mitigate potential environmental impacts.

—Also, this criterion requires that, at a minimum, Proposers should have identified, and disclosed in their Proposal(s), all major permits, approvals, appurtenances and entitlements (including applicable access, rights of way and/or easements) (collectively, the “permits”) required and have a preliminary plan for securing such permits. Preference will be given to Proposals that are able to provide a greater degree of certainty that its plan to secure the required permits is realistic and achievable, or have already received all or a majority of the required permits. The Proposer should disclose all identified (a) discretionary permits required, i.e., those requiring public or contested case hearings and/or review and discretionary approval by an appropriate government agency and (b) ministerial permits required, i.e., those requiring the submission of documents or other ministerial conditions without discretionary approval conditions. In all cases, the Proposer must provide a credible and viable plan to secure all necessary and appropriate permits necessary for the project. For example, if the project is located within an agricultural district, the Proposer shall provide evidence of Proposer’s verification with the appropriate government agency that the project complies with HRS Section 205-2 and Section 205-4.5, relating to solar energy facilities placed on agricultural land, provided, however that where a special use permit (under Section 205-6), exemption (under Section 205-6), or amendment to land use district boundary lines (under Section 205-4) is required to secure such compliance, Proposer shall identify the need for such permit, exemption or amendment and provide a list of required prerequisites and/or conditions and a realistic timeline necessary to obtain such permit, exemption or amendment satisfactory for Proposer to still meet its designated Guaranteed Commercial Operations Date GCOD.

- Experience and Qualifications – Proposals will be evaluated based on the experience of the Proposer in financing, designing, constructing, interconnecting, owning, operating, and maintaining projects (including all components of the project) of similar size, scope and technology. At a minimum, Proposals must show via the table format specified in RFP Appendix B Section 2.13 that at least one (1) member must have specific experience in each of the following categories: financing, designing, constructing, interconnecting, owning,
operating, and maintaining at least one electricity generation project including all components of the project similar to the Project being proposed. Preference will be given to Proposers with experience in successfully developing multiple projects that are similar to the one being proposed and/or that have prior experience successfully developing and interconnecting a utility scale project to the Company’s System.

- **Financial Strength and Financing Plan** – This criterion addresses the comprehensiveness and reasonableness of the financial plan for the Project as well as assesses the financial strength and capability of the Proposer to develop the Project. A complete financial plan addresses the following issues: Project ownership, capital cost and capital structure, sources of debt and equity, and evidence that credit-worthy entities are interested in financing the Project. The financial strength of Proposers or their credit support providers will be considered, including their credit ratings. The financing participants are expected to be reasonably strong financially. Developers and their sources of capital that have investment grade credit ratings from a reputable credit rating agency (S&P, Moody’s, Fitch) will also be given preference, with those that have higher credit ratings ranked higher.

- **RDG PPA Contract Proposed Modifications** – Proposers are encouraged to accept the contract terms identified in the model PPA in its entirety in order to expedite the overall RFP process and potential contract negotiations. Proposers who accept the model agreements without edits will receive a higher score and will be the only proposals that can achieve the highest scoring for this non-price evaluation. Technology-specific or operating characteristic-required modifications, with adequate explanation as to the necessity of such modifications, will not jeopardize a project’s ability to achieve the highest score. Proposers who elect to propose modifications to the model agreements shall provide a Microsoft Word red-line version of the applicable document identifying specific proposed modifications to the model agreement language, as well as a detailed explanation and supporting rationale for each modification. General comments without proposed alternate language, drafting notes without explanation or alternate language, footnotes such as “parties to discuss,” or a reservation of rights to make additional modifications to the model agreements at a later time are unacceptable will be considered unresponsive, and will result in a lower score. The Company and Independent Observer will evaluate the impact that the proposed modifications will have on the overall risk assessment associated with the evaluation of each Proposal.

- **Guaranteed Commercial Operations Date** - The Company is procuring resources and incorporating projects onto its System as part of its long-term plan to meet RPS goals. Proposers will be held to the Guaranteed Commercial Operations Date identified in their Proposal. The GCOD will be a Guaranteed Milestone and will be inserted without amendment into the RDG PPA. Proposers that are able to design for and commit to an earlier GCOD will be given more
favorable scoring. Proposers must have met the GCOD requirements of RFP Section 1.2.410 prior to being evaluated in this non-price criterion.

4.5 Selection of the Final Award Group

At the conclusion of both the price and non-price analysis, a total score will be calculated for each Eligible Proposal using the 60% price-related criteria/40% non-price-related criteria weighting outlined above. The price and non-price analysis, and the summation of both price and non-price scores described above, will result in a ranking of Proposals.

Based on the results of this Evaluation and review with the Independent Observer, the Company will select a Proposal to the Final Award Group from which to begin contract negotiations. All Proposers will be notified at this stage of the evaluation process whether their Proposal is included in the Final Award Group.

Selection to the Final Award Group and/or entering into contract negotiations does not guarantee execution of a PPA.

Further, if at any time during the evaluation process it is discovered that a Proposer’s Proposal contains incorrect or misrepresented information that have a material effect on any of the evaluation processes, including selection of the Final Award Group, the Company reserves the right, at any time prior to submission of the PPA Application with the PUC, in consultation with the Independent Observer, to disqualify the Proposer from the RFP. If discovery of the incorrect or misrepresented information is made after the Company has filed its PUC application for approval of the PPA with the Proposer, the Company will disclose the incorrect or misrepresented information to the PUC for evaluation and decision as to whether such Proposer should be disqualified and the Company’s application dismissed.

Following any removal of a proposal from the Final Award Group, either by disqualification noted immediately above, or via any other removal or withdrawal of a proposal, including failure to reach agreement to the PPA, the Company, taking into consideration the timing of such removal and the current status of the Company’s needs under the RFP, in consultation with and concurrence from the Independent Observer, will determine (1) if another proposal should be added to the Final Award Group; or (2) if either of the Contingency Plan or Parallel Plan should be pursued.

Order No. 36536 in Docket No. 2017-0352, issued on June 10, 2019 “directs the Companies to work with the [Independent Observers] to increase bid transparency within the RFP process, while maintaining an appropriate level of confidentiality regarding bids and bidders.” The Companies agree that it is desirable for the RFP process to be as transparent as possible while maintaining the confidentiality of Proposer and Proposal information. The type and quantity of information that can be disclosed will not be known until the Companies and the Independent Observer have a better understanding of the number proposals received and whether such information can be easily anonymized. The Companies will work with the Independent Observers to determine an appropriate level of disclosure after Proposals are received with a goal of disclosing more
information than was disclosed in the Companies’ Stage 1 RFPs for O‘ahu, Maui, and Hawai‘i Island.

Chapter 5: Post Evaluation Process

5.1 Interconnection Requirements Study Process

A complete package of IRS Data Request worksheets and project single line diagram(s) shall be submitted with each Proposal. For Projects with a proposed GCOD in 2022, the models for equipment and controls, list(s) to clearly identify the components and respective files (for inverters and power plant controller), and complete documentation with instructions, shall be submitted within 60 days thereafter. See Section 2.11.1 of Appendix B. For all other Projects, the same complete submittal shall be due within 60 days after selection to the Final Award Group. PSSE Generic models, PSSE User models, and ASPEN models shall be configured to represent all of the functional equipment with settings in place to comply with the Company’s PPA performance requirements. These must be checked for functionality by the Proposer or its vendors and consultants prior to submission to the Company. Similar and fully accurate PSCAD models shall be submitted in a condition that complies with the PSCAD modeling guidelines provided by the Company. PSSE generic models shall be provided promptly after the PSSE user models have been approved by the Company.

After proposals and models are submitted, the Company will inspect the data packages for general completeness. For any incomplete submissions, a list of missing or non-functional items will be provided. Proposers will be given 15 Days to resolve data and modeling deficiencies. The Company, in consultation with the Independent Observer, may deny remove Proposals from being selected to the Final Award Group or may terminate PPA negotiations or executed PPAs, if their submission requirements are deemed incomplete for the lack of requested models. Proposals that are complete will be considered for further evaluation. A formal, technical model checkout will be deferred until a later date when IRS Agreements and deposits are in place, so that the expert subject matter work can be provided by the Company’s IRS consultant(s).

Upon notification of selection to the Final Award Group, the Company will provide a draft IRS Agreement for the selected project, with a statement of required deposit for individual and prorated work as part of an IRS Scope for a System Impact Study that will involve (a) technical model checkout for the project and (b) any considerations that are specific to the particular project and location. Interconnection cost and schedule, including cost of any required system upgrades, will be determined in a subsequent Facilities Study.

The technical model checkouts will be conducted first. Upon identification of any functional problems or deficiencies, corrective action shall be taken immediately and on an interactive basis so that the problems or deficiencies can be resolved within 15 Days, including re-submission of data and updated models, or the project shall be deemed withdrawn. At the discretion of the Company and provided that there is a
demonstration of good faith action to minimize delay that would affect the schedule for IRS analyses, a second round of model checkout and problem solving may proceed. Thereafter any notice that a Project is deemed withdrawn for lack of completeness shall be final. Subject to consultation with the Independent Observer, failure to provide all requested material within the time(s) specified, or changes to the data provided after the due date(s), shall result in elimination from the Final Award Group.

Proposers shall be responsible for the cost of the IRS, under separate agreements for the System Impact Study and the Facilities Study. The overall IRS will provide information including, but not limited to, an estimated cost and schedule for the required Interconnection Facilities for a particular Project and any required mitigation measures. Proposers will be responsible for the actual final costs of all Seller-Owned Interconnection Facilities and Company-Owned Interconnection Facilities. Upon reviewing the results of the IRS, Proposers will have the opportunity to declare the PPA null and void in the event that the estimated interconnection costs and schedule for the Project are higher than what was estimated in the Project Proposal. See Section 12.4 of the RDG PPA.

5.2 Contract Negotiation Process

Within five (5) business days of being notified by the Company of its intent to enter into contract negotiations, the Proposer selected to the Final Award Group will be required to indicate, in writing to the Company’s primary contact for this RFP, whether it intends to proceed with its Proposal. The awarded Proposer will be required to keep its Proposal valid through the award period. Contract negotiations will take place in parallel with the IRS process. The Company’s goal is to complete contract negotiations and submit an executed PPA for approval within six (6) months of notification of intent to enter contract negotiations. The IRS may not be completed at such time. The Company intends to execute and file the PPA with the PUC for approval and later amend the PPA to include the results of the IRS.

5.3 Community Outreach and Engagement / Cultural Resource Impacts

The public meeting and comment solicitation process described in this Section and Section 29.21 of the PPA (Community Outreach Plan) do not represent the only community outreach and engagement activities that can or should be performed by a Proposer. Within 30 Days of the start of PPA negotiations, Proposers shall have provided the Company with an updated comprehensive Community Outreach Plan to work with and inform neighboring communities and stakeholders and to provide them timely information during all phases of the Project. The Community Outreach Plan shall include but not be limited to the following information: Project description, Project stakeholders, community concerns and Proposer’s efforts to address such concerns, Project benefits, government approvals, Project schedule, and a comprehensive communications plan. Upon selection to the Final Award Group, a Proposer's Community Outreach Plan shall be a public document available to the public on the Proposer’s website and upon request. The Proposer shall also provide the Company with links to their Project website and Community Outreach Plan, which the Company will post on the Company’s website.
Prior to the execution date of the PPA, Proposers shall also host a public meeting in the community where the proposed Project is to be located 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) calendar days from the date of said public meeting to submit written comments to Company and/or Proposer for inclusion in the Company’s submission to the PUC of its application for a satisfactory PUC Approval Order. The Proposer shall collect all public comments, and then provide the 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. If a PPA is executed by the Proposer and the Company, the Company may submit any and all public comments (presented in its original, unedited form) as part of its PUC application for this Project. Proposers shall notify the public at least three weeks in advance of the meeting. The Company shall be informed of the meeting. The Company will provide Proposers with detailed instructions regarding the community meeting requirement after the selection of the Final Award Group. (For example, notice will be published in county or regional newspapers/media, as well as media with statewide distribution. The Proposer will be directed to notify certain individuals and organizations. The Proposer will be provided templates to use for the public meeting notices, agenda, and presentation.) Proposers must also comply with any other requirement set forth in the PPA relating to Community Outreach.

Following the submission of the PUC application for the Project, and prior to the date when the Parties’ statements of position are to be filed in the docketed PUC proceeding for the Project, the Proposer shall provide another opportunity for the public to comment on the proposed Project. The Proposer’s statement of position filed in the docket associated with the Project will contain an attachment including those comments.

The Proposer shall be responsible for community outreach and engagement for the Project, and that the public meeting and comment solicitation process described in this section do not represent the only community outreach and engagement activities that can or should be performed.

Within 30 Days of the start of PPA negotiations, the Proposer shall contract with a consultant to begin a cultural impact assessment for the Project. The consultant shall identify (1) 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; (2) the extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken to reasonably protect native Hawaiian rights if they are found to exist.
5.4 Greenhouse Gas Emissions Analysis

The Proposer whose Proposal is selected for the Final Award Group shall cooperate with and promptly provide to the Company and/or Company’s consultant(s) upon request, all information necessary, in the Company’s sole and exclusive discretion, for such consultant to prepare a greenhouse gas (“GHG”) emissions analysis and report in support of a PUC application for approval of the PPA for the project (the “GHG Review”). Proposers shall be responsible for the full cost of the GHG Review associated with their project under a separate agreement between the Proposer and the Company. The GHG Review is anticipated to address whether the GHG emissions that would result from approval of the PPA and subsequent to addition of the Project to the Company’s system are greater than the GHG emissions that would result from the operations of the Company’s System without the addition of the Project, whether the cost for renewable, dispatchable generation, and/or energy storage services as applicable under the PPA is reasonable in light of the potential for GHG emissions, and whether the terms of the PPA are prudent and in the public interest in light of its potential hidden and long-term consequences.

5.5 PUC Approval of PPA

Any signed PPA resulting from this RFP is subject to PUC approval as described in the RDG PPA, including Article 12 and Section 29.20 thereof.

5.6 Facility In-Service

The Company requires the following be included with the 60% design drawings: relay settings and protection coordination study, including fuse selection and ac/dc schematic trip scheme.

For the Company to test the Facility, coordination between the Company and Project is required. Drawings must be approved by the Company prior to testing. The entire Facility must be ready for testing to commence. Piecemeal testing will not be allowed. Communication infrastructure and equipment must be tested by the IPP and ready for operation prior to Company testing.

If approved drawings are not available, or if the Facility is otherwise not test ready as scheduled, the Project will be moved to the end of the Company’s testing queue. If tests are not completed within the allotted scheduled testing time, the Project will be moved to the end of the Company’s testing queue. The IPP will be allowed to cure if successful testing is completed within the allotted scheduled time. No adjustments will be made to PPA milestones if tests are not completed within the original allotted time. Liquidated damages for missed milestones will be assessed pursuant to the PPA.
Exhibit 5

Redline of revised pages of the RDG PPA for PV against August 6, 2019 Draft PV RDG PPA
Model

Power Purchase Agreement

For

Renewable Dispatchable Generation

(PV + BESS)

August 6, November 27, 2019

Version
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 except to the extent that Company has requested and Seller has agreed, in their sole discretion, to exceed the Allowed Capacity. Where Company has not requested Seller to exceed the Allowed Capacity, Seller shall take all necessary affirmative action to limit Actual Output of the Facility 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
ARTICLE 11

GOVERNMENTAL APPROVALS, LAND RIGHTS AND COMPLIANCE WITH LAWS

[DRAFTING NOTE: TO THE EXTENT A DEVELOPER INTENDS TO SITE ITS PROJECT ON A COMPANY-OWNED SITE, APPROPRIATED REVISIONS SHALL BE MADE TO THIS AGREEMENT, INCLUDING THIS ARTICLE 11, TO REFERENCE THE APPLICABLE TERMS OF ATTACHMENT 2.]

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,
reactive power equipment or additional control modifications, at Seller's expense).

(c) **Ramp Rates.**

Seller shall ensure that the ramp rate of the Facility is less than 100 KW a minute for all conditions other than those under control of the Company System Operator and/or those due to desired frequency response, including start up, depletion of storage charge and resource, locally controlled startup and shut down.

(d) **Ride Through.**

Ride-Through requires that the resource continues to inject current within the "No Trip" zone of the voltage and frequency ride-through requirements. Unless approved during the Interconnection Requirements Study analysis, resources should not use "momentary cessation" within the ride-through regions for any of the ride-through requirements in this Attachment B (Facility Owned by Seller). In the "may trip" regions, the Facility shall initiate trip for over/under voltage and frequency conditions only as required for Facility equipment operating limits to avoid damage. Any such limits of operation should be conveyed to the Company and represented in the provided models.

(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). For alarm conditions the Facility shall not disconnect from the Company System unless the Facility's equipment is at risk of damage. This is necessary in order to coordinate with the existing Company System. [**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.**]:

[FOR ISLAND OF MOLOKA‘I]
$0.88 \leq V \leq 1.10$ pu The Facility remains connected to the Company System and in continuous operation.

$0.70 \leq V < 0.88$ pu The Facility may initiate disconnection from the Company System if the voltage remains in this range for more than 20 seconds.

$0.50 \leq V < 0.70$ pu The Facility may initiate disconnection from the Company System if the voltage remains in this range for more than 10 seconds.

$0.15 \leq V < 0.50$ pu The Facility may initiate disconnection from the Company System if voltage remains in this range for more than 2 seconds.

$0.00 \leq V < 0.15$ pu The Facility may initiate disconnection from the Company System if the voltage remains in this range for more than 0.16 seconds.

[FOR ISLAND OF LĀNAʻI]

$0.90 \leq V < 1.10$ pu The Facility remains connected to the Company System and in continuous operation.

$0.70 \leq V < 0.90$ pu The Facility may initiate disconnection from the Company System if the voltage remains in this range for more than 2 seconds.

$0.05 \leq V < 0.70$ pu The Facility may initiate disconnection from the Company System if the voltage remains
in this range for more than 600 milliseconds.

\[ V < 0.05 \text{ pu} \] The Facility may initiate disconnection from the Company System if the voltage remains in this range for more than 150 milliseconds.

Protective Undervoltage Relaying (27) shall be set to alarm only to meet the above ride-through requirements, and shall not initiate a disconnect from the Company System unless Seller reasonably determines based upon Good Engineering and Operating Practices that the Facility's equipment is at risk of damage. This is necessary in order to coordinate with the existing Company System.

Seller shall have sufficient capacity to fulfill the above mentioned requirements to ride-through subsequent events 300 cycles or more apart, between which the voltage at the POI recovers above 0.88-80 pu for Moloka'i and 0.90 pu for Lāna'i. [THE ACTUAL RIDE-THROUGH TIMES WILL BE DETERMINED BY COMPANY IN CONNECTION WITH THE IRS]

(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). For alarm conditions the Facility should not disconnect from the Company System unless the Facility's equipment is at risk of damage. This is necessary in order to coordinate with the existing Company System. [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.]:

{FOR ISLAND OF MOLOKA'I}
0.88 pu ≤ V ≤ 1.10 pu The Facility remains connected to the Company System and in continuous operation.

1.10 pu < V ≤ 1.20 pu The Facility remains connected to the Company System and in continuous operation no less than 30 seconds; the duration of the event is measured from the point at which the voltage increases at or above 1.10 pu and ends when voltage is at or below 1.10 pu.

V > 1.20 pu The Facility remains connected to the Company System and in continuous operation for as long as possible as allowed by the equipment operational limitations.

FOR ISLAND OF LĀNA‘I

0.90 pu ≤ V < 1.10 pu The Facility remains connected to the Company System and in continuous operation.

1.10 pu ≤ V < 1.20 pu The Facility remains connected to the Company System and in continuous operation no less than 30 seconds; the duration of the event is measured from the point at which the voltage increases at or above 1.10 pu and ends when voltage is at or below 1.10 pu.

V ≥ 1.20 pu The Facility remains connected to the Company System and in continuous operation for as long as possible as allowed by the equipment operational limitations.

Protective Overvoltage Relaying (59) shall be set to alarm only to meet the above ride-through requirements,
and shall not initiate a disconnect from the Company System unless Seller reasonably determines based upon Good Engineering and Operating Practices that the Facility's equipment is at risk of damage. This is necessary in order to coordinate with the existing Company System.

(g) **Transient Stability Ride-Through.**

In all modes, the Facility shall be designed such that the transient stability of Company System is maintained for normally cleared and secondarily cleared faults. The Facility will be required to remain connected through anticipated rates of change of frequency [TO BE PROVIDED UPON COMPLETION OF IRS]

(h) [RESERVED]

(i) **Underfrequency Ride-Through.**

The Facility shall meet the following underfrequency ride-through requirements during an underfrequency disturbance, and export of power shall continue with output adjusted as appropriate for Facility droop response consistent with Section 1(g)(xi) (Active Power – Frequency Response (DROOP)), Section 1(g)(xii) (Dynamic Active Power – Frequency Performance), and [FOR FACILITIES WITH STORAGE] Section 1(g)(xiii) (Alternate Active Power / Frequency Response Modes) of this Attachment B (Facility Owned by Seller) ("f" is the Company System frequency at the Point of Interconnection):

[FOR ISLAND OF MOLOKA‘I]

57.0 Hz ≤ f < 63.0 Hz  The Facility remains connected to the Company System and in continuous operation.

50.0 Hz ≤ f < 57.0 Hz  The Facility remains connected to the Company System and in continuous operation for at least twenty (20) seconds per event. The duration of the event is from the point at which the frequency is below 57
Hz and ends when the frequency is at or above 57 Hz. The Facility may initiate an alarm if frequency remains in this range for more than twenty (20) seconds.

\[
f < 50.0 \text{ Hz}
\]

The Facility remains connected to the Company System and in continuous operation for the duration allowed by the equipment operational limitations. The Facility may initiate an alarm immediately.

\[
\text{[FOR ISLAND OF LĀNAʻI]}
\]

\[
55.0 \text{ Hz} \leq f < 61.0 \text{ Hz}
\]

The Facility remains connected to the Company System and in continuous operation.

\[
f < 55.0 \text{ Hz}
\]

The Facility remains connected to the Company System and in continuous operation for the duration allowed by the equipment operational limitations. The Facility may initiate an alarm immediately.

Protective Underfrequency Relaying (81U) shall be set to alarm only to meet the above ride-through requirements, and shall not initiate a disconnect from the Company System unless Seller reasonably determines based upon Good Engineering and Operating Practices that the Facility's equipment is at risk of damage. This is necessary in order to coordinate with the existing Company System.

Any tripping on calculated frequency should be based on accurately calculated and filtered frequency measurement over a time frame of minimum six cycles, or other period as specified by the Company, and should not use an instantaneously calculated value.

(j) Overfrequency Ride-Through.
The Facility will behave as specified below for overfrequency conditions, and export of power shall continue with output adjusted as appropriate for Facility droop response consistent with Section 1(g)(xi) (Active Power – Frequency Response (DROOP)), Section 1(g)(xii) (Dynamic Active Power – Frequency Performance), and [FOR FACILITIES WITH STORAGE] Section 1(g)(xiii) (Alternate Active Power / Frequency Response Modes) ("f" is the Company System frequency at the Point of Interconnection):

[FOR ISLAND OF MOLOKA‘I]

57.0 Hz ≤ f ≤ 63.0 Hz  The Facility remains connected to the Company System and in continuous operation.

63.0 Hz < f ≤ 6465.0 Hz  The Facility remains connected to the Company System for at least twenty (20) seconds. After twenty seconds, the Facility may initiate an alarm and the Facility remains connected and producing power for the duration allowed by the equipment operational limitations. The duration of condition is from the point at which the frequency is above 63.0 Hz and ends when the frequency is at or below 63.0 Hz.

f > 6465.0 Hz  The Facility must may initiate disconnection from the Company System immediately.

[FOR ISLAND OF LĀNA‘I]

57.0 Hz ≤ f < 61.0 Hz  The Facility remains connected to the Company System and in continuous operation.

61.0 Hz ≤ f < 62.0 Hz  The Facility remains connected to the Company System for at least six (6) seconds. After
six seconds, the Facility may initiate an alarm and the Facility remains connected and producing power for the duration allowed by the equipment operational limitations. The duration of condition is from the point at which the frequency is above 61.0 Hz and ends when the frequency is at or above 61.0 Hz.

62.0 Hz \leq f < 65.0 Hz The Facility remains connected to the Company System for at least two (2) seconds. After two seconds, the Facility may initiate an alarm and the Facility remains connected and producing power for the duration allowed by the equipment operational limitations. The duration of condition is from the point at which the frequency is above 62.0 Hz and ends when the frequency is at or below 62.0 Hz.

65.0 Hz \leq f The Facility remains connected to the Company System for the duration allowed by the equipment operational limitations. The Facility may initiate an alarm immediately.

Protective Overfrequency Relaying (81O) shall be set to alarm only to meet the above ride-through requirements, and shall not initiate a disconnect from the Company System unless Seller reasonably determines based upon Good Engineering and Operating Practices that the Facility's equipment is at risk of damage. This is necessary in order to coordinate with the existing Company System.
(ii) The Facility shall include safeguards to prevent the unintentional switching of the Facility into and out of grid forming mode. The safeguards design shall be approved in writing by the Company and implemented by the Seller prior to control system testing.

(iii) The Facility shall transition seamlessly from grid forming mode to grid following mode and vice versa while under load without ceasing current output in accordance with tunable system state parameters (frequency/voltage) and/or under the direction of the Company System Operator.

(r) Black Start Capability.

[NOTE - APPLICABILITY BASED ON RESOURCE TYPE AND DESIGN, FOR INVERTER BASED RESOURCES] [For synchronous machines, require capability to operate in isochronous control and black start.] The BESS storage shall be capable of grid forming inverter capability so it can generate its own AC waveform at the designated POI rather than relying on grid voltage to synchronize and maintain frequency. Further, inverter-based resources shall ensure they have sufficient energy storage to maintain power injection to the grid during system restoration (i.e., have power available when and if called upon). [TO BE SPECIFIED DURING THE IRS] Inverter based facilities shall be capable of support as a black start cranking path to start synchronous generators for restoration.

The Facility shall have sufficient short-term over-current capability to supply inrush currents during energizing of transformers and distribution feeders and starting auxiliary motors of conventional power plants. Other inrush-current mitigating solutions can be accepted as well.

The Facility for black start shall be configured to provide a ground reference for a black start path during the black start procedure (avoid energizing delta-delta transformer connected paths, use switchable grounding transformers or use wye-grounded transformers with dedicated black start units).

(s) Provision of Synthetic Inertia. [TO BE DETERMINED BASED ON IRS.]
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 Z (Company-Owned Site) or this Agreement, keep the contents of this Attachment Z (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 Z (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 Z 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, EVENTS OF DEFAULT, SCOPE OF INDEMNIFICATION AND DRAWS UPON DEVELOPMENT PERIOD SECURITY OR OPERATING
Exhibit 6

Redline of revised pages of the RDG PPA for wind against August 6, 2019 Draft wind RDG PPA
Model

Power Purchase Agreement
For
Renewable Dispatchable Generation
(Wind + BESS)

August 6 November 27, 2019
Version
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 except to the extent that Company has requested and Seller has agreed, in their sole discretion, to exceed the Allowed Capacity. Where Company has not requested Seller to exceed the Allowed Capacity, Seller shall take all necessary affirmative action to limit Actual Output of the Facility 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)}
ARTICLE 11

GOVERNMENTAL APPROVALS, LAND RIGHTS AND COMPLIANCE WITH LAWS

ARTICLE 11  [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 11, TO REFERENCE THE APPLICABLE TERMS OF ATTACHMENT Z.]

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,
frequency response, including start up, depletion of storage charge and resource, locally controlled startup and shut down.

(d) **Ride-Through.**

Ride-Through requires that the resource continues to inject current within the "No Trip" zone of the voltage and frequency ride-through requirements. Unless approved during the Interconnection Requirements Study analysis, resources should not use "momentary cessation" within the ride-through regions for any of the ride-through requirements in this Attachment B (Facility Owned by Seller). **In the "may trip" regions, the Facility shall initiate trip for over/under voltage and frequency conditions only as required for Facility equipment operating limits to avoid damage. Any such limits of operation should be conveyed to the Company and represented in the provided models.**

(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). For alarm conditions the Facility shall not disconnect from the Company System unless the Facility's equipment is at risk of damage. This is necessary in order to coordinate with the existing Company System. **[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.]:**

- \(0.88 \text{ pu} \leq V \leq 1.10 \text{ pu}\) 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.
System if the voltage remains in this range for more than 10 seconds.

0.15 pu ≤ V < 0.50 pu

The Facility may initiate disconnection from the Company System if voltage remains in this range for more than 2 seconds.

0.00 pu ≤ V < 0.15 pu

The Facility may initiate disconnection from the Company System if the voltage remains in this range for more than 0.16 seconds.

Protective Undervoltage Relaying (27) shall be set to alarm only to meet the above ride-through requirements, and shall not initiate a disconnect from the Company System unless Seller reasonably determines based upon Good Engineering and Operating Practices that the Facility's equipment is at risk of damage. This is necessary in order to coordinate with the existing Company System.

Seller shall have sufficient capacity to fulfill the above mentioned requirements to ride-through subsequent events 300 cycles or more apart, between which the voltage at the POI recovers above 0.80 pu. [THE ACTUAL RIDE-THROUGH TIMES WILL BE DETERMINED BY COMPANY IN CONNECTION WITH THE IRS]

(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). For alarm conditions the Facility should not disconnect from the Company System unless the Facility's equipment is at risk of damage. This is necessary in order to coordinate with the existing Company System. [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.

0.880 pu ≤ V ≤ 1.10 pu  
The Facility remains connected to the Company System and in continuous operation.

1.10 pu < V ≤ 1.20 pu  
The Facility may initiate disconnection from the Company System if voltage remains in this range for more than 0.92 seconds (1 sec if 138 kV connected) remains connected to the Company System and in continuous operation no less than 30 seconds; the duration of the event is measured from the point at which the voltage increases at or above 1.10 pu and ends when voltage is at or below 1.10 pu.

V > 1.20 pu  
The Facility may initiate disconnection from the Company System immediately remains connected to the Company System and in continuous operation for as long as possible as allowed by the equipment operational limitations.

Protective Overvoltage Relaying (59) shall be set to alarm only to meet the above ride-through requirements, and shall not initiate a disconnect from the Company System unless Seller reasonably determines based upon Good Engineering and Operating Practices that the Facility's equipment is at risk of damage. This is necessary in order to coordinate with the existing Company System.

(g) Transient Stability Ride-Through.

In all modes, the Facility shall be designed such that the transient stability of Company System is maintained for normally cleared and secondarily cleared faults. The Facility will be required to remain connected
through anticipated rates of change of frequency [TO BE PROVIDED UPON COMPLETION OF IRS].

(h) [RESERVED]

(i) **Underfrequency ride-through.**

The Facility shall meet the following underfrequency ride-through requirements during an underfrequency disturbance, and export of power shall continue with output adjusted as appropriate for Facility droop response consistent with Section 1(g)(xi) (Active Power - Frequency Response (DROOP)), Section 1(g)(xii) (Dynamic Active Power - Frequency Performance), and [FOR FACILITIES WITH STORAGE] Section 1(g)(xiii) (Alternate Active Power / Frequency Response Modes) of this Attachment B (Facility Owned by Seller) ("f" is the Company System frequency at the Point of Interconnection):

- **57.0 Hz ≤ f ≤ 63.0 Hz**
  The Facility remains connected to the Company System and in continuous operation.

- **50.0 Hz ≤ f < 57.0 Hz**
  The Facility may initiate disconnection from the Company System if frequency remains in this range for more than twenty (20) seconds. Remains connected to the Company System and in continuous operation for at least twenty (20) seconds per event. The duration of the event is from the point at which the frequency is below 57 Hz and ends when the frequency is at or above 57 Hz. The Facility may initiate an alarm if frequency remains in this range for more than twenty (20) seconds.

- **f < 50.0 Hz**
  The Facility may initiate disconnection from the Company System immediately.
and in continuous operation for the duration allowed by the equipment operational limitations. The Facility may initiate an alarm immediately.

Protective Underfrequency Relaying (81U) shall be set to alarm only to meet the above ride-through requirements, and shall not initiate a disconnect from the Company System unless Seller reasonably determines based upon Good Engineering and Operating Practices that the Facility's equipment is at risk of damage. This is necessary in order to coordinate with the existing Company System.

Any tripping on calculated frequency should be based on accurately calculated and filtered frequency measurement over a time frame of minimum six cycles, or other period as specified by the Company, and should not use an instantaneously calculated value.

(j) Overfrequency ride-through.

The Facility will behave as specified below for overfrequency conditions, and export of power shall continue with output adjusted as appropriate for Facility droop response consistent with Section 1(g)(xi) (Active Power – Frequency Response (DROOP)), Section 1(g)(xii) (Dynamic Active Power – Frequency Performance), and [FOR FACILITIES WITH STORAGE] Section 1(g)(xiii) (Alternate Active Power / Frequency Response Modes) ("f" is the Company System frequency at the Point of Interconnection):

\[
57.0 \text{ Hz} \leq f \leq 63.0 \text{ Hz}
\]

The Facility remains connected to the Company System and in continuous operation.

\[
63.0 \text{ Hz} < f \leq 645.0 \text{ Hz}
\]

The Facility may initiate disconnection from the Company System if frequency remains in this range for more than twenty (20) seconds remains connected to the Company System for at least twenty (20) seconds. After twenty (20) seconds, the Facility may initiate an alarm.
and the Facility remains connected and producing power for the duration allowed by the equipment operational limitations. The duration of condition is from the point at which the frequency is above 63.0 Hz and ends when the frequency is at or below 63.0 Hz.

\[ f > 645.0 \text{ Hz} \]

The Facility may initiate disconnection from the Company immediately.

Protective Overfrequency Relaying (81O) shall be set to alarm only to meet the above ride-through requirements, and shall not initiate a disconnect from the Company System unless Seller reasonably determines based upon Good Engineering and Operating Practices that the Facility's equipment is at risk of damage. This is necessary in order to coordinate with the existing Company System.

Any tripping on calculated frequency should be based on accurately calculated and filtered frequency measurement over a time frame of minimum six cycles, or other period as specified by the Company, and should not use an instantaneously calculated value.

(k) Successive Faults.

If the resource necessitates tripping to protect from the cumulative effects of those successive faults, in a period of time to ensure safety and equipment integrity, the constraint and time periods should be provided for inclusion in the interconnection study. For all cases, at a minimum, the ride-through requirements shall be met for two ride-through events within two seconds to allow for the Company's transmission automatic reclosing attempt. [Note - this requirement may be modified based on the results of the IRS.]

(1) Rate of Change of Frequency ("ROCOF")

The inverter-based resources in the Facility shall not use rate-of-change-of-frequency protection unless an
indirectly, expressly or impliedly, or give rise to, any real property right, title, or interest.

**DRAFTING NOTES:**

1. ATTACHMENT Z 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, **EVENTS OF DEFAULT**, SCOPE OF INDEMNIFICATION AND DRAWS UPON DEVELOPMENT PERIOD SECURITY OR OPERATING PERIOD SECURITY WILL BE REVISED TO ACCOUNT FOR ATTACHMENT Z.
indirectly, expressly or implicitly, or give rise to, any real property right, title, or interest.

DRAFTING NOTES:

1. ATTACHMENT Z 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, EVENTS OF DEFAULT, SCOPE OF INDEMNIFICATION AND DRAWS UPON DEVELOPMENT PERIOD SECURITY OR OPERATING PERIOD SECURITY WILL BE REVISED TO ACCOUNT FOR ATTACHMENT Z.